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THE REVISED CODES OF MONTANA

OF 1921

CONTAINING THE PERMANENT LAWS OF THE STATE IN FORCE AT THE CLOSE OF THE SEVENTEENTH LEGISLATIVE ASSEMBLY OF 1921

IN FOUR VOLUMES

COMPILED, REVISED AND ANNOTATED UNDER CHAPTER 195, LAWS OF 1919, AND CHAPTER 109, LAWS OF 1921, AND PUBLISHED UNDER CHAPTER 122, LAWS OF 1921

I. W. CHOATE
COMMISSIONER

VOLUME ONE

POLITICAL CODE

61

SAN FRANCISCO:
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1921

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PREFACE

The Revised Codes of Montana of 1921 (cited by abbreviation "R. C. M. 1921") were compiled by the code commissioner under authority of chapter 195, Laws of 1919, and chapter 109, Laws of 1921, sections 5531 to 5542 of this code.

A statement of the contents and general plan of the work is here given.

1. CONTENTS.—These codes are a compilation of existing legislation. They aim to give in an orderly arrangement all the permanent laws of Montana, to and including the acts of the 17th legislative assembly of 1921, and to indicate their application and construction by the supreme court. All appropriation acts and resolutions, all titles, enacting and repealing clauses and all local or special laws temporary in character, are omitted from these codes except a few special acts whose retention in the permanent laws of the state has been thought advisable and which are published in part VI of the Political Code under the head of Local and Special Laws. A table of comparative sections and a table of session laws is contained in the appendix, volume 4, from which may be ascertained the location in this code or other disposal made of all sections of the Revised Codes of 1907 and of all session acts subsequent to 1909.

2. ARRANGEMENT.—These codes are divided into four volumes, preserving the four codes in substantially the form in which they have existed since the revision of 1895. Consecutive numbering of the sections throughout the entire code has been retained in accordance with the plan adopted in 1907 and generally followed by other states. The arbitrary divisions heretofore used have been entirely changed and each code is now divided into parts and chapters only. Some changes in the previous arrangement of the codes have also been made wherever it was thought that a more logical classification of the subject-matter would result.

3. HISTORY.—The complete history of each section is given in full in a note immediately following it, beginning with the Bannack Statutes enacted in 1864-65 and extending through the several territorial and state statutes and session laws to the present time. For the sake of brevity and economy this history has in some instances been consolidated by the use of a note following the first section of the chapter or act and directing attention generally to the earlier acts, a reference to the same being then made under each succeeding section. The following abbreviations are used in writing history:

Amd.	Amended	Field	Field Code of New York
Ap. p.	Appears in part	L.	Laws
C.	Code	P.	Page
C. Civ. Proc.	Code Civil Procedure	Pen. C.	Penal Code
Cal.	California	Pol. C.	Political Code
Civ. C.	Civil Code	Re-en.	Re-enacted
Cod.	Codified	Rep.	Repealed
Comp.	Compiled	Rev.	Revised
Div.	Division	Sec.	Section
En.	Enacted	Stat.	Statutes

4. ANNOTATIONS.—The codes are fully annotated to the decisions of the supreme court of Montana from volume 1 to 58, inclusive, and to the United States supreme court decisions. Annotations are arranged chronologically. In all instances where a statute has been construed the language of the court or a brief statement of the point decided is given. Whenever statutes have been cited or applied by the court but not construed, the case is indicated under the heading "cited or applied." The section number of the earlier acts cited in the decision, as also the chapter and section of session laws since the Revised Codes of 1907, is indicated in the annotation. Where a section has been amended since a decision was rendered that fact is also indicated in the annotation. The annotations to the Montana decisions are the work of Messrs. Edward J. Grindrod and Carl E. Cameron, members of the Montana bar. The references to the citations and notes in the National Reporter System and Annotated Case System are supplied by the publishers of the codes.

5. OTHER REFERENCES.—In the time and with the help available it has been impossible to attempt to annotate the codes to the decisions of other states, but the following references have been made. Immediately following the history of each section there is given the corresponding section number of the California codes, as the same appears in Kerr's Cyclopedic Codes, Fairall's Code of Civil Procedure, and other editions of the California statutes. In the Civil Code there is given, also, the corresponding section numbers of the so-called Field Code of New York submitted to the legislature of that state in 1865. While this code was not adopted by the state of New York, it furnished the model for the written law of many states which subsequently enacted a civil code, including Montana. The report of the Montana code commission of 1892, referring to our Civil Code, states that it is taken almost entirely from the Field Code and the Civil Code of California.

6. CHANGES AND CORRECTIONS.—A comparison of the Revised Codes of 1921 with those of 1907 and subsequent session laws will disclose that in some instances, especially in the Political Code, sections have been rewritten and changes therein have been made. This was done in cases where subsequent changes in the law had rendered necessary a slight rewording of a section to harmonize therewith. Throughout, the aim has been to make no changes in the law of the state, but to do away with all obsolete laws, to harmonize so far as possible the existing statutes and to correct all obvious mistakes in grammar and rhetoric. Whenever changes were made by the commissioner which were thought at all important, attention is directed thereto in a note following the section.

Grateful acknowledgment is expressed by the commissioner to the justices of the supreme court of Montana for their considerate advice in the preparation of this work; to Mr. A. K. Barbour, the librarian of the state law library, for his co-operation; to Mr. James H. Bonner, the engineer of the state railroad commission, and to Mr. C. S. Heidel, state engineer, for their aid in defining the boundaries of the counties of Montana; to the many members of the Montana bench and bar to whom the commissioner is indebted for suggestions, and to all those who have helped in the preparation of the work.

I. W. CHOATE,
Code Commissioner.

HELENA, MONTANA,
June 1, 1921.

COMMISSIONER'S CERTIFICATE.

The undersigned commissioner, appointed pursuant to chapter 195, Laws of 1919, to compile, revise and arrange all the laws of the state of Montana, of a permanent and general nature, in force and effect at the date herein specified, does hereby certify that the following, consisting of 12,552 sections in four volumes, is a correct compilation of all such laws in force and effect at the adjournment of the special session of the 17th legislative assembly of 1921.

I. W. CHOATE,
Commissioner.

Dated June 1, 1921.

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MAGNA CHARTA

THE GREAT CHARTER OF LIBERTIES OF KING JOHN, GRANTED AT RUNINGMEDE, JUNE 15, A. D. 1215, IN THE SEVENTEENTH YEAR OF HIS REIGN.

John, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy, and Aquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to All Bailiffs, and His Lieges, Greeting:

Know ye, that we, in the presence of God, and for the salvation of our soul, and the souls of our ancestors and heirs, and unto the honor of God and the advancement of Holy church, and amendment of our Realm, by advice of our venerable fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church; Henry, Archbishop of Dublin, William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, Bishops; of Master Pandulph, Sub-Deacon and Familiar of our Lord the Pope, Brother Aymeric, Master of the Knights Templars in England; and of the Noble Persons, William Marescall, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundell, Alan de Galloway, Constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, and Hubert de Burgh, Seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip of Albiney, Robert de Roppell, John Mareschal, John Fitz Hugh, and others, our liegemen, have in the first place, granted to God, and by this our present charter confirmed, for us and our heirs forever:

§ 1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we will have them so observed, that it may appear thence, that the freedom of elections, which is reckoned chief and indispensable to the English church, and which we granted and confirmed by our charter, and obtained the confirmation of the same from our Lord the Pope Innocent III., before the discord between us and our barons, was granted of mere free will; which charter we shall observe, and we do will it to be faithfully observed by our heirs forever.

§ 2. We also have granted to all the freemen of our kingdom, for us and for our heirs forever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs forever: If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owes a relief; he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

§ 3. But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

§ 4. The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we shall assign them; and if we sell or give to any one the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

§ 5. But the keeper, so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall deliver to the heir when he comes of full age, his whole land, stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

§ 6. Heirs shall be married without disparagement, and so that before matrimony shall be contracted those who are near in blood to the heir shall have notice.

§ 7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which time her dower shall be assigned.

§ 8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she hold of us; or without the consent of the lord of whom she holds, if she hold of another.

§ 9. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor has sufficient to pay the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

§ 10. If any one have borrowed any thing of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold; and if the debt falls into our hands we will take only the chattel mentioned in the deed.

§ 11. And if any one shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children

under age, they shall have necessaries provided for them, according to the tenement of the deceased; and out of the residue the debt shall be paid, saving however, the service due to the lords; and in like manner shall it be done touching debts due to others than the Jews.

§ 12. No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our eldest son a knight, and once for marrying our eldest daughter; and for these there shall be paid no more than reasonable aid. In like manner it shall be concerning the aids of the City of London.

§ 13. And the City of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore we will and grant, that all other cities and boroughs, and towns and ports, shall have all their liberties and free customs.

§ 14. And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons of the realm, singly by our letters. And furthermore we shall cause to be summoned generally by our sheriffs and bailiffs, all others who hold of us in chief, for a certain day, that is to say, forty days before their meeting at least, and to a certain place; and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

§ 15. We will not for the future grant to any one that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be only paid a reasonable aid.

§ 16. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

§ 17. Common pleas shall not follow our court, but shall be holden in some place certain.

§ 18. Trials upon the writs of novel disseisin, and of mort d'ancestor, and of darrein presentment, shall not be taken but in their proper counties, and after this manner: We, or, if we should be out of the realm, our chief justiciary, will send two justiciaries through every county four times a year, who, with four knights of each county, chosen by the county, shall hold the said assizes, in the county, on the day, and at the place appointed.

§ 19. And if any matters cannot be determined on the day appointed for holding the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid, shall stay to decide them, as is necessary, according as there is more or less business.

§ 20. A freeman shall not be amerced for a small offence, but only after the degree of the offence; and for a great crime according to the heinousness of it, saving to him his contentment; and after the same manner a merchant, saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men of the neighborhood.

§ 21. Earls and barons shall not be amerced, but by their peers, and after the degree of the offence.

§ 22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice.

§ 23. Neither a town nor any tenant shall be distrained to make bridges or banks, unless that anciently of right they are bound to do it.

§ 24. No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the crown.

§ 25. All counties, hundreds, wapentakes, and tythings, shall stand at the old rents, without any increase, except in our demesne manors.

§ 26. If any one holding of us a lay fee die, and the sheriff, or our bailiffs, show our letters patent, of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the dead, found upon his lay fee, to the amount of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfil the testament of the dead, and if there be nothing due from him to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable shares.

§ 27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by view of the church; saving to every one his debts which the deceased owed to him.

§ 28. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it, or hath respite of payment by the good will of the seller.

§ 29. No constable shall distrain any knight to give money for castle guard, if he himself will do it in his person, or by another able man in case he cannot do it through any reasonable cause. And if we have carried or sent him into the army, he shall be free from such guard for the time he shall be in the army by our command.

§ 30. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freemen for carriage, without the assent of the said freeman.

§ 31. Neither shall we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

§ 32. We will retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the fee.

§ 33. All weirs for the time to come shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the sea-coast.

§ 34. The writ, which is called *Praecipe*, for the future, shall not be made out to any one, of any tenement, whereby a freeman may lose his court.

§ 35. There shall be one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haber jeets, that is to say, two ells within the lists; and it shall be of weights as it is of measures.

§ 36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

§ 37. If any do hold of us by fee-farm, or by socage, or by burgage,

and he hold also lands of any other by knight's service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage or burgage, neither will we have the custody of the fee-farm, socage, or burgage; unless knight's service was due to us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service, by reason of any petty serjeanty by which he holds of us, by the service of paying a knife, an arrow, or the like.

§ 38. No bailiff from henceforth shall put any man to his law upon his own bare saying, without credible witnesses to prove it.

§ 39. No freeman shall be taken or imprisoned, or disseized, or outlawed or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.

§ 40. To none will we sell, to none will we deny, or delay, right or justice.

§ 41. All merchants shall have safe and secure conduct to go out of, and to come into England, and to stay there, and to pass as well by land as by water, for buying and selling by the ancient and allowed customs, without any unjust tolls; except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of the war, they shall be attached without damage to their bodies or goods, until it be known unto us, or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions.

§ 42. It shall be lawful, for the time to come, for any one to go out of our kingdom, and return safely and securely, by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be treated as is above mentioned.

§ 43. If any man hold of any escheat, as of the honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hand, and are baronies, and die, his heir shall give no other relief, and perform no other service to us, than he would to the baron, if it were in the baron's hand; we will hold it after the same manner as the baron held it.

§ 44. Those men who dwell without the forest, from henceforth shall not come before our justiciaries of the forest, upon common summons, but such as are impleaded, or are pledges for any that are attached for something concerning the forest.

§ 45. We will not make any justices, constables, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it.

§ 46. All barons who have founded abbeys, and have the kings of England's charters of advowson, or the ancient tenure thereof shall have the keeping of them, when vacant, as they ought to have.

§ 47. All forests that have been made forests in our time, shall forthwith be disforested; and the same shall be done with the water banks that have been fenced in by us in our time.

§ 48. All evil customs concerning forests, warrens, foresters and warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be

inquired into in each county by twelve sworn knights of the same shire, chosen by creditable persons of the same county; and within forty days after the said inquest, be utterly abolished so as never to be restored. So as we are first acquainted therewith, or our judiciary, if we should not be in England.

§ 49. We will immediately give up all hostages and writings delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service.

§ 50. We will entirely remove from our bailiwicks the relations of Gerard de Atheyes, so that for the future they shall have no bailiwick in England; we will also remove Engelard de Cygony, Andrew, Peter and Gyon, from the Chancery; Gyon de Cygony, Geoffrey de Martyn and his brothers; Philip Mark and his brothers, and his nephew, Geoffrey, and their whole retinue.

§ 51. As soon as peace is restored, we will send out of the kingdom all foreign soldiers, cross-bowmen, and stipendaries, who are come with horses and arms to the prejudice of our people.

§ 52. If any one has been dispossessed or deprived by us, without the legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned, for the preservation of the peace. As for all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry our father, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there is a plea depending, or whereof an inquest hath been made, by our order, before we undertake the crusade, but when we return from our pilgrimage, or if perchance we tarry at home and do not make our pilgrimage, we will immediately cause full justice to be administered therein.

§ 53. The same respite we shall have and in the same manner about administering justice, disafforesting the forests, or letting them continue for disafforesting the forests, which Henry our father, and our brother Richard have afforested; and for the keeping of the lands which are in another's fee, in the same manner as we have hitherto enjoyed those wardships, by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right; and when we return from our pilgrimage, or if we tarry at home, and do not make our pilgrimage, we will immediately do full justice to all the complaints in this behalf.

§ 54. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband.

§ 55. All unjust and illegal fines made by us, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be left to the decision of the five-and-twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and

if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter.

§ 56. If we have disseized or dispossessed the Welsh, of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the marche by the judgment of their peers; for tenements in England, according to the law of England, for tenements in Wales according to the law of Wales, for tenements of the marche according to the law of the marche; the same shall the Welsh do to us and our subjects.

§ 57. As for all those things of which a Welshman hath, without the legal judgment of his peers, been disseized or deprived of by King Henry our father, or our brother King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders; excepting those things about which a suit is depending, or whereof an inquest has been made by our order before we undertook the crusade; but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh and of the parts before mentioned.

§ 58. We will without delay dismiss the son of Llewellin, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

§ 59. We will treat with Alexander, King of Scots, concerning the restoring his sisters and hostages, and his right and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the charters which we have from his father, William, late King of Scots, it ought to be otherwise; but this shall be left to the determination of his peers in our court.

§ 60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us, towards our people of our kingdom, as well clergy as laity shall observe, as far as they are concerned, towards their dependents.

§ 61. And whereas, for the honor of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed; so that if we, our judiciary, our bailiffs, or any of our officers, shall in any circumstance fail in the performance of them, towards any person, or shall break through any of these articles of peace and security, and the offence be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our judiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed

without delay; and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our judiciary, within forty days, reckoning from the time it has been notified to us, or to our judiciary, if we should be out of the realm, the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons; and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person, and the persons of our queen and children; and when it is redressed, they shall obey us as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five-and-twenty barons aforesaid, in the execution of the premises, and will distress us jointly with them, to the utmost of his power; and we give public and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

§ 62. As for all those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons dies, or goes out of the kingdom, or is hindered any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest. In all things that are committed to the execution of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not, or can not, come, whatever is agreed upon, or enjoined, by the major part of those that are present, shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to observed. And we will not, by ourselves, or by any other, procure any thing whereby any of these concessions and liberties may be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other. And all the ill will, indignations and rancours that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive; moreover all trespasses occasioned by the said dissensions, from Easter in the fifteenth year of our reign, till the restoration of peace and tranquillity, we hereby entirely remit to all, both clergy and laity, and as far in us lies do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, lord archbishop of Canterbury, Henry, lord archbishop of Dublin, and the bishops aforesaid, as also of Master Pandulph, for the security and concessions aforesaid.

§ 63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all the men in our kingdom have and hold all the aforesaid liberties, rights and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, forever, as is aforesaid. It is also sworn, as well on our

part as on the part of the barons, that all the things aforesaid shall be observed, bona fide and without evil subtilty.

Given under our hand in the presence of the witnesses above named and many others, in the meadow called Runingmede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

These are the twenty-five elected barons:

COMES DE CLARE.
COMES ALBERMARLÆ.
COMES GLOVERNIÆ.
COMES WINTONIENSIS.
COMES HEREFORDENSIS.
COMES ROGERUS (Bigot).
COMES ROBERTUS (de Vere).
WILLELMUS MARESCALLUS, Junior.
ROBERTUS FILIUS WALTERI, Senior.
GILBERTUS DE CLARE.
EUSTACHIUS DE VESCI.
HUGO BIGOD.
WILLELMUS DE MUNBRAI.
MAJOR DE LONDONNIIS.
WILLELMUS DE LANVALAY.
ROBERTUS DE ROS.
CONSTABULARIUS CESTRIÆ.
RICARDUS DE PERCI.
JOHANNES FILIUS ROBERTI.
WILLELMUS MALET.
GAUFRIDUS DE SAY.
ROGERUS DE MUNBEZON.
WILLELMUS DE HUNTINGFELD.
RICARDUS DE MUNTFICHET.
WILLELMUS DE ALBINEIO.

[Note.—Three reissues of Magna Charta were granted in 1216, 1217 and 1225, and these were followed by many confirmations thereof. The third reissue marked the final form assumed by Magna Charta. The identical words were then used, which after became stereotyped and which were confirmed time after time without further modification. It is this charter of 1225, with some slight exceptions, which is always referred to in the original editions of the Statutes, in the courts of law, in Parliament, and in a long series of classical law books beginning with the second Institute of Sir Edward Coke, Id. p. 183.]

DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalianable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and, when so suspended he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large dis-

tricts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others, to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others, to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation—

For quartering large bodies of armed troops among us;

For protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us, without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas, to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments;

For suspending our own legislature and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:

JOHN HANCOCK.

New Hampshire.
JOSIAH BARTLETT,
WILLIAM WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay.
SAMUEL ADAMS,
JOHN ADAMS,
ROBERT TREAT PAINE,
ELBRIDGE GERRY.

Rhode Island.
STEPHEN HOPKINS,
WILLIAM ELLERY.

Connecticut.
ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
OLIVER WOLCOTT.

New York.
WILLIAM FLOYD,
PHILIP LIVINGSTON,
FRANCIS LEWIS,
LEWIS MORRIS.

New Jersey.
RICHARD STOCKTON,
JOHN WITHERSPOON,
FRANCIS HOPKINSON,
JOHN HEART,
ABRAHAM CLARK.

Maryland.
SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHAS. CARROLL, of Carrollton.

Pennsylvania.
ROBERT MORRIS,
BENJAMIN RUSH,
BENJAMIN FRANKLIN,
JOHN MORTON,
GEORGE CLYMER,
JAMES SMITH,
GEORGE TAYLOR,
JAMES WILSON,
GEORGE ROSS.

Delaware.
CAESAR RODNEY,
GEORGE READ,
THOMAS M'KEAN,

Virginia.
GEORGE WYTHE,
RICHARD HENRY LEE,
THOMAS JEFFERSON,
BENJAMIN HARRISON,
THOMAS NELSON, JR.,
FR. LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina.
WILLIAM HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina.
EDWARD RUTLEDGE,
THOMAS HAYWARD, JR.,
THOMAS LYNCH, JR.,
ARTHUR MIDDLETON.

Georgia.
BUTTON GUINETT,
LYMAN HALL,
GEORGE WALTON.

CONSTITUTION

OF THE

UNITED STATES OF AMERICA

PREAMBLE

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

[See section 2 of the fourteenth amendment.]

3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into the three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore,* in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

[The seventeenth amendment supersedes paragraph 1 of section 3 and so much of paragraph 2 of section 3 as relates to the filing of vacancies.]

4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

5. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

8. The congress shall have power—

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

9. The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[*The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate, shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one

of them for president. And if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.] (*This paragraph superseded by the twelfth amendment.)

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (*or* affirm), that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of

such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

4. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

1. The judicial power of the United States shall be vested in one supreme court, and such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states [*between a state and citizens of another state]; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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*See article XI of amendments.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings, of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

3. New states may be admitted by the congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any other state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty seven, and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in this constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

[Note.—The first ten amendments to the federal constitution were proposed by the first congress September 25, 1789, and were ratified by the requisite number of states. The last ratification was by Virginia December 15, 1791.]

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[Note.—Ratified and proclaimed effective January 8, 1798.]

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number

of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

[Note.—Ratified and proclaimed effective September 25, 1804.]

ARTICLE XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

[Note.—Ratified and proclaimed effective December 18, 1865.]

ARTICLE XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, including Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[Note.—Ratified and proclaimed effective July 28, 1868.]

ARTICLE XV.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

2. Congress shall have power to enforce this article by appropriate legislation.

[Note.—Ratified and proclaimed effective March 30, 1870.]

ARTICLE XVI.

The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

[Note.—Ratified and proclaimed effective February 25, 1913.]

ARTICLE XVII.

1. The senate of the United States shall be composed of two senators from each state, elected by the people thereof for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

2. When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies; *provided*, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

3. This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the constitution.

[Note.—Ratified and proclaimed effective May 31, 1913.]

ARTICLE XVIII.

1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

2. The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of the several states, as provided in the constitution, within seven years from the date of the submission hereof to the states by the congress.

[Note.—Ratified and proclaimed effective January 29, 1919.]

ARTICLE XIX.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

2. Congress shall have power by appropriate legislation to enforce the provisions of this article.

[Note.—Ratified and proclaimed effective August 26, 1920.]

ORGANIC ACT

OF THE

TERRITORY OF MONTANA

AN ACT to provide a temporary government for the territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That all that part of the territory of the United States included within the limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington, with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along the said degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky mountains; thence following the crest of the Rocky mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of said Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the territory of Montana: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory or changing its boundaries in such manner and at such time as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided further,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Montana, until said tribe shall signify their assent to the president of the United States to be included within said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

§ 2. *And be it further enacted,* That the executive power and authority in and over said territory of Montana, shall be vested in a governor, who

shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory and shall be commander-in-chief of the militia and superintendent of Indian affairs thereof. He may grant pardons and respites for offenses against the laws of said territory, and reprieve for offenses against the laws of the United States, until the decision of the president of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

§ 3. *And be it further enacted,* That there shall be a secretary of said territory, who shall reside therein and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor, during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

§ 4. *And be it further enacted,* That the legislative power and authority of the said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters, as hereinafter prescribed, whose term of office shall continue two years. The house of representatives shall, at its first session, consist of thirteen members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district, or county, or counties for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the

persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts, respectively, for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives in each of said representative districts, respectively, shall be declared by the governor to be duly elected members of said house: *Provided,* That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of commencement of the regular sessions of the legislative assembly: *Provided,* That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

§ 5. *And be it further enacted,* That all citizens of the United States, and those who have declared their intentions to become such, and who are otherwise described and qualified under the fifth section of the act of congress providing for a temporary government for the territory of Idaho, approved March third, eighteen hundred and sixty-three, shall be entitled to vote at said first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

§ 6. *And be it further enacted,* That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it becomes a law, be presented to the governor of the territory. If he approve, he shall sign it; but if not he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of such houses shall be determined by yeas and nays, to be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in

like manner as if he had signed it, unless the assembly by adjournment, prevent its return, in which case it shall not be a law: *Provided,* That whereas slavery is prohibited in said territory by act of congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

§ 7. *And be it further enacted,* That all township, district and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Montana. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for the members of the council and house of representatives and all other officers.

§ 8. *And be it further enacted,* That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly. And no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly; or shall hold any office under the government of said territory.

§ 9. *And be it further enacted,* That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of probate courts and of justices of the peace shall be limited by law: *Provided,* That justices of the peace shall not have jurisdiction of any matter in controversy when the title of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts respectively shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or the justices thereof, shall appoint its own clerk; and every clerk shall hold his office at the pleasure of the court for which he shall have been

appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the district and circuit courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases, shall be made to the supreme court of said territory the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington territory now receive for similar services.

§ 10. *And be it further enacted,* That there shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Washington. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services. There shall also be appointed by the president of the United States, by and with the advice and consent of the senate, a surveyor general of said territory, who shall locate his office at such place as the secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may from time to time deem it advisable to give.

§ 11. *And be it further enacted,* That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be appointed by the president of the United States, by and with the advice and consent of the senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge or some justice of the peace in the limits of said

territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, or before the chief justice or some associate justice of the supreme court of the United States, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. And any person who has heretofore been appointed chief justice or associate justice of the territory of Idaho, who has not yet taken the oath of office, as prescribed by the act organizing said territory, may take said oath or affirmation before the chief justice or some associate justice of the supreme court of the United States. The governor shall receive an annual salary of two thousand five hundred dollars; the chief justice and associate justices shall receive an annual salary of two thousand five hundred dollars; the secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly from the dates of the respective appointments at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each, per day, during their attendance at the sessions thereof, and four dollars each for every twenty miles travel in going to and returning from said sessions, estimated according to the nearest usually travelled routes; an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms, and door-keeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day during the session of the legislative assembly; but no other officers shall be paid by the United States; *Provided,* That there shall be but one session of the legislative assembly annually, unless on an extraordinary occasion the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of the clerk of the executive department. And there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses. And the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of

the United States, and shall semi-annually account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

§ 12. *And be it further enacted,* That the legislative assembly of the territory of Montana shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; *Provided,* That the seat of government fixed by the governor and legislative assembly shall not be at any time changed except by an act of the said assembly duly passed, and which shall be approved after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

§ 13. *And be it further enacted,* That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives; but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the time and places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the constitution and all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Montana territory as elsewhere within the United States.

§ 14. *And be it further enacted,* That when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

§ 15. *And be it further enacted,* That, until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

§ 16. *And be it further enacted,* That all officers to be appointed by

the president of the United States, by and with the advice and consent of the senate, for the territory of Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

§ 17. *And be it further enacted,* That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued, with the same power and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the office of said agencies or superintendents.

§ 18. *And be it further enacted,* That until congress shall otherwise direct, all that part of the territory of Idaho included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty-third degree of longitude to the crest of the Rocky Mountains; thence northward along the said crest of the Rocky Mountains to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence eastward along said forty-fourth degree thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree north latitude; thence eastward along said forty-fifth degree of north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington to the forty-first degree north latiude; thence west along said forty-first degree north latitude to the place of beginning, shall be, and is hereby, incorporated temporarily into, and made part of, the territory of Dakota. [*Approved May 26, 1864.*]

AN ACT amendatory of "An Act to provide a temporary government for the territory of Montana," approved May 26, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legislative assemblies of the several territories of the United States shall not, after the passage of this act, grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits.

§ 2. *And be it further enacted,* That the probate courts of the territory of Montana, in their respective counties, in addition to their probate jurisdiction, are hereby authorized to hear and determine civil causes wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the territory as do not require the intervention of a grand jury; *Provided,* That they shall not have jurisdiction in any matter in controversy when the title or right to the

peaceable possession of land may be in dispute, or chancery, or divorce causes; *And provided further,* That in all cases an appeal may be taken from any order, judgment, or decree of said probate court to the district court.

§ 3. *And be it further enacted,* That the chief justice and associate justices of said territory and the territory of Idaho shall each receive an annual salary of thirty-five hundred dollars.

§ 4. *And be it further enacted,* That the judges of the supreme court of said territory, or a majority of them, shall, when assembled at the seat of government of said territory, define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and shall also fix and appoint the times and places for holding the courts in the several counties or sub-divisions in each of said judicial districts, and alter the times and places of holding the courts as to them shall seem proper and convenient, but not less than two terms shall be held at each place of holding court each year.

§ 5. *And be it further enacted,* That for the purpose of reviving the legislative functions of the territory of Montana, which have been adjudged therein to have lapsed, the governor of said territory be, and he is hereby, authorized, on or before the first day of July, eighteen hundred and sixty-seven, to divide said territory into legislative districts for the election of members of the council and house of representatives, and to apportion among said districts the number of members of the legislative assembly provided for in the organic act of said territory, and the election of said members of the legislative assembly shall be held at such time and shall be conducted in the manner prescribed by the legislative assembly of said territory at the session thereof, begun and holden at the city of Bannack, in eighteen hundred and sixty-four and eighteen hundred and sixty-five, and the qualifications of voters shall be the same as that prescribed by said organic act, saving and excepting the distinction therein made on account of race or color, and the legislative assembly, so elected, shall convene at the time prescribed by said legislative assembly at the session last aforesaid. The apportionment provided for in this section shall be based upon such an enumeration of the qualified electors of the said several legislative districts as shall appear from the election returns in the office of the secretary of said territory, and from such other sources of information as will enable the governor, without taking a new census, to make an apportionment which shall fairly represent the people of the several districts in both houses of the legislative assembly, but the legislature may at any time change the legislative districts of the territory as fixed by the governor.

§ 6. *And be it further enacted,* That all acts passed at the two sessions of the so-called legislative assembly of the territory of Montana, held in eighteen hundred and sixty-six, are hereby disapproved and declared null and void, except such acts as the legislative assembly herein authorized to be elected, shall by special act, in each case, re-enact: *Provided, however,* That in all the claims of vested rights thereunder, the party claiming the same shall not, by reason of anything in this section contained, be precluded from making and testing said claim in the courts of said territory: *And provided further,* That no legislation or pretended legislation in said territory since the adjournment of the first legislative assembly shall be

deemed valid until the election of the legislative assembly herein provided for shall take place.

§ 7. *And be it further enacted,* That from and after the first day of April next, the salary of each of the judges of the several supreme courts in each of the organized territories (except Montana and Idaho) shall be two thousand five hundred dollars.

§ 8. *And be it further enacted,* That all acts and parts of acts inconsistent with this act are hereby repealed. [*Approved March 2, 1867.*]

THE ENABLING ACT

AN ACT to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the inhabitants of all that part of the area of the United States now constituting the territories of Dakota, Montana, and Washington, as at present described, may become the states of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

§ 2. The area comprising the territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time assemble in convention at the city of Sioux Falls.

§ 3. That all persons who are qualified by the laws of said territories to vote for representatives to the legislative assembly thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories respectively, persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, the chief justice, and the secretary of said territories; and the governors of said territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, eighteen hundred and eighty-nine, which proclamation shall be issued on the fifteenth day of April, eighteen hundred and eighty-nine; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall

be seventy-five; and all persons resident in said proposed states, who are qualified voters of said territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

§ 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the Fourth day of July, eighteen hundred and eighty-nine, and, after organization, shall declare, on behalf of the people of said proposed states, that they adopt the constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and state governments for said proposed states, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said states:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation: but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such acts of congress may prescribe.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states, respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

§ 5. That the convention which shall assemble at Bismarck shall form

a constitution and state government for a state to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and state government for a state to be known as South Dakota: *Provided*, That at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words, "For the Sioux Falls constitution," or the words, "Against the Sioux Falls constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "for the Sioux Falls constitution," it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection, at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November third, eighteen hundred and eighty-five, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the state of South Dakota shall be admitted as a state in the Union under said constitution as hereinafter provided; but the archives, records and books of the territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "against the Sioux Falls constitution," then and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, eighteen hundred and eighty-nine, to proceed to form a constitution and state government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

§ 6. It shall be the duty of the constitutional convention of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the territory, which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota; and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of such states shall obligate itself to pay its proportion of said debts and liabilities the same as if they had been created by such states respectively.

§ 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the

territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed constitution shall continue under the territorial government of the present territory of Dakota, but shall, after the state adopting its constitution is admitted into the Union, be called by the name of the territory of North Dakota or South Dakota, as the case may be: *Provided*, That if either of the proposed states provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

§ 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington, shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states, respectively, for ratification or rejection at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided

shall be deemed admitted by congress into the Union under and by virtue of this act on an equal footing with the original states from and after the date of said proclamation.

§ 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota, which shall be entitled to two, and the representatives to the fifty-first congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted into the Union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

§ 10. That upon the admission of each of said states into the Union sections numbered sixteen and thirty-six in every township of said proposed states, and where such section, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; *Provided,* That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

§ 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such lands shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

§ 12. That upon the admission of each of said states into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said states, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said states for the purpose of erecting public buildings at the capital of said states for legislative, executive and judicial purposes.

§ 13. That five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the Union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a

permanent fund, the interest of which only shall be expended for the support of common schools within said states respectively.

§ 14. That the lands granted to the territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota, and Montana, respectively, if such states are admitted into the Union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in the like manner to the state of Washington for the purpose of a university in said state. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the territory of Dakota, for an asylum for the insane shall, upon admission of the said state of South Dakota into the Union, become the property of said state.

§ 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said state of South Dakota for the purposes therein designated; and the states of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

§ 16. That ninety thousand acres of land, to be selected and located as provided in section ten of this act, are hereby granted to each of said states, except to the state of South Dakota, to which one hundred and twenty

thousand acres are granted, for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of lands for such purpose.

§ 17. That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the state of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for state normal schools, eighty thousand acres; for public buildings at the capital of said state, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said state may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the state of North Dakota: A like quantity of land as is in this section granted to the state of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the state of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for state normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the state of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for state normal schools, one hundred thousand acres; for public buildings at the state capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for state charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

§ 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity

of other unappropriated lands in said states, in lieu thereof, for the use and benefit of the common schools of said states.

§ 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by congress to said territories for similar objects.

§ 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

§ 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts, therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state; the regular term of said courts shall be held in each district at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district court of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska.

§ 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record

from the supreme court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts may be heard and determined by said supreme court of the United States. And the mandate of execution or of further proceedings shall be directed by the supreme court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the supreme court of such state, as the nature of the case may require: *Provided,* That the mandate of execution or of further proceedings shall, in cases arising in the territory of Dakota, be directed by the supreme court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the state of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the state of North Dakota, or to the supreme court of the territory of North Dakota, as the nature of the case may require. And each of the circuit, district and state courts, herein named, shall, respectively, be the successor of the supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States as they shall have had by law prior to the admission of said state into the Union.

§ 23. That in respect to all cases, proceedings and matters now pending in the supreme or district courts of either of the territories mentioned in this act at the time of the admission into the Union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the territories mentioned in this act at the time of the admission of such territory into the Union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said supreme and district territorial courts; and all the files, records, indictments and proceedings relating to any such cases, shall be transferred to such circuit, district and state courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act, shall be pending in any territorial court in any of the territories mentioned in this act, shall abate by the admission of any such state into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district or state court, as the case may be: *Provided, however,* That in all civil actions, causes and proceedings, in which the United States is not a party, transfer shall not be made to the circuit and district courts of the United States, except upon written

request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request such cases shall be proceeded with in the proper state courts.

§ 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the legislatures and representatives in the fifty-first congress; but said state governments shall remain in abeyance until the states shall be admitted into the Union, respectively, as provided by this act. In case the constitution of any of said proposed states shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States; and the governor and secretary of state of such proposed state shall certify the election of the senators and representatives in the manner required by law; and when such state is admitted into the Union, the senators and representatives shall be entitled to be admitted to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States; and the officers of the state governments formed in pursuance of said constitution, as provided by the constitutional conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories, at the time of their admission into the Union, shall be in force in said states, except as modified or changed by this act or by the constitutions of the states, respectively.

§ 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said territories or by congress, are hereby repealed. [*Approved February 22, 1889.*]

ACTS OF CONGRESS RELATING TO THE AUTHENTICATION OF LAWS AND RECORDS

(Authentication of legislative acts and proof of judicial proceedings of states, etc.) The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken. (R. S.)

[Act of May 26, 1790, Ch. 11, 1 Stat. L. 122; Act of March 27, 1804, Ch. 56, 2 Stat. L. 299, 3 Fed. Stat. Ann. (2d Ed.) Sec. 905.]

(Proofs of records, etc., kept in offices not pertaining to courts.) All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken. (R. S.)

[Act of March 27, 1804, Ch. 56, 2 Stat. L. 298-299; Act. of Feb. 21, 1871, Ch. 62, 16 Stat. L. 419. 3 Fed. Stat. Ann. (2d Ed.) Sec. 906.]

CONSTITUTION

OF THE

STATE OF MONTANA

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION AUGUST 17, 1889; RATIFIED BY THE PEOPLE, OCTOBER 1, 1889; STATE ADMITTED, NOVEMBER 8, 1889.

PREAMBLE.

We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the enabling act of congress, approved the twenty-second of February, A. D. 1889, ordain and establish this constitution.

The preamble of the constitution is not the source of any substantive power. Jacobson v. Massachusetts, 197 U. S. 22, 49 U. S. (L. Ed.) 643, 3 Ann. Cas. 765; U. S. v. Boyer, 85 Fed. 430.

ARTICLE I.

BOUNDARIES.

Section 1. The boundaries of the state of Montana shall be as follows, to-wit: Beginning at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latiude, thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington, thence due south along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky mountains, thence following the crest of the Rocky mountains northward to its intersection with the Bitter Root mountains; thence northward along the crest of the Bitter Root mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along that boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along the twenty-seventh degree of longitude to the place of beginning.

Original jurisdiction of United States supreme court in action affecting state boundaries, see Ann. Cas. 1912C, 530.

ARTICLE II.

MILITARY RESERVATIONS.

Section 1. Authority is hereby granted to and acknowledged in the United States to exercise exclusive legislation, as provided by the constitution of the United States, over the military reservations of Fort

Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the state of Montana; and the legislative assembly is authorized and directed to enact any law necessary or proper to give effect to this article.

Provided, that there be, and is hereby reserved to the state the right to serve all legal process of the state, both civil and criminal, upon persons and property found within any of said reservations, in all cases where the United States has not exclusive jurisdiction.

This section acknowledges absolute sovereignty in the United States over the places named or referred to therein. State v. Tully, 31 Mont. 365, 375, 78 Pac. 760, 3 Ann Cas. 824.

Location of mining claim on military reservations, see 7 L. R. A. (N. S.) 790.

Cutting timber of military reservations, see 70 L. R. A. 909.

ARTICLE III.

A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA.

Section 1. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole.

This guaranty refers as well to the right of naming candidates for public office as it does to the right of the electors to vote for the candidates at the polls. State ex rel. Scharnikow v. Hogan, 24 Mont. 383, 391, 62 Pac. 583; State ex rel. Metcalf v. Wileman, 49 Mont. 436, 441, 143 Pac. 565.

Powers reserved to the people, see 6 R. C. L. 136.

Sec. 2. The people of the state have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state, and to alter and abolish their constitution and form of government, whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the constitution of the United States.

Cited or applied in State ex rel. Hay v. Alderson, 49 Mont. 387, 414, 142 Pac. 210, Ann. Cas. 1916B, 39; Pohl v. Chicago, Milwaukee & St. Paul Ry. Co., 52 Mont. 572, 576, 160 Pac. 515.

For text treatment of this subject, see 6 R. L. C. 24; also, article on Constitutional Law, in Cal. Jur.

Sec. 3. All persons are born equally free, and have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring, possessing, and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways.

Sections 3 and 27 of this article imply, if they do not express, a prohibition against the power of the legislature to enact a law whose effect would be the impairment of a vested right. Hinds v. Wilcox, 22 Mont. 4, 11, 55 Pac. 355.

The amendment approved February 28, 1899, to section 592 of the Code of Civil Procedure of 1895, relating to property held in tenancy in common, impairs the vested rights of cotenants whose estates were in existence at the time the amendment became operative, and is repugnant to this section and section 27 of this article. Butte & Boston Consol. Min. Co. v. Montana Ore Purchasing Co., 25 Mont. 41, 68, 63 Pac. 825.

The constitution of this state guarantees to every one the right to pursue happiness and to acquire, possess, and protect property in all lawful ways, and this provision secures the right to peaceable possession and to free ingress to and egress from property. The rights thus secured cannot be invaded, unless the public health, morals, or safety, or the general welfare, requires interference, or the owner is deprived of his rights by due process

of law. Iverson v. Dilno, 44 Mont. 270, 273, 119 Pac. 719.

Nothing in this section invalidates a code provision which requires a newspaper, after taking a contract for public printing, to sublet such part of it as it is itself unable to perform to some similar enterprise, within the state. Hersey v. Neilson, 47 Mont. 132, 146, 131 Pac. 30, Ann. Cas. 1914C, 963.

The statutes authorizing the state inspector of fruit pests to destroy infected fruit are valid. Colvill v. Fox, 51 Mont. 72, 79, 149 Pac. 496, L. R. A. 1915F, 894.

Chapter 95, Laws of 1915 (1113-1132), providing for teachers' pensions, is not invalid as in contravention of this section. Trumper v. School District No. 55, 55 Mont. 90, 93, 173 Pac. 946.

Cited or applied in Butte Miners' Union v. City of Butte, 58 Mont. 391, 401, 194 Pac. 149.

See 6 R. C. L. 245.

Sec. 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the state, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

For text treatment of this subject, see 6 R. C. L. 251; also, article on Constitutional Law in Cal. Jur.

Sectarianism in schools, see 5 A. L. R. 866.

Preference to certain religious denominations by failure to extend prohibition against intoxicating liquors to that used for sacramental purposes, see 1 A. L. R. 1689.

Religious belief as defense to prosecution for homicide for failure to provide medical attention, see 10 A. L. R. 1146.

Right to interrogate jurors on voir dire as to prejudice for or against witnesses of a particular religious denomination, see 1 A. L. R. 1689.

Religious affiliations disqualifying jurors, see 9 A. L. R. 758.

Sec. 5. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Where an act of the legislature provided for not less than two nor more than five polling places in school districts of the first class, and it appeared that the facilities were somewhat inadequate to accommodate those who wished to vote, but it further appeared that those who were not able to vote did not attempt to do so until the latter part of the day, the law was not in conflict with this section. State ex rel. Bray v. Long, 21 Mont. 26, 34, 52 Pac. 645.

Under the rule that a statute which denies to the elector of the state, or any part of it, the right to nominate candidates for public office is void as violative of this section and section 26 of this article, chapter 113, Laws of 1909, providing for nonpartisan nomination to judicial office, by petition, is invalid because incapable of being made to operate uniformly throughout the state, in that it fails to provide any means by which a candidate for judicial office may be nominated in a newly created municipality, or for a newly created judicial office, or for judicial office in a district the boundaries of which have been changed since the last election, or may be changed hereafter. State ex rel. Holliday v. O'Leary, 43 Mont. 157, 164, 115 Pac. 204.

Sec. 6. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property, or character; and that right and justice shall be administered without sale, denial, or delay.

Maintenance of a wife may be enforced by the district courts of this state, in the exercise of their equity jurisdiction, by decreeing proper relief in an action brought by the wife against her husband, independently of an action for divorce, where it is shown that he without just cause abandoned her, or by his cruelty or other

improper conduct has given her cause for living separate and apart from him, and she is without means of support and he is able to maintain her. Edgerton v. Edgerton, 12 Mont. 122, 145, 29 Pac. 966, 33 Am. St. Rep. 557; 16 L. R. A. 94.

The act approved March 14, 1889, providing that in actions for the foreclosure of mechanics' liens, the owner of the property subject to the lien shall pay as costs a reasonable attorney's fee, is not unconstitutional as being repugnant to this section. Wortman v. Kleinschmidt, 12 Mont. 316, 331, 30 Pac. 280. But see Mills v. Olsen, 43 Mont. 129, 139, 115 Pac. 33. See, also, Doty v. Reece, 53 Mont. 404, 410, 164 Pac. 512.

The act approved December 10, 1903, authorizing each party to disqualify five district judges by filing an affidavit of prejudice, does not violate this section. State ex rel. Anaconda Copper Min. Co. v. Clancy, 30 Mont. 529, 543, 77 Pac. 312.

The courts of the state are open to afford a remedy for such an injury as might be suffered by the holder of a valid subsisting mining claim through another person's proceeding to obtain patent to the same ground. Poore v. Kaufman, 44 Mont. 248, 257, 119 Pac. 785.

The provisions of this section, as well as the section of the code defining a nuisance, may be invoked for the protection of a person whose business is interfered with by reason of aggressive manifestations by crowds in the alleged interest of organized labor. Iverson v. Dilno, 44 Mont. 270, 273, 119 Pac. 719.

A district judge cannot, by his own wrongful conduct, deny to a litigant the right to be heard in a court established for the purpose of administering judicial remedies. Stephens v. Nacey, 47 Mont. 479, 482, 133 Pac. 361.

Sections 48 and 49 of the Corrupt Practices Act (10773-10820), awarding the successful party in an election contest attorney's fees, etc., are not open to constitutional objections that they deny to the unsuccessful one the equal protection of the laws, grant to the former a special privilege not enjoyed by successful litigants in other cases, violate the provision that justice shall be administered without sale, denial, or delay, and constitute an attempt to delegate legislative power to the courts. Doty v. Reece, 53 Mont. 404, 408, 164 Pac. 542.

The Workmen's Compensation Act of 1915 (2816 et seq.), is not repugnant to this section, as closing access to the courts by the injured employee and compelling him to seek relief through the industrial accident board. Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

This section is addressed exclusively to the courts. The courts are its sole subject-matter, and it relates directly to the duties of the judicial department of the government. It means no more or less than that under the provisions of the constitution and laws constituting them, the courts must be accessible to all persons alike, without discrimination, at the time or times and the place or places appointed for their sitting, and afford a speedy remedy for every wrong recognized by law as being remediable in a court. The term "injury," as therein used, means such an injury as the law recognizes or declares to be actionable. Shea v. North-Butte Min. Co., 55 Mont. 522, 533, 179 Pac. 499.

Cited or applied in State ex rel. Sackett v. Thomas, 25 Mont. 226, 238, 64 Pac. 503; Lane v. Lane-Potter Lumber Co., 40 Mont. 541, 546, 107 Pac. 898.

Sec. 7. The people shall be secure in their persons, papers, homes, and effects, from unreasonable searches and seizures, and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

The proper construction of the words "probable cause," as used in this section, may be facts embodied in a complaint which charges the offense upon information and belief. State v. McCaffery, 16 Mont. 33, 38, 40 Pac. 63; State v. Shafer, 26 Mont. 11, 16, 66 Pac. 463.

The protection afforded by this section is waived in a criminal case, unless the defendant objects at the trial; hence, where an information charging a person with the commission of an offense was not verified, but the defendant entered a plea of not guilty and was convicted of murder in the second degree, he thereby waived the right to object upon that ground. State ex rel. Nolan v. Brantly, 20 Mont. 173, 176, 50 Pac. 410.

The provision that no warrant shall issue without probable cause, supported by oath, prevents arbitrary accusations by requiring affidavits of truthfulness to facts constituting probable cause, avoids false issues, and guarantees to the citizen that no warrant of seizure of his person can lawfully issue except upon such probable cause, supported by the oath of some one. But, being a formal matter, the support by oath or affirmation can be waived, and, if the verification can be waived, the illegality of a warrant issued upon an unverified information can also be waived. State ex

rel. Nolan v. Brantly, 20 Mont. 173, 178, 50 Pac. 410.

The requirement of the constitution that no warrant shall issue without probable cause, reduced to writing, and supported by oath or affirmation, is, prima facie, satisfied and complied with when an information charging a public offense is filed by the county attorney; and such an information is, prima facie, the statement of probable cause under oath, equally with an indictment presented upon the oath of grand jurors. State v. Clancy, 20 Mont. 498, 501, 52 Pac. 267.

A warrant may issue on an information filed by the county attorney by leave of court on a motion in writing not verified, and the information veried on information and belief only. State v. Shafer, 26 Mont. 11, 15, 66 Pac. 463.

The legislature, by section 1810 of the Code of Civil Procedure of 1895 (9771), providing that any court in which an action is pending may order either party to give to the other an inspection of any document in his possession containing evidence relating to the merits of the action or defense, has given a construction to this section defining the circumstances under which the inspection of the private papers and documents of one party in an action by another will not be deemed an unreasonable search. State ex rel. Boston & Montana Etc. Co. v. District Court, 27 Mont. 441, 445, 71 Pac. 602, 94 Am. St. Rep. 831.

The constitutional guaranty contained in this section cannot be disregarded to satisfy the idle curiosity of litigants. State ex rel. Mendenhall v. District Court, 29 Mont. 363, 368, 74 Pac. 1078.

Evidence obtained by the taking of the shoes of defendant, charged with murder, whether with or without his consent, and comparing them with footprints leading from the place of the crime, is admissible, and its use does not deprive him of the constitutional guaranty prohibiting unreasonable searches and seizures. State v. Fuller, 34 Mont. 12, 18, 85 Pac. 369, 9 Ann. Cas. 648; 8 L. R. A. (N. S.) 762.

Because a search warrant is a process subject to much abuse, it has in this country generally been limited in its use by constitutional restrictions. State ex rel. Streit v. Justice Court, 45 Mont. 375, 382, 123 Pac. 405, 48 L. R. A. (N. S.) 156.

For text treatment of this subject, see 24 R. C. L. 699; also, article on Search and Seizure in Cal. Jur.

Constitutional guaranties against unreasonable searches and seizures as applied to search for or seizure of intoxicating liquor, see 3 A. L. R. 1514.

Power to issue warrant for search of train, see 7 A. L. R. 121.

Entry and search of premises for purpose of arresting one without search warrant, see 5 A. L. R. 263.

Right to seize property under general delegation of power to guard against spread of contagious disease, see 8 A. L. R. 840.

Search and seizure under the Volstead Act, see 10 A. L. R. 1553.

Sufficiency of description of premises in search warrant or affidavit therefor, see 17 Ann. Cas. 232.

Validity of statutes authorizing the seizure and destruction of gambling apparatus, see 2 Ann. Cas. 936; 13 Ann. Cas. 454.

Admissibility in evidence against defendant of documents or articles taken from him, see 59 L. R. A. 466; 8 L. R. A. (N. S.) 762; 34 L. R. A. (N. S.) 58; L. R. A. 1915B, 834; L. R. A. 1916E, 715.

Damages recoverable for wrongful search, see 50 L. R. A. (N. S.) 1151.

Gambling device as property within constitutional protection against search and seizure, see 12 L. R. A. (N. S.) 394.

Right of officer, in executing criminal process, to take possession of evidentiary articles, see 18 L. R. A. (N. S.) 253; L. R. A. 1916C, 1017.

Right to seize for purposes of evidence property of one person under a warrant of arrest against another, see L. R. A. 1915E, 399.

Power to seize gambling devices in absence of charge of violation of laws against gambling, see L. R. A. 1915A, 233.

Search warrant without an affidavit or complaint, see 28 L. R. A. (N. S.) 548.

Seizure and production of papers, see 29 L. R. A. 819.

Seizure of property as a condition of an action for the malicious prosecution of a civil action, see L. R. A. 1918D, 550.

Liability of officers executing invalid search warrant, see 49 L. R. A. (N. S.) 770.

Malicious prosecution for wrongful search of premises, see 39 L. R. A. (N. S.) 205.

To what extent may premises be damaged in executing search warrant, see 22 L. R. A. (N. S.) 819.

Security from unlawful search, see 101 A. S. R. 328.

Right to protection of books and papers from examination, see 32 A. S. R. 643.

Sec. 8. Criminal offenses of which justice's courts and municipal and other courts, inferior to the district courts, have jurisdiction, shall, in all courts inferior to the district court, be prosecuted by complaint. All crim-

inal actions in the district court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment.

A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

The clause of this section, relating to the prosecution of criminal actions by information, did not execute itself, and before it could be carried into effect, the exercise, jurisdiction, and limitations of the procedure, and the rights and pleadings of the state and accused, must be defined by the legislative department. State v. Ah Jim, 9 Mont. 167, 172; 23 Pac. 76.

The clause of this section relating to the grand jury executes itself, and in the absence of further legislation, all offenses of the grade of felonies, or having their origin in the district court, must be inquired into under the provisions of the Criminal Practice Act relative to indictments. State v. Ah Jim, 9 Mont. 167, 173, 23 Pac. 76.

In a prosecution for murder, the substantial rights of the accused were not prejudiced by the submission of his case to the grand jury created by the constitution, and the clause of this section relating to the number of jurors composing that body is not ex post facto. State v. Ah Jim, 9 Mont. 167, 173, 23 Pac. 76.

Where defendant was indicted by a grand jury of seven persons drawn and summoned by order of the district judge, it was not required that the order should show the necessity therefor, it being presumed that the judge considered his action necessary. State v. King, 9 Mont. 445, 450, 24 Pac. 265.

The provision of the constitution relating to prosecution by information is not self-executing, and in the absence of legislation defining the procedure, a trial and conviction upon information is without process of law. In re Durbon, 10 Mont. 147, 148, 25 Pac. 442.

A conviction in a court of the state for a felony committed in the territory prior to the adoption of the constitution cannot be sustained where the prosecution was by information, as provided by the constitution and the act of March 2, 1891, relating thereto, as the provision of the federal constitution guaranteeing to the accused the right to be prosecuted through the intervention of a grand jury was, at the time of the commission of the offense, the supreme law of the land, and the substitution by the state constitution of prosecution by information in place of that by indictment, not being a matter affecting the procedure, deprived the accused of a substantial right, and gave said act a retrospective operation. State v. Kingsly, 10 Mont. 537, 545, 26 Pac. 1066.

One of the objects of the constitution was to do away, to a great extent, with the machinery and expense of a grand jury, by substituting therefor prosecution by information. It is not necessary, in order to vest power in the county attorney to file an information, that there shall be a preliminary examination and commitment. He may act, after leave has been granted by the court, in a case where there may not have been any charge or information before a committing magistrate. State v. Brett, 16 Mont. 360, 364, 40 Pac. 873; State v. Bowser, 21 Mont. 133, 135, 53 Pac. 179.

Under this section, either there must have been an examination and commitment, or leave of court procured, but both steps are not required. State v. Brett, 16 Mont. 360, 364, 40 Pac. 873.

One of the purposes of the convention in formulating this section, and the people in adopting it, was to dispense with the slow, expensive, and therefore unsatisfactory procedure by indictment, and to substitute a procedure expeditious and inexpensive, to be availed of by the prosecuting officers at their discretion, subject to control by the court, to guard a particular defendant against oppression and malice, and prevent abuse of power by the county attorney. State v. Brett, 16 Mont. 360, 365, 40 Pac. 873; State v. Cain, 16 Mont. 561, 563, 41 Pac. 709; State v. Vinn, 50 Mont. 27, 34, 144 Pac. 773.

The proceeding authorized by this section, allowing prosecution by information with leave of court, without preliminary examination having been had, is not a deprivation of the liberty of the citizen without due process of law, and does not abridge the privileges and immunities of any citizen as guaranteed by the fourteenth amendment of the constitution of the United States. State v. Brett, 16 Mont. 360, 366, 40 Pac. 873.

Prosecutions in the district court may be either by information, in cases where there has been an examination and commitment or admission to bail by a magistrate, in which case an order of the court

is not necessary; or by information filed by order of the court upon written motion of the county attorney, which may be done without such examination. State v. Bowser, 21 Mont. 133, 134, 53 Pac. 179.

An information may be filed with leave of court, without a previous commitment of accused by a magistrate. An information need not show on its face that it was filed with leave of court. State v. Spotted Hawk, 22 Mont. 33, 43, 55 Pac. 1026.

The provision of this section, that prosecutions shall be either by information or indictment, and authorizing the court to decide which method shall be pursued in each particular case, is not an abridgment of the privileges and immunities of citizens. State v. Little Whirlwind, 22 Mont. 425, 426, 56 Pac. 820.

When prosecuted under the Code of Civil Procedure, a contempt of court is not to be regarded as a "criminal offense," to be prosecuted only by complaint, information, or indictment, as laid down by this section, but, rather, as a special proceeding of a criminal character—in that sense it is a public offense, yet it is not one a prosecution for which is exclusively controlled by constitutional limitations circumscribing methods of prosecution of strictly criminal offenses. State ex rel. Flynn v. District Court, 24 Mont. 33, 35, 60 Pac. 493; State ex rel. Boston & M. Co. v. Clancy, 30 Mont. 193, 198, 76 Pac. 10.

After dismissal of an indictment because of substantial defects therein, the district court may, but is not required to, submit the case to another grand jury, or permit, or order, the county attorney to file an information charging the defendant with the same offense ineffectually sought to be charged against him by the indictment. State v. Vinn, 50 Mont. 27, 33, 144 Pac. 773.

Cited or applied in State v. McCaffery, 16 Mont. 33, 36, 40 Pac. 63; State v. Morris, 22 Mont. 1, 3, 55 Pac. 360; State ex rel. Payne v. District Court, 53 Mont. 350, 355, 165 Pac. 294.

For text treatment of this subject, see 8 R. C. L. 104; 12 R. C. L. 1013; also, article on Grand Jury in Cal. Jur.

Misconduct of officers in selection or summoning of grand jury as contempt of court, see 7 A. L. R. 345.

Women as jurors, see 4 A. L. R. 152.

Legality of grand jury not selected in accordance with statute, see 10 Ann. Cas. 964.

Number of grand jurors necessary to constitute quorum, see Ann. Cas. 1912C, 30.

Number necessary to form grand jury, see 27 L. R. A. 783, 846.

Number necessary to concur in finding indictment, see 28 L. R. A. 33.

Sec. 9. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall work corruption of blood or forfeiture of estate; the estates of persons who may destroy their own lives shall descend or vest as in cases of natural death.

For text treatment of this subject, see 8 R. C. L. 336.

Treason by domiciled alien, see 8 Ann. Cas. 77.

Forfeiture of rights of innocent persons in property forfeited for treason, see L. R. A. 1916E, 344.

Sec. 10. No law shall be passed impairing the freedom of speech; every person shall be free to speak, write, or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

The constitutional freedom of speech mentioned in this section includes the right to discuss matters pertaining to courts, or the practice therein, which have no tendency to affect the merits or results of particular cases pending. In re Shannon, 11 Mont. 62, 72, 27 Pac. 352.

While this section of the constitution secures the largest liberty to the press, it also imposes responsibilities. It is a statute of liberty, not of "licentious scandal." The liberty of the press is one thing; the "abuse of that liberty" is quite another. State ex rel. Haskell v. Faulds, 17 Mont. 140, 145, 42 Pac. 285.

This section is not violated by subdivision 7 of section 293 of the Penal Code of 1895 (10944), making the publication of a false and grossly inaccurate report of the proceedings of any court punishable

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both as a contempt and as a misdemeanor. State ex rel. Haskell v. Faulds, 17 Mont. 140, 145, 42 Pac. 285.

The system of practice of this state is based upon the theory that it is the province of the jury to determine the facts, and that of the court to determine and declare the law, in all cases, except in prosecutions for libel. The clause of this section conferring upon the jury, under the direction of the court, the power to determine the law and the facts, appears to make it plain that the jury have no right to determine the law in any other case. "Expressio unius est exclusio alterius." Murray v. Heinze, 17 Mont. 353, 365, 42 Pac. 1057, 43 Pac. 714.

The doctrine that the jury are the judges of the law as well as the facts is never recognized in this jurisdiction, except, possibly, in prosecutions for libel, which are regulated by express constitutional provision. King v. Lincoln, 26 Mont. 157, 161, 66 Pac. 836.

While the jury have the power to determine the law and facts in an action for libel, it is the duty of the court to give the jury a correct declaration of the legal principles involved, and an erroneous instruction to the prejudice of a party is cause for reversal. Paxton v. Woodward, 31 Mont. 195, 216, 78 Pac. 215, 107 Am. St. Rep. 416, 3 Ann. Cas. 546. See, also, State v. Koch, 33 Mont. 490, 501, 85 Pac. 272, 8 Ann. Cas. 804.

The language of this section is not susceptible of any other meaning than this: That the individual citizen of Montana cannot be prevented from speaking, writing, or publishing whatever he will on any subject; if, however, what he writes or publishes constitutes a criminal libel, he may be held responsible for the abuse of the liberty in a criminal prosecution, or if what he speaks, writes, or publishes wrongfully infringes the rights of others, he may be held responsible for the abuse in a civil action for damages. Lindsay & Co. v. Montana Federation of Labor, 37 Mont. 264, 276, 96 Pac. 127, 127 Am. St. Rep. 722, 18 L. R. A. (N. S.) 707.

Under this section, a court may not enjoin a labor organization from publishing a circular calling upon all laboring men, and those in sympathy with organized labor, not to patronize a certain business house, characterized therein as "unfair," even though the persons comprising the organization be insolvent, and an abuse of the liberty guaranteed by the constitution may result in loss for which there cannot be any adequate compensation. Lindsay & Co. v. Montana Federation of Labor, 37 Mont. 264, 276, 96 Pac. 127, 127 Am. St. Rep. 722, 18 L. R. A. (N. S.) 707. See, also, Empire Theatre Co. v. Cloke, 53 Mont. 183, 190, 163 Pac. 107, L. R. A. 1917E, 383.

Except in prosecutions for libel, wherein the jury, "under the direction of the court, shall determine the law and the facts," the court shall declare the law, and the jury shall determine the facts. Allen v. Bear Creek Coal Co., 43 Mont. 269, 289, 115 Pac. 673.

The right of free speech is guaranteed by the constitution. It is declared there that no law shall be enacted impairing it, and that every person shall be free to speak, write, or publish whatever he will on any subject. At the same time, it leaves a way open by which everyone who abuses his privilege may be brought to account. Kelly v. Independent Publishing Co., 45 Mont. 127, 139, 122 Pac. 735, Ann. Cas. 1913D, 1063, 38 L. R. A. (N. S.) 1160.

In libel cases, since the constitution provides that in such cases "the jury, under the direction of the court, shall determine the law and the facts," the refusal of the jury to follow the advice of the court on the question of the libelous nature of the publication is no ground for granting a new trial. Harrington v. Butte Miner Co., 48 Mont. 550, 554, 139 Pac. 451, Ann. Cas. 1915D, 1257, 51 L. R. A. (N. S.) 369.

The second clause of this section is not alone addressed to the legislature, but under it the courts as well are without authority to restrain one by injunction from publishing what he pleases, though it imposes responsibility for all abuse of that liberty. Empire Theatre Co. v. Cloke, 53 Mont. 183, 191, 163 Pac. 107, L. R. A. 1917E, 383.

The immunity granted by this section does not extend to seditious utterances during time of war, and the Sedition Act of the extraordinary session of 1918 is not invalid. State v. Kahn, 56 Mont. 108, 117, 182 Pac. 107.

Cited or applied in In re MacKnight, 11 Mont. 126, 138, 27 Pac. 336, 28 Am. St. Rep. 451; State ex rel. Metcalf v. District Court, 52 Mont. 46, 54, 155 Pac. 278, Ann. Cas. 1918A, 985, L. R. A. 1916F, 132.

For text treatment of this subject, see 6 R. C. L. 253; 17 R. C. L. 325; also, articles on Constitutional Law and Libel and Slander in Cal. Jur.

Effect of constitutional guaranty of free speech on right to injunctive relief against boycott in industrial disputes, see 6 A. L. R. 971.

Validity of statute or ordinance prohibiting or regulating holding of meetings in street, see 10 A. L. R. 1483.

Legislation directed against social or industrial propaganda deemed to be of a dangerous tendency as invasion of freedom of speech, see 1 A. L. R. 336.

Constitutional liberty of speech and

press as protecting publication of immoral matters, see Ann. Cas. 1915B, 1186; 15 Ann. Cas. 9.

Constitutional freedom of speech and press, see 32 L. R. A. 829.

Sec. 11. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

The legislature can no more impair the obligation of a contract entered into by the state than it can the obligation of a contract made between individuals. State ex rel. State Sav. Bank v. Barret, 25 Mont. 112, 119, 63 Pac. 1030.

A statute which changes the terms of an agreement by imposing new conditions, or dispensing with those expressed or implied, is repugnant to the constitution as being a law impairing the obligation of a contract; and the degree of impairment is immaterial. State ex rel. State Sav. Bank v. Barret, 25 Mont. 112, 119, 63 Pac. 1030.

Where a contract was made with reference to a certain section of the code, which provided that, if certain state warrants to be issued in payment of work on the state school of mines building could not be paid on presentation for lack of money in the state school of mines building fund, out of which they were to be paid, they should bear a certain rate of interest per annum from the date of presentation, a subsequent law repealing the section of the code in question was void as to such contract, as impairing the obligation of the contract, and the holder was entitled to interest on the warrants. State ex rel. State Sav. Bank v. Barret, 25 Mont. 112, 120, 63 Pac. 1030.

A judgment is in the nature of a contract, but it is not a contract within the meaning of this section, and a statute changing the rate of interest which a judgment shall bear after entry is not unconstitutional. Stanford v. Coram, 28 Mont. 288, 292, 72 Pac. 655, 98 Am. St. Rep. 566.

There is no prohibition in the constitution against retrospective legislation other than that contained in this section. The legislature is therefore untrammeled and free, in so far as constitutional provisions are concerned, to pass any retrospective laws which do not violate the obligations of contracts or interfere with any vested rights. Bullard v. Smith, 28 Mont. 387, 396. 72 Pac. 761.

Chapter 92, Laws of 1909 (11180-11183), making it unlawful to record or register, or to aid or abet in recording, reporting, or registering any bet or wager upon races held without the state, and which, among other things, allows betting on speed contests held within race-track or fair-ground enclosures in this state, for thirty days in first-class counties and fourteen days in other counties, is not in contravention of the provisions of this section prohibiting the irrevocable granting of any special privileges, franchises, or immunities. State v. Rose, 40 Mont. 66, 71, 105 Pac. 82.

The act passed in 1899, page 113, authorizing the directors of a mining corporation to sell its property, does not impair the obligation of contracts, and is valid. See, also, Somerville v. St. Louis Min. & M. Co., 46 Mont. 268, 275, 127 Pac. 464, L. R. A. 1915B, 811.

While no constitutional barriers, other than those stated in this section, exist to restrain retroactive legislation in this state, and while a certain amount of retrospection is necessarily involved in many of our laws, it is nevertheless a fundamental rule of construction that retroactive effect is not to be given to a statute unless commanded by its context, terms, or manifest purpose. Falligan v. School District, 54 Mont. 177, 179, 169 Pac. 803.

Cited or applied in State v. Kingsly, 10 Mont. 537, 544, 26 Pac. 1066; State ex rel. Cruse Sav. Bank v. Gilliam, 18 Mont. 94, 95, 44 Pac. 394, 45 Pac. 661, 31 L. R. A. 721, 33 L. R. A. 556; Allen v. Ajax Mining Co., 30 Mont. 490, 502, 77 Pac. 47.

For text treatment of this subject, see 6 R. C. L. 290; 6 R. C. L. 323; also, article on Constitutional Law in Cal. Jur.

War legislation in nature of moratory statute as violation of contract obligation, see 9 A. L. R. 6.

Impairment of obligation of convict labor contract, see 3 A. L. R. 1671.

Power of state to change private contract rates for public utilities, see 9 A. L. R. 1423.

Power of state to increase franchise rates, see 3 A. L. R. 730; 9 A. L. R. 1165.

Power of Public Service Commission with respect to regulation of street railways as affected by contract, see 5 A. L. R. 44.

Examination and supervision of banks by public officers as impairment of charter rights, see 8 A. L. R. 898.

Franchise provisions for free or reduced rates by public service corporations as contract protected from change under contract clause of federal constitution, see 10 A. L. R. 499.

Paving ordinance as impairment of obligation of street railway franchise, see 10 A. L. R. 897.

Constitutionality of rent laws, see 11 A. L. R. 1252.

Constitutionality or statutory provisions for prosecution of felony upon information without indictment as an ex post facto law, see 38 L. R. A. (N. S.) 96.

Constitutionality of statute providing for increased punishment because of prior conviction, see 34 L. R. A. 399.

Impairment of contract obligations by Workmen's Compensation Act, see L. R. A. 1916A, 426; L. R. A. 1917D, 56.

Alteration of stockholders' liability as impairment of the obligation of contract, see L. R. A. 1915B, 797.

Ex post facto laws, see 37 A. S. R. 582.

Impairing obligation of contract by franchise tax, see 131 A. S. R. 878.

Sec. 12. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Imprisonment for refusal to give bond required by court decree, see 10 A. L. R. 380.

Constitutional or statutory provision against imprisonment for debt as applicable to imprisonment for failure to pay fine or penalty, see 19 Ann. Cas. 757.

Constitutional or statutory provision against imprisonment as applicable to imprisonment for failure to pay alimony, see Ann. Cas. 1913E, 1087.

Civil liability for tort as debt within constitutional provision against imprisonment for debt, see 20 Ann. Cas. 1344.

Statute punishing frauds on innkeepers as within constitutional provision against imprisonment for debt, see 16 Ann. Cas. 1231.

Statute making breach of contract by employee criminal offense as contravening constitutional provision against imprisonment for debt, see 14 Ann. Cas. 1060.

Constitutionality of imprisonment for debt, see 34 L. R. A. 634; L. R. A. 1915B, 645.

Statutes violating prohibitions against imprisonment for debt, see 37 A. S. R. 758.

Sec. 13. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Cited or applied in Butte Miners' Union v. City of Butte, 58 Mont. 391, 401, 194 Pac. 149.

Right to bear arms, see 1 Ann. Cas. 56; 17 Ann. Cas. 570; Ann. Cas. 1913B, 333.

Right to keep and bear arms, see 115 A. S. R. 199.

Sec. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner.

A railway company is entitled to possession of condemned property upon making a deposit of the damages awarded by the commission, though title pending appeal is merely provisional, and the fact that an appeal has been taken does not abrogate the award of the commission, for until revised by appeal such award is just compensation and this provision has been complied with thereby. State ex rel. Volunteer Min. Co. v. McHatton, 15 Mont. 159, 160, 38 Pac. 711.

By the vacation of a public road, there is no taking of private property for public use, within the meaning of this section. State ex rel. Johnson v. Board of Commrs., 19 Mont. 582, 585, 49 Pac. 147.

By adopting this section the convention modified the rule of the common law, which denied to the owner compensation for infringements upon his right of free access to his property by changes in the grade of the street upon which it abuts, and secured to him the possession and enjoyment of it free from interference with it by any means for any public purpose, until just compensation has been ascertained and made or tendered to him. The making or tendering of compensation is thus made a condition precedent. Less v. City of Butte, 28 Mont. 27, 31, 72 Pac. 140, 98 Am. St. Rep. 545, 61 L. R. A. 601; Eby v. City of Lewistown, 55 Mont. 113, 122, 173 Pac. 1163.

This section was drafted in broad language for the express purpose of preventing an unjust or arbitrary exercise of the power of eminent domain. Less v. City of Butte, 28 Mont. 27, 32, 72 Pac. 140, 98 Am. St. Rep. 545, 61 L. R. A. 601.

A landowner is entitled, under this section, to compensation for damages owing to the grading of a street on which his property abuts, in accordance with a grade established by a city, notwithstanding the fact that such grade is the first one ever fixed. Less v. City of Butte, 28 Mont. 27, 33, 72 Pac. 140, 98 Am. St. Rep. 545, 61 L. R. A. 601.

This section is both mandatory and pro-

hibitory, and it is also self-executing. Less v. City of Butte, 28 Mont. 27, 33, 72 Pac. 140, 98 Am. St. Rep. 545, 61 L. R. A. 601.

It seems that this section does not authorize a remedy for every diminution in the value of property that is caused by public improvements; the damages for which compensation is to be made being a damage to the property itself, and not including mere infringement of the owner's personal pleasure or enjoyment. Less v. City of Butte, 28 Mont. 27, 33, 72 Pac. 140, 98 Am. St. Rep. 545, 61 L. R. A. 601.

An examination of a lode mining claim under section 1314, Code of Civil Procedure of 1895 (9492), is not in contravention of this section prohibiting the taking or damaging of private property without just compensation to the owner. State ex rel. Parrot S. & C. Co. v. District Court, 28 Mont. 528, 544, 73 Pac. 230.

The district court has the power to compel a defendant, upon the payment of the reasonable cost, to lower and hoist the agents of the plaintiff into and from the underground workings of a lode mining claim, while engaged in the inspection thereof, without infringing the provisions of this section. State ex rel. Boston & M. Co. v. District Court, 30 Mont. 206, 219, 76 Pac. 206.

Chapter 106, Laws of 1905, providing for the construction and maintenance of drains "wherever the same shall be conducive to the improvement or reclamation of agricultural lands, public health, convenience, or welfare," is not unconstitutional as permitting the taking of private property for other than a public use. Billings Sugar Co. v. Fish, 40 Mont. 256, 260, 106 Pac. 565, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973.

The intention of the legislature in enacting section 1340, Revised Codes of 1907, was to declare to be public highways only those that have been established by the public authorities, or had been recognized by them and generally by the public, or those which had become such by prescription or adverse use at the time the provision was enacted. Any other construction would render the legislation open to serious constitutional objection. Barnard Realty Co. v. City of Butte, 48 Mont. 102, 110, 136 Pac. 1064.

The assumption that a railroad, since it is for the public use and benefit, has, through being given authority by the legislature to construct its line, rights to which the rights of adjacent property holders are subordinated, is limited by the principle of the constitution that no person can be deprived of property without due process of law, and compensation first being made to the owner. Wine v. Northern Pacific Ry. Co., 48 Mont. 200, 206, 136 Pac. 387, Ann. Cas. 1915D, 1102, 49 L. R. A. (N. S.) 711.

The right to compensation for damages to property occasioned by the grading of a street from contour to established grade, is guaranteed by this section. State ex rel. City of Butte v. District Court, 48 Mont. 614, 617, 139 Pac. 791.

Private property cannot be taken for a public use in invitum, except upon compensation first being made to the owner. In other words, the payment or tender of compensation, the amount of which has been ascertained in the manner provided by law, is made a condition precedent to the acquisition of any right by the public. Possession taken from the owner without compliance with this condition is wrongful, and ejectment will lie in favor of the owner to recover it. The fact that the wrong-doer is a municipal corporation does not affect the right to maintain the action. Flynn v. Beaverhead County, 49 Mont. 347, 352, 141 Pac. 673; Postal Telegraph-Cable Co. v. Nolan, 53 Mont. 129, 136, 162 Pac. 169; Eby v. City of Lewistown, 55 Mont. 113, 123, 173 Pac. 1163.

The statutes authorizing the state inspector of fruit pests to destroy infected fruit are valid, though the destruction is without compensation to the owner. Colvill v. Fox, 51 Mont. 72, 79, 149 Pac. 496, L. R. A. 1915F, 894.

This provision of the constitution refers to the authority exercised by the state, or through some designated agency, by virtue of the power of eminent domain, where the property taken is subjected to some public use, as for highway, railway, or other purpose in which the public interest is the predominating factor. It has no application whatever to property destroyed by the public agencies acting by virtue of the police power of the state. Colvill v. Fox, 51 Mont. 72, 79, 149 Pac. 496.

The rule of construction applicable to this provision of the constitution is declared in section 27 of this article. Expressed in terms clearly prohibitory, without words in itself or elsewhere in the constitution expressly declaring it to be otherwise, it is a limitation denying to the legislature the power to authorize the taking or damaging of the property of the citizen without a fulfillment of the condition expressly imposed by it, namely "without just compensation having been first made to or paid into court for the owner." Eby v. City of Lewistown, 55 Mont. 113, 122, 173 Pac. 1163.

Section 13, chapter 89, Laws of 1913, which casts upon the owner of the city or town realty embraced within the limits of a proposed special improvement district the burden of ascertaining the amount of damages likely to ensue to the

property by reason of its creation, and making claim for the amount within a specified time, or be debarred thereafter from doing so, is in violation of this section. Eby v. City of Lewistown, 55 Mont. 113, 125, 173 Pac. 1163.

Cited or applied in Flynn v. Beaverhead County, 54 Mont. 309, 312, 170 Pac. 13.

For text treatment of this subject, see 10 R. C. L. 1; also, article on Eminent Domain in Cal. Jur.

State power of eminent domain over property of United States, see 4 A. L. R. 548.

Power to condemn against particular use of property, see 8 A. L. R. 594.

Constitutional right to compensation on destruction of diseased animals, see 8 A. L. R. 70.

Delegation of powers of eminent domain, see 1 Ann. Cas. 537.

Right of county to exercise power of eminent domain, see Ann. Cas. 1913E, 1079.

What constitutes public use for which property may be taken by eminent domain, see 2 Ann. Cas. 50; 14 Ann. Cas. 903; Ann. Cas. 1912D, 1002.

Generally as to whether consequential damages to property from proper exercise of governmental power is taking, see 4 Ann. Cas. 1185.

Property subject to appropriation for public use, see 22 L. R. A. (N. S.) 6.

Power to take private property for public use, see 22 A. S. R. 48.

"Damaged" as used in constitution defined, see 109 A. S. R. 905.

What constitutes public use, see 102 A. S. R. 813.

Sec. 15. The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right of way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

The provisions of this section, that the necessity for, and the damages occasioned by, the opening of private roads shall first be determined by a jury, did not abrogate sections 1495 et seq. of the general laws of 1877 (7382 et seq.), granting to the owners of mining claims a right of way across the claims of others, and providing for the assessment of damages by commissioners, but merely modified the statute as to the method of determining the damages, leaving the jurisdiction and procedure in other respects unchanged. State ex rel. Coleman v. District Court, 14 Mont. 476, 479, 37 Pac. 7.

The phrase "other beneficial use," as used in this section, includes other uses than such as are kindred to rental, sale, or distribution. It includes in the term "public use" the use of water for the purpose of irrigating a particular tract of agricultural land, or working a particular mine, as well as the use of water for irrigating a number of tracts of land, or working a number of mines owned by different persons. Ellinghouse v. Taylor, 19 Mont. 462, 464, 48 Pac. 757. See, also, Eastern Oregon Land Co. v. Willow River L. & I. Co., 204 Fed. 516, 522, 122 C. C. A. 636.

While any person is permitted to appropriate water for a useful purpose, it must be used with some regard for the rights of the public. Fitzpatrick v. Montgomery, 20 Mont. 181, 187, 50 Pac. 416, 63 Am. St. Rep. 622. See, also, Schodde v. Twin Falls Water Co., 224 U. S. 107, 121, 32 Sup. Ct. 470, 56 L. Ed. 686.

Under this section, the use of appropriated water is made a public use. Smith v. Denniff, 24 Mont. 20, 22, 60 Pac. 398, 81 Am. St. Rep. 408, 50 L. R. A. 741.

The use of water to irrigate a farm under the water-right law is a public use. City of Helena v. Rogan, 26 Mont. 452, 475, 68 Pac. 798.

The use of the waters in streams being declared by this section to be a public use, every citizen is entitled to divert and use them so long as he does not infringe the rights of some other citizen who has acquired a prior right by appropriation, on condition that he restore the waters to the channel of the stream on the cessation of his necessity. Bullerdick v. Hermsmeyer, 32 Mont. 541, 554, 81 Pac. 334; Featherman v. Hennessy, 42 Mont. 535, 541, 113 Pac. 751.

The taking of land for the purpose of flooding it, rendered necessary by the construction of a dam for generating electric power, to be sold to industrial enterprises and to the public generally, the power also to be utilized for pumping water upon arid lands, is for such a public use as will support the right to acquire the land by

condemnation. Helena Power Transmission Co. v. Spratt, 35 Mont. 108, 128, 88 Pac. 773, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567.

The language of this section, in the light of our history and natural conditions, in a region where the conservation and use of its waters is all-important to its development and progress, is a mandate from the sovereign people to the courts. The words "sale" and "rental" are especially significant. This section is self-executing, and should receive a broad construction. Spratt v. Helena Power Transmission Co., 37 Mont. 60, 78, 94 Pac. 631.

Since the use of water is declared by the constitution to be a public use, the right to appropriate water on the land of another may be acquired by condemnation proceedings. Prentice v. McKay, 38 Mont. 114, 118, 98 Pac. 1081.

A beneficial use of the water flowing in the streams of the state is a public use, but it may nevertheless be appropriated to a more necessary public use, an example of which is the right of a city to acquire a water supply by the exercise of the right of eminent domain, even though it may have already been appropriated to some other public use. Carlson v. City of Helena, 39 Mont. 82, 105, 102 Pac. 39, 17 Ann. Cas. 1233.

The appropriator of water need not be an owner of, or a person in the possession of, land in order to make a valid appropriation for irrigation purposes. The use of water is a public use, and a public service corporation can appropriate water, independently of present or future customers; otherwise the improvement of arid lands in localities where the undertaking by individuals would be too vast for them must never take place. Bailey v. Tintinger, 45 Mont. 154, 175, 122 Pac. 575.

The use of water flowing in the streams of this state is declared by the constitution to be a public use. The use must be beneficial, and, when the appropriator or his successor ceases to use the water for such purpose, the right ceases. Conrow v. Huffine, 48 Mont. 437, 444, 138 Pac. 1094.

Cited or applied in Butte, Anaconda & Pacific Ry. Co. v. Montana Union Ry. Co., 16 Mont. 504, 529, 41 Pac. 232, 50 Am. St. Rep. 508, 31 L. R. A. 298.

Exercise of eminent domain for purpose of irrigating land of private owner, see 9 A. L. R. 583.

Exercise of eminent domain for water supply, see 58 L. R. A. 241; 22 L. R. A. (N. S.) 156.

Drainage of private lands as public purpose authorizing exercise of power of eminent domain, see 49 L. R. A. 781; 1 L. R. A. (N. S.) 208; 22 L. R. A. (N. S.) 163.

Private road, see 16 L. R. A. 81.

Condemnation for railroad right of way, see 19 A. S. R. 459.

Sec. 16. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

The accused, in a criminal prosecution, is entitled to meet the witnesses against him face to face, and it is therefore error, in a criminal trial, where the prosecuting witness was not within the state, to admit in evidence the committing magistrate's general recollection of the testimony which such witness gave at the preliminary examination. State v. Lee, 13 Mont. 248, 249, 33 Pac. 690. See, also, State v. Byers, 16 Mont. 565, 569, 41 Pac. 708.

Where a defendant has been twice tried before the expiration of the second term after the filing of the information, and the state prosecutes an appeal from an order granting him a new trial after a conviction on the second trial, which appeal was finally held to be unauthorized, and during the pendency of such appeal two terms elapsed without another trial, this is not a denial to the accused of the speedy trial guaranteed him by this section. State ex rel. Northrup v. Conrow, 13 Mont. 552, 553, 35 Pac. 240.

The constitutional rights, guaranteed by this section to the accused, to demand the nature and cause of the accusation, are not violated by the statute permitting an accusation against one as principal who is in fact an agent, for the reason that the old distinction between principal and accessory before the fact was merely arbitrary, and "without existence in natural reason or the ordinary doctrines of the law." State v. Geddes, 22 Mont. 68, 87, 55 Pac. 919.

Since a disbarment proceeding is not a criminal prosecution, this section, declaring the right of the accused to meet the witnesses face to face, is inapplicable, and depositions can be taken on the applica-

tion of the attorney-general. In re Wellcome, 23 Mont. 259, 58 Pac. 711.

A jury is an entity. By the constitution of this state, one accused of crime is guaranteed the right to "a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed." An impartial jury must be composed of twelve impartial men. A number less than that will not suffice. If one of the jurors is incompetent because of actual bias entertained by him against the accused, and conceals such incompetency on his voir dire, this vitiates the jury as a whole. The accused being entitled to a jury of twelve impartial men, if he has but eleven, while the twelfth is hostile to him, he has not the impartial jury which the constitution and laws contemplate that he shall have. State v. Mott, 29 Mont. 292, 297, 74 Pac. 728.

Section 12,048, providing that when the jury has been guilty of any misconduct by which a fair and due consideration of the case has been prevented, it shall be ground for a new trial, is not unconstitutional as not granting to the accused in a criminal prosecution a "trial by an impartial jury." State v. Mott, 29 Mont. 292, 300, 74 Pac. 728.

Criminal actions must be tried in the county where the offense was committed. State v. Tully, 31 Mont. 365, 369, 78 Pac. 760, 3 Ann. Cas. 824.

Where defendant, in a prosecution for murder, pleads "not guilty," an instruction to the jury to the effect that they could find him guilty of murder in either of its degrees, or of voluntary or involuntary manslaughter, but "you cannot find him not guilty," is in contravention of defendant's constitutional right to have the question of his guilt or innocence determined by a jury, of which right he cannot be deprived, no matter how clear and unimpeached or free from suspicion the evidence may be. State v. Koch, 33 Mont. 490, 496, 85 Pac. 272, 8 Ann. Cas. 804. See, also, State v. Sloan, 35 Mont. 367, 371, 89 Pac. 829; State ex rel. Rowe v. District Court, 44 Mont. 318, 327, 119 Pac. 1103, Ann. Cas. 1913B, 396.

The constitutional guaranty, that in all criminal prosecutions the accused shall have the right to trial by jury, includes misdemeanors as well as felonies. State v. Koch, 33 Mont. 490, 496, 85 Pac. 272, 8 Ann. Cas. 804.

The word "trial," as used in this section, embraces all proceedings in the progress of a criminal prosecution after the issues are made up, down to and including the rendition of the verdict. State v. Koch, 33 Mont. 490, 496, 85 Pac. 272, 8 Ann. Cas. 804.

The local jurisdiction of the crime is in the county where it is committed, and the charge must show that fact; the defendant is entitled to know the cause of the accusation, so that he may prepare his defense. State v. Beesskove, 34 Mont. 41, 50, 85 Pac. 376.

The word "district," as used in the provision declaring that in criminal prosecutions the accused shall be tried by a jury from the "county or district in which the offense is alleged to have been committed," is not synonymous with the term "township," but means the precise portion of the territory or political division of the state over which a court may exercise power in criminal matters. State v. O'Brien, 35 Mont. 482, 494, 90 Pac. 514, 10 Ann. Cas. 1006.

The design of this provision of the constitution is to furnish a guaranty to every person charged with a crime of a trial by a jury from the vicinage or neighborhood where the crime is supposed to have been committed, so that he may have the benefit, on his trial, of his own good character and standing with his neighbors, if these he has preserved, and also of such knowledge as the jury may possess of the witnesses who may give evidence against him. State v. O'Brien, 35 Mont. 482, 495, 90 Pac. 514, 10 Ann. Cas. 1006.

That the right secured by this section to a person accused of crime to meet the witnesses against him face to face is not an absolute one is determined by the next succeeding section, wherein provision is made for taking and using the deposition of a witness in a criminal case. State v. Vanella, 40 Mont. 326, 332, 106 Pac. 364, 20 Ann. Cas. 398.

In a criminal action the defendant cannot object that a particular juror was not allowed to sit in his case on a challenge for cause; his right being only that he shall be tried by an impartial jury, as provided in this section. State v. Byrd, 41 Mont. 585, 590, 111 Pac. 407.

If, during the presentation of the case, the court has accorded the defendant all the rights enumerated in this section, and, further, has guarded him against surprise by the introduction of evidence against him by the state which he cannot meet, or the effect of which he cannot minimize, so far as this would have been possible by previous knowledge of the witnesses, he cannot complain that the county attorney has failed to pursue the statute regarding the indorsing of the names of witnesses upon the information. State v. McDonald, 51 Mont. 1, 5, 149 Pac. 279.

In a prosecution under the statute for the infamous crime against nature, the right of the defendant to "demand the nature and cause of the accusation" has been accorded to him, even though the information fails to allege a description of the manner or means by which the offense

was accomplished. State v. Guerin, 51 Mont. 250, 257, 152 Pac. 747.

Where, in a prosecution for rape, the court made an order that on account of the nature of the case no one should be allowed in the court room in addition to those then present, and those present, after once leaving, could not return, court officers, doctors, attorneys, and newspapermen being excluded from the order, the enforcement of such order was a denial of the right to a public trial guaranteed by this section. State v. Keeler, 52 Mont. 205, 212, 156 Pac. 1080, Ann. Cas. 1917E, 619, L. R. A. 1916E, 472.

The constitution guarantees to a defendant charged with crime, whether innocent or guilty, a public trial, and when the right is denied him, he has not had a fair and impartial trial within the meaning of the constitution, and all that can be required of him is that he make known the fact of the denial, and the law imputes prejudice. State v. Keeler, 52 Mont. 205, 214, 156 Pac. 1080, Ann. Cas. 1917E, 619, L. R. A. 1916E, 472.

The provision of the constitution guaranteeing to the accused the right to a public trial is to be construed in the light of the conditions prevailing in Montana at the date of its enactment in 1889. State v. Keeler, 52 Mont. 205, 217, 156 Pac. 1080, Ann. Cas. 1917E, 619, L. R. A. 1916E, 472.

The term "criminal prosecutions," as employed in the constitution, refers to prosecutions for offenses which were crimes at common law, and doubtless to statutory offenses. State ex rel. Payne v. District Court, 53 Mont. 350, 355, 165 Pac. 294.

The guaranty contained in this section is but declaratory of the ancient common-law rule that no one shall be held to answer an information or indictment, unless the crime be charged with precision and fullness, to the end that the defendant may have ample opportunity to make his defense and avail himself of his conviction or acquittal in a subsequent proceeding for the same offense. State v. Wolf, 56 Mont. 493, 499, 185 Pac. 556.

The right to trial by an impartial jury, every member of which is impartial, given by the constitution, is an unqualified one, which it is beyond the power of the legislature to curtail, and any provisions of the statutes which relate to the selection of a jury are to be understood as merely providing the means by which the constitutional guaranty may be exercised to the fullest extent. State v. Brooks, 57 Mont. 480, 188 Pac. 942.

Proof of the charge in the information that defendant published the seditious article mentioned herein, in a certain county, was indispensable to give the district court of such county jurisdiction to try the cause. State v. Smith, 57 Mont. 563, 190 Pac. 107.

For text treatment of this subject, see 8 R. C. L. 67; also, article on criminal law in Cal. Jur.

Right of accused to try his own case without attorney and effect thereof, see Ann. Cas. 1913C, 739.

Appointment of inexperienced or unfaithful counsel or of insufficient number of counsel to represent defendant in criminal case as reversible error, see Ann. Cas. 1912C, 457.

Right of convict to speedy trial, see 17 Ann. Cas. 170.

Necessity of arraignment in criminal cases, see 12 Ann. Cas. 704; Ann. Cas. 1915C, 1073.

Inability of defendant in criminal case to understand language of witnesses as depriving him of constitutional right to confront witnesses, see Ann. Cas. 1913D, 673.

Admission of proposed testimony of absent witness as violation of constitutional rights of accused, see Ann. Cas. 1913C, 490.

Waiver by person accused of felony of right to be present during course of trial, see Ann. Cas. 1913C, 1146.

Right to public trial, see 14 L. R. A. 809.

Right upon plea of guilty to sentence accused without intervention of jury, see 35 L. R. A. (N. S.) 1146.

Power to regulate or restrict constitutional right of defendant in criminal cases to compulsory process to procure witnesses in his behalf, see 8 L. R. A. (N. S.) 509.

Power of legislature to provide for indictment in county or district other than where crime alleged to have been committed, see 7 L. R. A. (N. S.) 669; L. R. A. 1918F, 965.

Right of accused to speedy trial, see 85 A. S. R. 188.

Right of accused to public trial, see 28 A. S. R. 308.

Right of accused to confront witnesses, see 129 A. S. R. 24.

Sec. 17. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time

and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

In cases of a criminal nature, depositions can be taken, on notice, in the presence of the accused and his counsel, "or without their presence, if they shall fail to attend." State v. Vanella, 40 Mont. 326, 337, 106 Pac. 364, 20 Ann. Cas. 398.

The right of defendant to be present at the taking of a deposition is not an absolute one, but a privilege which he may waive; and the burden is upon him to show that he was not present, or was not given an opportunity to be present, before he can complain. State v. Vanella, 40 Mont. 326, 337, 106 Pac. 364, 20 Ann. Cas. 398.

Sec. 18. No person shall be compelled to testify against himself, in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense.

The plea of former jeopardy cannot be maintained on a second trial which a defendant has obtained upon his own motion. Territory v. Hart, 7 Mont. 489, 496, 17 Pac. 718; State v. Thompson, 10 Mont. 549, 562, 27 Pac. 349.

Defendant, who was charged with murder, was tried three times, and at the third trial found guilty of manslaughter. The jury disagreed upon the second trial, and was discharged. At the third trial the plea of once in jeopardy was interposed, on the ground that the jury had been discharged at the second trial without there having existed a necessity therefor, which defense was overruled by the district court. Under these circumstances, the disagreement of the jury and their consequent discharge did not operate to bring the defendant within the provision of this section which prohibits any person from being put twice in jeopardy for the same offense. State v. Keerl, 33 Mont. 501, 509, 85 Pac. 862.

The privilege that "no person shall be compelled to testify against himself in a criminal proceeding," may be waived by consent, either expressly or by implication. State v. Fuller, 34 Mont. 12, 18, 85 Pac. 369, 9 Ann. Cas. 648, 8 L. R. A. (N. S.) 762.

Where, on a trial for murder, defendant consented to the taking of his shoes for the purpose of comparison with footprints, leading from the place of homicide, he waived his right to object to the use of such evidence against him on the ground that this section forbids its use in declaring that no person shall be compelled to testify against himself in a criminal proceeding. State v. Fuller, 34 Mont. 12, 18, 85 Pac. 369, 9 Ann. Cas. 648, 8 L. R. A. (N. S.) 762.

Evidence obtained by the taking of the shoes of defendant, charged with murder, against his consent, and comparing them with footprints leading from the place of the crime, is admissible, and its use does not deprive him of the constitutional guaranty declaring that no person shall be compelled to testify against himself in a criminal proceeding. State v. Fuller, 34 Mont. 12, 19, 85 Pac. 369, 9 Ann. Cas. 648, 8 L. R. A. (N. S.) 762.

Although no compulsion may be exercised upon a person charged with crime to make him testify against himself, still, if the accused goes upon the witness stand in his own behalf, he is subject to all proper cross-examination, even though in such cross-examination he may be compelled to incriminate himself. State v. Vanella, 40 Mont. 326, 336, 106 Pac. 364, 20 Ann. Cas. 398.

The constitutional security a person has against being twice put in jeopardy for the same offense prevents only a second prosecution after the first has resulted in a conviction or acquittal; intermediate steps, such as the dismissal of an indictment on technicalities, give him no such security. State v. Vinn, 50 Mont. 27, 35, 144 Pac. 773.

This section does not mean that, after an indictment has been dismissed, a defendant may not be charged with the same offense by any method the use of which is permitted by the constitution, until his guilt or innocence has been ascertained by the verdict of a jury, or, in any event, until he has once been in jeopardy. State v. Vinn, 50 Mont. 27, 35, 144 Pac. 773.

The right to immunity from a second prosecution is constitutional, and that right is to be measured by the meaning of the term "jeopardy" as employed in the constitutional provision. This is to be ascertained from the state of the law when the constitution was adopted, not from subsequent legislation; and, as so ascertained, the term was not intended to apply merely to those cases where a verdict has been rendered, but it applies as well to every case where the defendant has been brought to trial in a competent court upon a sufficient indictment or information before a jury duly impaneled and sworn; and whenever such jeopardy has occurred for the same offense, and has, without necessity or the procurement of the accused, ended by a discharge of the jury before

verdict, the plea is available. State v. Gaimos, 53 Mont. 118, 121, 162 Pac. 596.

When a witness waives his constitutional privilege by testifying in his own behalf, he renders himself liable to be cross-examined upon all facts relevant and material to the issue raised by his denial of the commission of the offense imputed to him. State v. Smith, 57 Mont. 349, 359, 188 Pac. 644.

Cited or applied in State ex rel. Chenoweth v. Acton, 31 Mont. 37, 42, 77 Pac. 299; State v. Driscoll, 49 Mont. 558, 560, 144 Pac. 153.

For text treatment of this subject, see 8 R. C. L. 77; 8 R. C. L. 134; also, article on criminal law in Cal. Jur.

Compulsory examination for venereal disease, see 2 A. L. R. 1332.

Discharge of accused under a limitation statute as bar to a subsequent prosecution for same offense, see 3 A. L. R. 519.

Acquittal or conviction of offense during commission of which homicide is committed as bar to prosecution for homicide, see 4 A. L. R. 702.

Acquittal on charge as to one as bar to charge as to the other, where one person is killed or assaulted by acts directed at another, see 2 A. L. R. 606.

Occurrences during a view as warranting the jury's discharge without letting in plea of former jeopardy upon subsequent trial, see 4 A. L. R. 1266.

Constitutional guaranty against self-incrimination; equivalent to exemption to witnesses, see 1 L. R. A. (N. S.) 167.

Right to compel accused to exhibit himself for examination, see L. R. A. 699.

Rule against double jeopardy for same offense, see 92 A. S. R. 93.

Sec. 19. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

When an application is made for bail, in a capital case, the county attorney, if he resists the application, should make some showing that the proof is evident or the presumption great, thus bringing the case within the exception mentioned in the constitution. On failure to make such showing, the defendant is entitled to bail in all cases; but, if such showing is made, the court or judge should refuse bail without hesitation. State ex rel. Murray v. District Court, 35 Mont. 504, 508, 90 Pac. 513.

Cited or applied in State v. Lagoni, 30 Mont. 472, 479, 76 Pac. 1044.

For text treatment of this subject, see 3 R. C. L. 1; also, article on Bail and Recognizance in Cal. Jur.

Giving bail as waiver of privilege against arrest, see 8 A. L. R. 757.

Right to apply cash bail to payment of fine, see 7 A. L. R. 389.

Abolition of death penalty as affecting right to bail of one charged with murder in the first degree, see 8 A. L. R. 1352.

Imposition of life sentence as affecting capital character of offense, see 3 A. L. R. 970.

Surrender of principal by sureties on bail bond, see 3 A. L. R. 180.

Insanity of principal as relieving bail for his non-appearance, see 7 A. L. R. 394.

Induction of principal into military or naval service as exonerating his bail for his non-appearance, see 8 A. L. R. 371.

Bail as a matter of right or of discretion, see 1 Ann. Cas. 12; 9 Ann. Cas. 619.

Bail as a matter of right, see 39 L. R. A. (N. S.) 752.

Sec. 20. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

A fine is a penalty exacted by the state for some criminal offense, and this provision has no application to the penalty imposed upon the directors of a corporation for neglect to file the annual statement required by section 3850, Revised Codes of 1907, as amended. Daily v. Marshall, 47 Mont. 377, 398, 133 Pac. 681.

Cited or applied in State v. Lagoni, 30 Mont. 472, 479, 76 Pac. 1044.

For text treatment of this subject, see 8 R. C. L. 262; also, article on Criminal Law in Cal. Jur.

Imposition of both of alternative punishments, see 1 Ann. Cas. 734.

Right of prisoner who has received excessive sentence to be discharged on habeas corpus or appeal, see 7 Ann. Cas. 144.

Effect of punishment actually imposed to reduce grade of crime from felony to misdemeanor, see 8 Ann. Cas. 821.

Cruel and unusual punishments, see 35 L. R. A. 561.

Effect of excessive sentence, see 45 L. R. A. 137; 51 L. R. A. (N. S.) 373.

Sec. 21. The privilege of the writ of habeas corpus shall never be suspended, unless, in case of rebellion, or invasion, the public safety require it.

For text treatment of this subject, see 12 R. C. L. 1176; also, article on Habeas Corpus in Cal. Jur.

Right of one detained pursuant to quarantine to habeas corpus, see 2 A. L. R. 1542.

Authority of habeas corpus as paramount to that of other writs, see Ann. Cas. 1914A, 829.

Suspension of writ of habeas corpus, see 45 L. R. A. 832; 45 L. R. A. (N. S.) 996.

Nature and purpose of writ, see 87 A. S. R. 168.

Suspension of writ during insurrection or rebellion necessitating government by martial law, see 98 A. S. R. 776.

Sec. 22. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

For text treatment of this subject, see 18 R. C. L. 1080; also, article on Military in Cal. Jur.

Sec. 23. The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. A jury in a justice's court, both in civil cases and in cases of criminal misdemeanor, shall consist of not more than six persons. In all civil actions and in all criminal cases not amounting to felony, two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all of such jury concurred therein.

The constitution must be construed in view of the conditions existing at the time of its adoption, and the right of trial by jury guaranteed under this broad declaration is the right as it then existed, and not one created or extended, except by express terms, by the instrument itself. This rule extends to both civil and criminal trials. State ex rel. Jackson v. Kennie, 24 Mont. 45, 56, 60 Pac. 589; Montana O. P. Co. v. Boston M. C. C. & S. M. Co., 27 Mont. 288, 306, 70 Pac. 1114.

Under this section the party complained of, in a proceeding in a justice court, to compel him to give security to keep the peace, is not entitled to a jury trial. No such right existed when the constitution was adopted, and there is nothing in the constitution extending the right to any case in which it did not exist at the date of its adoption. State ex rel. Jackson v. Kennie, 24 Mont. 45, 56, 60 Pac. 589.

The direction of a verdict in a creditors' suit to set aside a sale as fraudulent was not an infringement on the defendant's right to a trial by jury, though the testimony in the case was conflicting, since such cases were within the exclusive jurisdiction of chancery at the time the constitution was adopted, and the constitution did not enlarge the right of trial by jury. Finch v. Kent, 24 Mont. 268, 279, 61 Pac. 653.

Since parties in an action to determine an adverse claim to real property, or an interest therein, were not entitled to a jury trial prior to the adoption of the constitution, a defendant in an action to try an adverse claim to a lode mining claim under the statute authorizing such an action, as re-enacted subsequent to the constitution, is not entitled to have the issues submitted to a jury. Montana O. P. Co. v. Boston & M. C. C. & S. M. Co., 27 Mont. 288, 306, 70 Pac. 1114.

Plaintiff, in an action for damages for the maintenance of a nuisance, is entitled to a trial by jury of his right to damages, although he also asks for the equitable relief of injunction to restrain the continuance of the acts complained of. Chessman v. Hale, 31 Mont. 577, 584, 79 Pac. 254, 3 Ann. Cas. 1038, 68 L. R. A. 410.

The right guaranteed by this section is the same as that guaranteed by the seventh amendment of the federal constitution, because the federal constitution was the fundamental law of the territory at the time of its admission as a state, and the right as it then existed was preserved in the state constitution. Chessman v. Hale, 31 Mont. 577, 585, 79 Pac. 254, 3 Ann. Cas. 1038, 68 L. R. A. 410; Consolidated Gold & Sapphire Min. Co. v. Struthers, 41 Mont. 565, 571, 111 Pac. 152.

The right of trial by jury, as it existed at the time of the adoption of the constitution, still exists and cannot be taken away by legislative enactment. Chessman v. Hale, 31 Mont. 577, 585, 79 Pac. 254, 3 Ann. Cas. 1038, 68 L. R. A. 410.

The provision of this section, that a jury

may be waived in the manner prescribed by law—that is, by written law—is mandatory and prohibitory. It is the duty of the court to grant to litigants the rights given them by the constitutional provision. The constitution, in effect, commands that a jury trial, if waived, shall be waived in a certain manner, and prohibits its being waived in any other manner. Chessman v. Hale, 31 Mont. 577, 590, 79 Pac. 254, 3 Ann. Cas. 1038, 68 L. R. A. 410.

A party to an action is not under any obligation to demand a trial by jury, nor is he required to submit to the court the question as to whether he has a right to a jury trial, when these rights are granted to him by the constitution. Chessman v. Hale, 31 Mont. 577, 591, 79 Pac. 254, 3 Ann. Cas. 1038, 68 L. R. A. 410.

A juror cannot be said to be fair and impartial who has formed an opinion which will take evidence to remove, and who entertains a prejudice against a class to which the defendant belongs. Shane v. Butte Electric Ry. Co., 37 Mont. 599, 601, 97 Pac. 958.

The provision of this section, that the right of trial by jury shall be secured to all, and remain inviolate, applies only to cases where right of trial by jury existed at the time of the adoption of the constitution. The section refers in terms to "civil cases" and "criminal cases." Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 215, 119 Pac. 554.

The provision of this section, that the right of trial by jury shall remain inviolate, and referring to civil cases, did not confer the right to trial by jury, in a special proceeding to obtain the benefits of chapter 67, laws of 1909, providing a scheme for industrial insurance for persons engaged in coal mining within the state, and their dependents, in case of injury or death in the course of their occupation; and hence such act was not unconstitutional, as depriving those subject to its terms of their right to trial by jury. Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 217, 119 Pac. 554.

If the relator, in a mandamus proceeding, must litigate therein any private right to damages which he may have against the respondent personally, arising out of the wrong to which the mandate itself is directed, perforce the adversary must submit; so that a cause of action at law becomes summarily justifiable without a jury, notwithstanding the fact that as to such causes of action both parties are entitled to a jury, and cannot be compelled to submit to a summary adjudication. Bailey v. Edwards, 47 Mont. 363, 372, 133 Pac. 1095.

The right of trial by jury is preserved as it existed at the time the constitution was adopted, and since the right to a trial of a contested divorce suit did not exist at that time, a party to such a suit may not now demand, as a matter of right, a jury trial of the issues raised by the pleadings. Davidson v. Davidson, 52 Mont. 441, 443, 158 Pac. 680.

Cited or applied in Spencer v. Spencer, 31 Mont. 631, 639, 79 Pac. 320; State v. Koch, 33 Mont. 490, 496, 85 Pac., 8 Ann. Cas. 804; Freeman v. United States, 227 Fed. 732, 746, 142 C. C. A. 256; State v. Kelly et al., 57 Mont. 123-130, 187 Pac. 637.

For text treatment of this subject, see 16 R. C. L. 176; also, article on Jury in Cal. Jur.

Right to jury trial in proceeding for removal of public officer, see 3 A. L. R. 232; 8 A. L. R. 1476.

Statute conferring on chancery courts power to abate public nuisances as invasion of constitutional guaranty of jury trial, see 5 A. L. R. 1474.

General scope of constitutional provisions guaranteeing right of trial by jury, see 1 Ann. Cas. 703.

Validity of court rule regulating right to jury trial, see Ann. Cas. 1914B, 1184.

Validity of statute depriving of right to trial by jury in lower court but providing for jury trial on appeal, see Ann. Cas. 1912C, 1109.

Statute regulating instructions on evidence as invasion of right of trial by jury, see Ann. Cas. 1916A, 1147.

Constitutional provisions as to number and agreement of jurors necessary to verdict, see 43 L. R. A. 37.

Right to jury as affected by compulsory evidence against one's self, see 29 L. R. A. 219.

Right to trial by jury in inquisition of insanity, see L. R. A. 1918A, 348.

Validity of waiver of jury trial in criminal action, see 11 L. R. A. (N. S.) 1136.

Power of legislature to abridge right to jury trial, see 98 A. S. R. 538.

Sec. 24. Laws for the punishment of crime shall be founded on the principles of reformation and prevention, but this shall not affect the power of the legislative assembly to provide for punishing offenses by death.

For text treatment of this subject, see 8 R. C. L. 257; also, article on Criminal Law in Cal. Jur.

Right to compel prisoner to labor, see 27 L. R. A. 593.

Capital punishment, see L. R. A. 1915C, 561.

Sec. 25. Aliens and denizens shall have the same right as citizens to

acquire, purchase, possess, enjoy, convey, transmit, and inherit mines and mining property, and milling, reduction, concentrating, and other works, and real property necessary for or connected with the business of mining and treating ores and minerals: provided, that nothing herein contained shall be construed to infringe upon the authority of the United States to provide for the sale or disposition of its mineral and other public lands.

This provision goes no further than to put aliens and denizens on the same footing as citizens in granting the right to inherit. In other words, since citizens have the right, aliens and denizens also have it. The provision is not a limitation upon the power of the legislature to impose upon it the condition prescribed in section 4835 of the Revised Codes of 1907 (7088), that "no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession," or any other condition which it may deem necessary to prescribe in order that estates may be properly administered and distributed. The code provision in question is a statute of limitations which does not affect in any way the right conferred. It deals with the remedy only, and, being remedial in its nature, is not in anywise repugnant to this provision of the constitution. In re Colbert's Estate, 44 Mont. 259, 267, 119 Pac. 791.

Cited or applied in State ex rel. Kolbow v. District Court, 38 Mont. 415, 417, 100 Pac. 207.

For text treatment of this subject, see 1 R. C. L. 799; also, article Aliens, in Cal. Jur.

Disabilities and property rights of aliens as proper subjects of treaty regulations, see 4 A. L. R. 1391.

Right of alien to acquire title to realty by adverse possession, see Ann. Cas. 1913C, 1240.

Right of alien to locate mining claim, see 7 L. R. A. (N. S.) 813.

Sec. 26. The people shall have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

Under the rule that a statute which denies to the elector of the state, or any part of it, the right to nominate candidates for public office is void as violative of this section and section 5 of this article, chapter 113, laws of 1909, providing for non-partisan nominations to judicial office, by petition, is invalid because incapable of being made to operate uniformly throughout the state, in that it fails to provide any means by which a candidate for judicial office may be nominated in a newly created municipality, or for a newly created judicial office, or for judicial office in a district the boundaries of which have been changed since the last election, or may be changed hereafter. State ex rel. Holliday v. O'Leary, 43 Mont. 157, 164, 115 Pac. 204.

For text treatment of this subject, see 6 R. C. L. 250; also, article on Constitutional Law in Cal. Jur.

Validity of statute or ordinances prohibiting or regulating holding of meetings in street, see 10 A. L. R. 1483.

Sec. 27. No person shall be deprived of life, liberty, or property without due process of law.

Sections 10666 and 10669 authorizing a party to contradict his own witness by other evidence, and to ask him whether he had made other statements, are not repugnant to this section. State v. Bloor, 20 Mont. 574, 585, 52 Pac. 611.

A litigant has no constitutional right to have his cause tried before a particular judge, and hence a party is not deprived of life, liberty, or property by the mere fact that he cannot have his cause tried before the judge of the district where the action was commenced. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 541, 77 Pac. 312.

The act of December 10, 1903, amending section 180 of the Code of Civil Procedure of 1895 (8868), so as to provide for the disqualification of district judges on the filing of an affidavit of prejudice, is not in violation of this section, in that no notice is required to be given of the filing of the disqualifying affidavit, since, as the mere filing of the affidavit works the disqualification, the giving of notice would serve no purpose. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 541, 77 Pac. 312.

A statute which authorizes the taxation of costs upon the filing of a memorandum, without notice to the person liable therefor, would seem to be obnoxious to the constitutional guaranty contained in this section, the phrase "due process of law" including notice and a hearing before judgment. State ex rel. Riddell v. District Court, 33 Mont. 529, 532, 85 Pac. 367.

The phrase "due process of law" does not necessarily mean by a judicial proceeding. Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 217, 119 Pac. 554. See, also, State ex rel. Marshall v. District Court, 50 Mont. 289, 296, 146 Pac. 743, Ann. Cas. 1917C, 164.

The act of the legislature, laws of 1909, chapter 67, page 81, although invalid for another reason, is not in violation of the due process of law principle of the constitution. Whether the collection of an occupation tax in the summary manner provided by the act affords due process of law is set at rest, as to taxes generally, by Kelly v. City of Pittsburg, 104 U. S. 78, 26 L. Ed. 658. See, also, Palmer v. McMahon, 133 U. S. 660, 10 Sup. Ct. 324, 33 L. Ed. 772. And see, also, McMillan v. Anderson, 95 U. S. 37, 24 L. Ed. 335, where it is said that the mode of assessing taxes is summary in all cases, in order that it may be speedy and effectual, but that summary does not mean arbitrary, or unequal or illegal. Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 217. 119 Pac. 554.

The assumption that a railroad, since it is for the public use and benefit, has, through being given authority by the legislature to construct its line, rights to which the rights of adjacent property holders are subordinated, is limited by the principle of the constitution that no person can be deprived of property without due process of law. Wine v. Northern Pacific Ry. Co., 48 Mont. 200, 206, 136 Pac. 387, Ann. Cas. 1915D 1102, 49 L. R. A. (N. S.) 711.

The statutes authorizing the state inspector of fruit pests to destroy infected fruit are valid. Colvill v. Fox, 51 Mont. 72, 79, 149 Pac. 496, L. R. A. 1915F, 894.

Chapter 95, Laws of 1915 (1113-1132), providing for teachers' pensions, is not invalid as in contravention of this section. Trumper v. School District No. 55, 55 Mont. 90, 93, 173 Pac. 946.

The rule of construction applicable to the provision of this article, that private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner, is declared in this section of the constitution. Eby v. City of Lewistown, 55 Mont. 113, 122, 173 Pac. 1163.

Cited or applied in State v. Ah Jim, 9 Mont. 167, 171, 23 Pac. 76; State v. Kingsly, 10 Mont. 537, 544, 26 Pac. 1066; State v. Bernheim, 19 Mont. 512, 514, 49 Pac. 441; Hinds v. Wilcox, 22 Mont. 4, 11, 55 Pac. 355; Butte & B. Co. v. Montana O. P. Co., 25 Mont. 41, 68, 63 Pac. 825; State ex rel. Heinze v. District Court, 32 Mont. 394, 397, 80 Pac. 673; Billings Sugar Co. v. Fish, 40 Mont. 256, 260, 106 Pac. 565, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973; Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 88, 173 Pac. 1062.

For text treatment of this subject, see 6 R. C. L. 433; also article on Constitutional Law in Cal. Jur.

Constitutionality of rent laws, see 11 A. L. R. 1252.

Denial of due process of law making judgment void, see 39 L. R. A. 449.

Continuance of constitutional guaranties during war or insurrection, see 45 L. R. A. (N. S.) 996.

What constitutes due process of law, see 20 A. S. R. 554; 122 A. S. R. 904.

Sec. 28. There shall never be in this state either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

For text treatment of this subject, see 21 R. C. L.; also, article on Penalties in Cal. Jur.

Constitutionality of statute requiring persons, regardless of financial condition, to engage in some business, profession, occupation or employment, see 9 A. L. R. 1366.

Restraint on freedom of child as involuntary servitude, see 18 L. R. A. (N. S.) 893.

Statute creating prima facie rules of evidence in criminal case as infringement against constitutional prohibition against involuntary servitude, see L. R. A. 1915C, 725.

Sec. 29. The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Section 9 of article XIX of this constitution, requiring the secretary of state to publish a proposed constitutional amendment for three months prior to the next general election is mandatory, and a noncompliance therewith renders the adoption of the proposed amendment nugatory. State ex rel. Woods v. Tooker, 15 Mont. 8, 14, 37 Pac. 840, 25 L. R. A. 560. See, also, Durfee v. Harper, 22 Mont. 354, 363, 56 Pac. 582.

This section can have but one meaning, namely, that with reference to the subjects upon which the constitution assumes to speak, its declarations shall be conclusive upon the legislature, and shall prevent the enactment of any law which has for its purpose the extension or limitation of the

powers which they confer. In re Weston, 28 Mont. 207, 212, 72 Pac. 512.

The provisions of the constitution providing for the assessment and taxation of all the property of corporations situated within this state are mandatory. Northwestern Mut. Life Ins. Co. v. Lewis and Clarke County, 28 Mont. 484, 497, 72 Pac. 982, 98 Am. St. Rep. 572.

The rule declared in this section applies to all parts of the constitution. State ex rel. City of Butte v. Weston, 29 Mont. 125, 129, 74 Pac. 415.

While all the provisions of the constitution are "mandatory and prohibitory," yet the courts, bearing in mind that the legislature is a co-ordinate branch of the government, and that its action, if fair, should be sustained, have given this section a liberal construction, so as to not interfere with or impede proper legislative functions. State v. McKinney, 29 Mont. 375, 381, 74 Pac. 1095, Ann. Cas. 579.

A provision of the constitution is to be deemed mandatory and prohibitory unless declared to be otherwise, or else made by the instrument itself subject to exception. State ex rel. Peyton v. Cunningham, 39 Mont. 197, 201, 103 Pac. 497, 18 Ann. Cas. 705.

The appellate jurisdiction of the supreme court is extended under the constitution to "all cases at law and in equity," and the rule of interpretation for ascertaining the limits of this jurisdiction is included in the maxim, "inclusio unius est exclusio alterius," since "the provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." State ex rel. City of Helena v. Helena W. W. Co., 43 Mont. 169, 173, 115 Pac. 200.

A constitutional provision is construed to be mandatory from the nature of the instrument, but in Montana the character is given by express declaration to that effect. State ex rel. Hay v. Alderson, 49 Mont. 387, 412, 142 Pac. 210, Ann. Cas. 1916B, 39.

The provision in section 34 of article III of the constitution, limiting, in the case of an appointment to fill a vacancy in an elective office, the tenure of the appointee to the time of the qualification of a person chosen by the electors to serve for the unexpired term, is exclusive and hence prohibitory. The legislature cannot extend the terms beyond that thus definitely fixed, and the governor is equally without power to do so. State ex rel. Patterson v. Lentz, 50 Mont. 322, 340, 146 Pac. 932.

The legislature may extend the exemption to the property enumerated in section 2 of article XII of the constitution, but it cannot go further or include any other. This is the construction uniformly placed upon such provisions, and is commanded by the rule of interpretation contained in this section. Cruse v. Fischl, 55 Mont. 258, 263, 175 Pac. 878.

The provisions of section 16, article XII of the constitution, are mandatory and prohibitory, in the sense that the legislature cannot take from the state board of equalization the power to assess railroad property, nor vest such power elsewhere. State v. State Board of Equalization, 56 Mont. 413, 442, 185 Pac. 708, 186 Pac. 697.

Cited or applied in State v. Ah Jim, 9 Mont. 167, 172, 23 Pac. 76; State ex rel. Rotwitt v. Hickman, 9 Mont. 370, 379, 23 Pac. 740, 8 L. R. A. 403; Palmer v. City of Helena, 19 Mont. 61, 68, 47 Pac. 209; Mutual Life Ins. Co. v. Martien, 27 Mont. 437, 439, 71 Pac. 470; Chessman v. Hale, 31 Mont. 577, 590, 79 Pac. 254, 3 Ann. Cas. 1038, 68 L. R. A. 410; Missouri River Power Co. v. Steele, 32 Mont. 433, 437, 80 Pac. 1093; State ex rel. Haire v. Rice, 33 Mont. 365, 385, 83 Pac. 874; State v. Koch, 33 Mont. 490, 496, 85 Pac. 272, 8 Ann. Cas. 804; State v. District Court, 35 Mont. 51, 53, 88 Pac. 564; Johnson v. City of Great Falls, 38 Mont. 369, 373, 99 Pac. 1059, 16 Ann. Cas. 974; State ex rel. Jones v. Foster, 39 Mont. 583, 590, 104 Pac. 860; State ex rel. Working v. Mayor, 43 Mont. 61, 63, 114 Pac. 777; State ex rel. Ford v. Schofield, 53 Mont. 502, 515, 165 Pac. 594; City of Butte v. Montana Independent Tel. Co., 50 Mont. 574, 578, 148 Pac. 384; Eby v. City of Lewistown, 55 Mont. 113, 120, 173 Pac. 1163; State ex rel. Cutts v. Hart, 56 Mont. 571, 574, 185 Pac. 769, 7 A. L. R. 1678; Willis v. Pilot Butte Min. Co., 58 Mont. 26, 34, 190 Pac. 124.

For text treatment of this subject, see 6 R. C. L. 55; also, article on Constitutional Law in Cal. Jur.

Construction of requirement that proposed constitutional amendment be entered in journals, see 6 A. L. R. 1227.

Construction of constitutional provisions relative to titles to statutes, see 1 Ann. Cas. 584.

Legal meaning of "require" in constitution, see Ann. Cas. 1912A, 1236.

When "may," in constitutional provision, deemed to be mandatory, see 5 L. R. A. (N. S.) 340.

Sec. 30. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Sec. 31. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression

of domestic violence, except upon the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

Power of governor, in exercise of power to suppress insurrection, to authorize arrest and detention of persons without turning them over to the civil authorities, see 12 L. R. A. (N. S.) 979.

Martial law, see Ann. Cas. 1914C, 22.

Martial law other than in time of war, see 98 A. S. R. 772.

ARTICLE IV.

DISTRIBUTION OF POWERS.

Section 1. The powers of the government of this state are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

A county attorney may hold the office of notary public, without violating the provisions of this section, and it is no objection to an affidavit used by the state, on a motion for a new trial, that the notary before whom it was taken was the county attorney. State v. Jackson, 9 Mont. 508, 519, 24 Pac. 213.

This section does not prevent the courts from controlling by mandamus the exercise by the governor of the state of a purely ministerial duty. State ex rel. State Pub. Co. v. Smith, 23 Mont. 44, 48, 57 Pac. 449.

It is not lawful for any department, or officer thereof, to interfere with the power of any other department. Jordan v. Andrus, 26 Mont. 37, 39, 66 Pac. 502, 91 Am. St. Rep. 396.

The orderly disposition of the business of the state requires the faithful observance of this section; and the legislature cannot impose upon the supreme court, or its justices, the performance of an act not judicial in its character, but purely ministerial or executive. In re Weston, 28 Mont. 207, 219, 72 Pac. 512.

Section 1192 of the Penal Code of 1895, as amended by Laws 1907, page 24, providing that any person who shall wear or use the insignia or ceremonies of any society, order, or organization of ten years' standing in this state, "unless entitled to use or wear the same, under the constitution and by-laws, rules, and regulations of such society or organization," shall be guilty of a misdemeanor, is unconstitutional and void, in that by leaving it to the different societies to supply in their secret work the description of the articles which it is unlawful to use or wear, the legislature delegated legislative powers to the orders mentioned. State v. Holland, 37 Mont. 393, 402, 96 Pac. 719. See, also, State ex rel. Bennett v. State Board of Examiners, 40 Mont. 59, 64, 104 Pac. 1055; O'Neill v. Yellowstone Irr. Dist., 44 Mont. 492, 505, 121 Pac. 283; State ex rel. Smith v. District Court, 50 Mont. 134, 138, 145 Pac. 721.

The constitution, after dividing the powers of government into three distinct departments, namely, the legislative, executive, and judicial, provides that "no person or collection of persons, charged with the exercise of powers belonging to one of these departments shall exercise powers properly belonging to either of the others;" the only exception being where some provision is found in the constitution expressly providing otherwise. State ex rel. Schneider v. Cunningham, 39 Mont. 165, 168, 101 Pac. 962.

The purpose of this section is to constitute each department an exclusive trustee of the power vested in it, accountable to the people alone for its faithful exercise, so that each may act as a check upon the other, and thus may be prevented the tyranny and oppression which would be the result of a lodgment of all power in the hands of one body. State ex rel. Schneider v. Cunningham, 39 Mont. 165, 168, 101 Pac. 962; O'Neill v. Yellowstone Irr. Dist., 44 Mont. 492, 505, 121 Pac. 283; State ex rel. Smith v. District Court, 50 Mont. 134, 140, 145 Pac. 721.

Chapter 146, Laws of 1909 (7166), providing for the creation of irrigation districts, is not, in conferring certain alleged non-judicial powers and duties in that connection upon the district judge, violative of the provisions of this section dividing the powers of government into the legislative, executive, and judicial departments, and prohibiting each from exercising any power properly belonging to either of the others. O'Neill v. Yellowstone Irr. Dist., 44 Mont. 492, 504, 121 Pac. 283.

Where the principal powers conferred upon a district judge by an act, the con-

stitutionality of which is attacked on the ground that the powers thus bestowed are non-judicial in character, contrary to the provisions of this section, are judicial, the fact that their exercise may incidentally require the performance of legislative or administrative functions does not impair the validity of the legislation conferring it. O'Neill v. Yellowstone Irr. Dist., 44 Mont. 492, 507, 121 Pac. 283.

The separation of the government into three great departments does not mean that there shall be no common link of connection or dependence, the one upon the other in the slightest degree; but only that the powers properly belonging to one shall not be exercised by the others. State ex rel. Hillis v. Sullivan, 48 Mont. 320, 330, 137 Pac. 392.

The constitutional requirement that the several departments of government be kept distinct prevents a judge of court being made a ministerial agent to gather and furnish testimony for use by the legislature in passing upon the qualifications of its members. State ex rel. Smith v. District Court, 50 Mont. 134, 140, 145 Pac. 721.

The fact that the state auditor is a member of the industrial accident board does not render the workmen's compensation act unconstitutional on the ground that he thus holds two offices, since the only limitation upon the legislature in imposing duties upon that officer under this section prohibits the imposition of duties appertaining to the legislative or judicial—not the executive—departments of government. Shea v. North-Butte Min. Co., 55 Mont. 522, 538, 179 Pac. 499.

Laws initiated and enacted by the people may be amended by the legislature the same as acts passed by it, and the validity upon favorable action by the people on a referendum vote thereon. State ex rel. Goodman v. Stewart, 57 Mont. 144, 187 Pac. 641.

The legislative declaration that an emergency exists and that for that reason a certain act is necessary for the immediate preservation of the public peace and safety, making the act non-referable, is not conclusive, the question—backed by facts—whether the act is of such character being a judicial one determinable by the courts. State ex rel. Goodman v. Stewart, 57 Mont. 144, 187 Pac. 641.

In determining whether an act is necessary for the immediate preservation of the public peace or safety, and so excepted from the power reserved in the people to have a referendum, courts may consider the face of the act, the history of the legislation and contemporaneous declarations of the legislature, the evil to be remedied, and the natural or absurd consequences of any particular interpretation. State ex rel. Goodman v. Stewart, 57 Mont. 144, 187 Pac. 641.

The exception embodied in this article was not intended to extend further than to matters arising out of some unforeseen menace, public calamity, accident, sudden emergency, extraordinary occurrence or unprecedented climatic condition, rendering immediate action imperative to prevent serious or irreparable injury to the public. State ex rel. Goodman v. Stewart, 57 Mont. 144, 187 Pac. 641.

A statute which authorizes district judges to order the payment of claims against a county after disapproval by the auditor would seem to violate this section for the reason that it undertakes to cast upon district court judges a power which pertains exclusively to the executive branch of the government. State ex rel. Dolin v. Majors, 58 Mont. 140, 151, 192 Pac. 618.

Cited or applied in State ex rel. Haviland v. Beadle, 42 Mont. 174, 178, 111 Pac. 720.

For text treatment of this subject, see 6 R. C. L. 134; also, article on Constitutional Law in Cal. Jur.

Encroachment on judicial power by statute making mere filing of affidavit of bias or prejudice sufficient to disqualify judge, see 5 A. L. R. 1275.

Power of legislature to set aside or impair judgment, see 3 A. L. R. 450.

Power of legislature to investigate conduct of private person, corporation, or institution, see 9 A. L. R. 1341.

Legislative authority to abridge power of courts to punish for contempt, see 36 L. R. A. 254.

Constitutional power of courts or judges to appoint officers, see 16 L. R. A. 737.

ARTICLE V.

LEGISLATIVE DEPARTMENT.

Section 1. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives; but the people reserve to themselves power to propose laws, and to enact or reject the same at the polls, except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amend-

ments, and except as to local or special laws, as enumerated in article V, section 26, of this constitution, independent of the legislative assembly; and also reserve power, at their own option, to approve or reject at the polls, any act of the legislative assembly, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in article V, section 26, of this constitution. The first power reserved by the people is the initiative and eight per cent. of the legal voters of the state shall be required to propose any measure by petition; provided, that two-fifths of the whole number of the counties of the state must each furnish as signers of said petition eight per cent. of the legal voters in such county, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state, not less than four months before the election at which they are to be voted upon.

The second power is the referendum, and it may be ordered either by petition signed by five per cent. of the legal voters of the state, provided that two-fifths of the whole number of the counties of the state must each furnish as signers of said petition five per cent. of the legal voters in such county, or, by the legislative assembly as other bills are enacted.

Referendum petitions shall be filed with the secretary of state, not later than six months after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people by the legislative assembly or by initiative referendum petitions.

All elections on measures referred to the people of the state shall be had at the biennial regular general election, except when the legislative assembly, by a majority vote, shall order a special election. Any measure referred to the people shall still be in full force and effect unless such petition be signed by fifteen per cent. of the legal voters of a majority of the whole number of the counties of the state, in which case the law shall be inoperative until such time as it shall be passed upon at an election, and the result has been determined and declared as provided by law. The whole number of votes cast for governor at the regular election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of the legal petitions and orders for the initiative and for the referendum shall be filed with the secretary of state; and in submitting the same to the people, he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor. The enacting clause of every law originated by the initiative shall be as follows:

"Be it enacted by the people of Montana."

This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure.

Note.—Section 1 is given as amended by act approved March 2, 1905 (L. 1905, Ch. 61), declared to be in force by proclamation by the governor December 7, 1906.

The initiative and referendum amendment to this section was held to have been properly submitted to the people as against the objection that the secretary of state had failed to literally comply with the constitutional requirement touch-

ing publication thereof. State ex rel. Hay v. Alderson, 49 Mont. 387, 142 Pac. 210, Ann. Cas. 1916B, 39.

The referendum, while in political effect a veto, is not such in the sense in which that term is used in our constitution, and is not an invasion of the executive function. Under it the people proceed toward bills enacted by the assembly, expressing assent or dissent, in essentially the same manner as the senate upon a bill which has passed the house; they are an additional body through which acts of the legislature must pass in certain cases, and disapproval, when it occurs, is purely legislative. State ex rel. Hay v. Alderson, 49 Mont. 387, 407, 142 Pac. 210, Ann. Cas. 1916B, 39; State ex rel. Esgar v. District Court, 56 Mont. 464, 471, 185 Pac. 157.

There is not any repugnancy either between the provision of this section, which requires referred measures to be voted upon at biennial general elections, and the provisions of section 2041, Revised Codes of 1907, which forbids a local option election to be held in any month in which a general election is held. They deal with different subjects, and each is controlling in its appointed sphere. State ex rel. Eagye v. Bawden, 51 Mont. 357, 363, 152 Pac. 761.

By force of the referendum amendment to the constitution, a referable act does not become finally effective until the people have exercised their reserved power, either by declining to refer it or by approving or disapproving it at the polls. State ex rel. Esgar v. District Court, 56 Mont. 464, 475, 185 Pac. 157.

The provision of this section, reserving to the people the right to refer, and to approve or reject, an act of the legislature by their ballot, and declaring that in the interim the legislation shall be in full force and effect, means that it is in force and effect, subject to the will of the people, and that upon disapproval of a measure it becomes ineffective from the beginning, because it lacks the approval of a constitutional branch of the legislative department, namely, the people. State ex rel. Esgar v. District Court, 56 Mont. 464, 475, 185 Pac. 157.

Under the amendment to this section, a petition for referendum to be effective must be signed by five per cent of all the legal voters of the state, and each of the two-fifths of all the counties must furnish as signers five per cent of the legal voters of that county; if then the whole number from those counties does not make the required five per cent, the petition may be rendered effective by a sufficient number of signers from other counties to supply the deficiency. State ex rel. Gleason v. Stewart, 57 Mont. 397, 188 Pac. 904.

Idem. Where a suspension of a legislative act pending submission thereof to a vote of the people is sought through the medium of a referendum, the petition must be signed by fifteen per cent. of the legal voters of a majority of the whole number of counties of the state—not by fifteen per cent of all the legal voters of the state.

Idem. A legal voter, possessing the qualifications of citizenship, age, residence, etc., is one who has registered.

Cited or applied in State ex rel. Haviland v. Beadle, 42 Mont. 174, 178, 111 Pac. 720.

For text treatment of this subject, see 6 R. C. L. 152; 25 R. C. L. 804; also, articles on Constitutional Law and Statutes in Cal. Jur.

Ratification of amendments to federal constitution, or other acts of the state legislature under provisions of federal constitution, as subject to state referendum, see 5 A. L. R. 1417.

Effect of declaring emergency in the enactment of a law without declaring it free from the operation of the referendum, see 7, A. L. R. 530.

Sec. 2. Senators shall be elected for the term of four years, and representatives for the term of two years, except as otherwise provided in this constitution.

Cited or applied in State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

Sec. 3. No person shall be a representative who shall not have attained the age of twenty-one years, or a senator who shall not have attained the age of twenty-four years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected.

Is eligibility to be determined as of time of election or appointment, or of induction into office? see 23 L. R. A. (N. S.) 1228; 41 L. R. A. (N. S.) 1119.

Constitutionality of primary election laws imposing new restrictions or qualifications on candidates, see 22 L. R. A. (N. S.) 1142; L. R. A. 1917A, 262.

Constitutionality of statute making residence within the district a qualification of a public officer, see 32 L. R. A. (N. S.) 835.

Sec. 4. The legislative assembly of this state, until otherwise provided by law, shall consisist of sixteen members of the senate, and fifty-five members of the house of representatives.

It shall be the duty of the first legislative assembly to divide the state into senatorial and representative districts, but there shall be no more than one senator from each county. The senators shall be divided into two classes. Those elected from odd-numbered districts shall constitute one class, and those elected from even-numbered districts shall constitute the other class; and when any additional senator shall be provided for by law, his class shall be determined by lot.

One-half of the senators elected to the first legislative assembly shall hold office for one year, and the other half for three years; and it shall be determined by lot immediately after the organization of the senate, whether the senators from the odd or even-numbered districts shall hold for one or three years.

Cited or applied in State ex rel. Harrington v. Kenny, 10 Mont. 410, 413, 25 Pac. 1022.

Sec. 5. Each member of the first legislative assembly, as a compensation for his services shall receive six dollars for each day's attendance, and twenty cents for each mile necessarily traveled in going to and returning from the seat of government to his residence by the usually traveled route, and shall receive no other compensation, perquisite, or allowance whatsoever.

No session of the legislative assembly, after the first, which may be ninety days, shall exceed sixty days.

After the first session, the compensation of the members of the legislative assembly shall be as provided by law; provided, that no legislative assembly shall fix its own compensation.

This section and section 15 of this article guarantee to persons occupying the office of legislator certain rights, privileges, and emoluments, which courts of justice will regard and enforce in proper cases and upon proper showing. State ex rel. Thompson v. Kenney, 9 Mont. 223, 232, 23 Pac. 733.

Under this section and section 8 of this article, the constitution fixed the compensation of members of the first legislative assembly, and conferred upon that body the power to enact laws for the payment of its successors. Such legislation can be amended at any time, subject to the restrictions that no legislative assembly can pass a law which defines its own compensation, and that members cannot receive an increase of salary or mileage. It was also contemplated that the first legislative assembly would provide the statutes which were applicable to these conditions, but it failed to discharge its functions by the passage of any laws. The second legislative assembly having made an appropriation by law for the payment of its members at the same rate established by this section, it was held that the intent of the constitution being to prevent a legislative assembly from securing extravagant compensation by its own votes, the second legislative assembly did not fix its own compensation within the intent, spirit, or scope of these sections, and the appropriation was valid. State ex rel. Harrington v. Kenney, 10 Mont. 410, 412, 25 Pac. 1022.

Right to salary of one illegally elected or appointed to legislature, see 7 A. L. R. 1682.

Per diem compensation of members and officers of legislature, see 1 A. L. R. 286.

Sec. 6. The legislative assembly (except the first) shall meet at the seat of government at twelve o'clock noon, on the first Monday of January, next

succeeding the general election provided by law, and at twelve o'clock, noon, on the first Monday of January, of each alternate year thereafter, and at other times when convened by the governor.

The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law; provided, that the first legislative assembly shall meet at the seat of government upon the proclamation of the governor after the admission of the state into the union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the state into the union.

For ordinary purposes, the legislature may not convene oftener than once in two years. State ex rel. Bennett v. State Board of Examiners, 40 Mont. 59, 62, 104 Pac. 1055.

Validity of statute passed at special or extra session, see 21 Ann. Cas. 409.

Extra session, see 15 L. R. A. 847.

Sec. 7. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.

Resignation of one office as affecting eligibility to another office during term of former office, see 5 A. L. R. 117.

Sec. 8. No member of either house shall, during the term for which he shall have been elected, receive any increase of salary or mileage under any law passed during such term.

This section embodies an express restriction upon the powers of the legislative assembly. Lloyd v. Silver Bow County, 11 Mont. 408, 413, 28 Pac. 453.

Cited or applied in State ex rel. Harrington v. Kenney, 10 Mont. 410, 412, 25 Pac. 1022.

Sec. 9. The senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The house of representatives shall elect one of its members speaker. Each house shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

The power to try the ultimate right of a person claiming to be a member of the legislative assembly is in the house where he claims his seat. State ex rel. Thompson v. Kenney, 9 Mont. 223, 232, 23 Pac. 733.

Speaking generally, the state constitution is a limitation of powers, but the provision contained in this section, that each house shall judge of the elections, returns, and qualifications of its members, is an exception to that rule. This is a distinct grant of power by the people to each branch of the legislative assembly, a power necessary to the existence and independence of each house as an instrumentality of government. This power, emanating from the sovereign people, cannot be delegated by either house or both acting together; and likewise neither house possesses the power to divest itself of the authority thus conferred upon it. So long as the constitution stands as it is now written, no officer, individual, court, or other tribunal can infringe upon the exclusive prerogative of each house to determine for itself whether one who presents himself for membership is entitled to a seat. State ex rel. Smith v. District Court, 50 Mont. 134, 138, 145 Pac. 721.

The power conferred by the last sentence of this section is a continuing one, and may be exercised at any time during the term of the member. State ex rel. Smith v. District Court, 50 Mont. 134, 141, 145 Pac. 721.

Since each house of the legislative assembly is the judge of the ultimate right of persons to seats as members thereof, the supreme court is without jurisdiction to entertain a proceeding in quo warranto to determine such right. State ex rel. Ford v. Cutts, 53 Mont. 300, 301, 163 Pac. 470.

Each house of the legislative assembly is by the constitution clothed with plenary and exclusive authority to determine for

itself, and in its own way, whether a person who presents himself for membership is entitled to a seat, and each member, after seated, holds his office at the will and pleasure of the house to which he belongs, its authority in this respect being a continuing one running throughout the term for which he is elected. State ex rel. Boulware v. Porter, 55 Mont. 471, 473, 178 Pac. 832.

Though each house of the legislative assembly has plenary power to judge of the qualifications, elections, and returns of its membership, the courts are not for that reason required to aid one who was appointed to a vacancy in one of the houses, contrary to a provision of the constitution, in his endeavor to secure the emoluments attached to the office. State ex rel. Cutts v. Hart, 56 Mont. 571, 577, 185 Pac. 769, 7 A. L. R. 1678.

Cited or applied in State ex rel. Haviland v. Beadle, 42 Mont. 174, 178, 111 Pac. 720.

Sec. 10. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe.

Sec. 11. Each house shall have power to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribe or private solicitation, and with the concurrence of two-thirds, to expel a member, and shall have all other powers necessary for the legislative assembly of a free state.

A member expelled for corruption shall not thereafter be eligible to either house of the legislative assembly; and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

Cited or applied in State ex rel. Haviland v. Beadle, 42 Mont. 174, 178, 111 Pac. 720.

Power of legislature to expel members, see 2 Ann. Cas. 759.

Sec. 12. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

This section requires that each house shall keep a journal of its proceedings; but, except those instances where the constitution requires a specific entry to be made in the journals, the question what entries shall be made, or how full or minute the entries made shall be, are matters addressed to the legislative discretion. State ex rel. Gregg v. Erickson, 39 Mont. 280, 288, 102 Pac. 336.

Right of legislature to amend or correct journals, see 21 Ann. Cas. 814.

Sec. 13. The sessions of each house and of the committees of the whole shall be open, unless the business is such as requires secrecy.

Sec. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. 15. The members of the legislative assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

Cited or applied in State ex rel. Thompson v. Kenney, 9 Mont. 223, 232, 23 Pac. 733.

Immunity of members of legislative body from criminal arrest, see 1 A. L. R. 1156.

Sec. 16. The sole power of impeachment shall vest in the house of representatives; the concurrence of a majority of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

This section provides that the sole power of impeachment is vested in the house of representatives, and that impeachment shall be tried by the senate sitting for that purpose. The senate cannot initiate the proceedings; the house must perform that function—whereupon the senate tries the impeachment. It will thus be seen that it is the legislative assembly, constituting the legislative department of the state government, to which is delegated, by the constitution, the sole power of impeachment from its initiatory step to the final judgment. In other words, the jurisdiction to conduct and determine impeachments is, by the constitution, lodged solely in the legislative department. A senator or representative, by virtue of the fact that he may act in impeachment proceedings, does not thereby lose his character or status as a member of the legislative assembly. It is only because of the fact that he is such senator or representative that he may act in such proceedings. State ex rel. Haviland v. Beadle, 42 Mont. 174, 180, 111 Pac. 720.

Right to jury trial in proceeding for removal of public officer, see 3 A. L. R. 232; 8 A. L. R. 1476.

Sec. 17. The governor, and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit under the laws of the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

A policeman is not a state officer subject to removal by impeachment in accordance with the provisions of this section. He is a public officer in the sense that he has certain duties to perform other than those strictly pertaining to the government of the municipality for which he is acting. State ex rel. Quintin v. Edwards, 38 Mont. 250, 263, 99 Pac. 940.

The words "state officers," as employed in this section, do not include members of the legislative assembly. Members of the legislative assembly are not liable to impeachment. State ex rel. Haviland v. Beadle, 42 Mont. 174, 179, 111 Pac. 720.

The framers of the constitution did not regard a senator as either a state or judicial officer, within the meaning of those terms as employed in this section. He cannot be a judicial officer because the constitution expressly provides that a judicial officer may be removed by impeachment, and a senator cannot be so removed. The governor and other state and judicial officers can be removed only by impeachment. The constitutional provision is exclusive. State ex rel. Haviland v. Beadle, 42 Mont. 174, 180, 111 Pac. 720.

"Judicial officers," as used in this section, was adopted by the legislative assembly in passing section 11668, both provisions using the phrase in the same sense. State ex rel. Haviland v. Beadle, 42 Mont. 174, 180, 111 Pac. 720.

This section is only applicable to constitutional officers, and does not cover a city police judge, whose office is statutory only. State ex rel. Working v. Mayor, 43 Mont. 61, 63, 114 Pac. 777.

Cited or applied in State ex rel. Rowe v. District Court, 44 Mont. 318, 323, 119 Pac. 1103, Ann. Cas. 1913B, 396; State ex rel. Payne v. District Court, 53 Mont. 350, 355, 165 Pac. 294.

Sec. 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

Section 3236, Revised Codes of 1907 (5015), authorizing the city council to remove any officer on written charges after notice by a two-thirds vote of all the members elect, is in consonance with this section, and the statute is a proper exercise of the legislative authority granted, and a police judge of a city may be removed

in a proper case by the city council. State ex rel. Working v. Mayor, 43 Mont. 61, 63, 114 Pac. 777.

Any act involving moral turpitude, or any act which is contrary to justice, honesty, principle, or good morals, if performed by virtue of office or by authority of office, is included in the term "misconduct in office." State ex rel. Wynne v. Examining & Trial Board, 43 Mont. 389, 393, 117 Pac. 77, Ann. Cas. 1912C, 143; State ex rel. Ryan v. Board of Aldermen, 45 Mont. 188, 193, 122 Pac. 569.

In pursuance of this provision, the legislature enacted section 11688 and section 11702. From a comparison of the two sections, it appears that the first was intended to apply to those cases only in which the accused has been guilty of wilful or corrupt misconduct or malfeasance, while the other was intended to apply to those derelictions which are the result of incompetency or inattention to official duties. State ex rel. Rowe v. District Court, 44 Mont. 318, 323, 119 Pac. 1103, Ann. Cas. 1913B, 396.

This section added nothing to the power which the legislature would have had in the absence of the provisions therein contained. In other words, the legislature was left entirely free to enact such statutes as it might see fit providing for the removal of officers other than those enumerated in the preceding section. State ex rel. Payne v. District Court, 53 Mont. 350, 356, 165 Pac. 294.

Cited or applied in State v. Driscoll, 49 Mont. 558, 560, 144 Pac. 153.

Sec. 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

No act of legislation has the force of law, even though unanimously passed and approved by the governor, unless the requirements of this section and sections 20 and 23 of this article, that every law shall be passed by bill, that it must have an enacting clause, and a title clearly expressing the subject of the enactment, are met; and a resolution, in the passing of which neither of these essentials has been observed, is not an authoritative expression of the legislative will upon the subject with which it deals. Under this rule house joint resolution No. 13 (Laws 1909, p. 390), conferring upon the state game warden authority to appoint the widow of a deputy warden, who was killed in the discharge of his duties, a deputy in addition those authorized by statute, is invalid, and the state auditor properly refused to issue to her a warrant for services performed as such deputy warden. State ex rel. Peyton v. Cunningham, 39 Mont. 197, 200, 103 Pac. 497, 18 Ann. Cas. 705.

Cited or applied in Mutual Benefit Life Ins. Co. v. Winne, 20 Mont. 20, 35, 49 Pac. 4446.

Sec. 20. The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly of the State of Montana."

Cited or applied in State ex rel. Peyton v. Cunningham, 39 Mont. 197, 200, 103 Pac. 497, 18 Ann. Cas. 705.

Constitutional requirement as to form of enacting clause of statute as directory or mandatory, see 14 Ann. Cas. 813.

Necessity of enacting clause, see L. R. A. 1915B, 1060.

Effect on statute of omission of enacting clause, see Ann. Cas. 1916A, 520.

Sec. 21. No bill for the appropriation of money, except for the expenses of the government, shall be introduced within ten days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced.

Sec. 22. No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members.

Sec. 23. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

The act of March 4, 1891, entitled "An act to amend sections 790, 795, 796, and 808, Fifth Division of the Compiled Statutes of Montana," relates to one general

subject, and is not obnoxious to this section, prohibiting the passage of a law containing more than one subject, which shall be expressed in its title. Hotchkiss v. Marion, 12 Mont. 218, 225, 29 Pac. 821.

The unity of title required by this section is served notwithstanding the existence of many provisions in an act, where such provisions are germane to the general subject expressed. Hotchkiss v. Marion, 12 Mont. 218, 225, 29 Pac. 821; State v. McKinney, 29 Mont. 375, 381, 74 Pac. 1095, 1 Ann. Cas. 579; In re Terrett, 34 Mont. 325, 331, 86 Pac. 266; Carlson v. City of Helena, 39 Mont. 82, 108, 102 Pac. 39, 17 Ann. Cas. 1233; State ex rel. Hay v. Alderson, 49 Mont. 387, 405, 142 Pac. 210, Ann. Cas. 1916B, 39.

Chapter IX of the proposed Penal Code of 1895, entitled "Gaming," and prohibiting the same, having been stricken out by the legislature, and prior laws authorizing certain gambling games re-enacted in lieu thereof, which were annex to chapter VIII of the Penal Code, entitled "Lotteries," the act of February 28, 1895, entitled "An act to amend chapter IX of the Penal Code of the state of Montana, and prohibiting all gambling, is in conflict with this section, since, at the time of the passage of said act of February 28 there was no chapter IX concerning gaming in the Penal Code to be amended, and as the other chapters numbered IX in said code pertained to other subjects, there was nothing in the title of the bill to indicate to which one, if any, of the three existing chapters it was an amendment. State v. Mitchell, 17 Mont. 67, 75, 42 Pac. 100.

The act entitled "An act to regulate the sale and redemption of transportation tickets of common carriers," passed in 1893, provides for the appointment of agents to sell tickets and the issuance of a license, and prescribes penalties for the violation of parts of the act. The subject of the act is clearly expressed in the title, since the penalty imposed is merely an incident to the regulation of the sale and redemption of transportation tickets, which is the subject of the law. State v. Bernheim, 19 Mont. 512, 518, 49 Pac. 441. See Snock v. Clark, 20 Mont. 230, 233, 50 Pac. 718; State v. McKinney, 29 Mont. 375, 383, 74 Pac. 1095, 1 Ann. Cas. 579; In re Terrett, 34 Mont. 325, 331, 86 Pac. 266; State v. Ross, 38 Mont. 319, 323, 99 Pac. 1056.

Where the purpose of a bill is manifestly to harmonize and revise generally sections of the law referring to the same subject it is not necessary to mention specifically in the title of the bill the several sections proposed to be amended or repealed; in such a case it is sufficient to state in the title that it is a bill for an act to revise the laws pertaining to that subject; and the fact that the title of the bill specified certain sections and did not mention one which was repealed in the body of the bill did not render it void under this section of the constitution. In re Ryan, 20 Mont. 64, 65, 50 Pac. 129. See State ex rel. Cotter v. District Court, 49 Mont. 146, 150, 152, 140 Pac. 732.

The act approved March 2, 1891, entitled "An act requiring railroad companies to pay for damages to stock," and which provides that railroad companies must fence their track or respond in damages, is not void because the title does not refer to fences or penalties. Snook v. Clark, 20 Mont. 230, 233, 50 Pac. 718. See State v. McKinney, 29 Mont. 375, 384, 74 Pac. 1095, 1 Ann. Cas. 579; In re Terrett, 34 Mont. 325, 331, 86 Pac. 266.

An act approved March 4, 1897, was entitled "An act repealing sections 470 and 472, article IX, chapter III, title I, part III, of the Political Code, relating to the appointment of the state land agent and his annual salary." These sections were amended and not repealed. The misuse of the word "repealing" in the title of such act, instead of "amending," does not violate this section, since the other words of the title clearly point out the sections, chapter, title, and code and subject to be affected by the provisions of the bill. State ex rel. Neill v. Page, 20 Mont. 238, 242, 50 Pac. 719.

The act of March 9, 1893, amending the act of 1891, concerning the compensation of county officers, and providing for the payment of sheriffs by salary, and that the commissioners shall fix the number of deputy sheriffs, is not repugnant to this section. Jobb v. County of Meagher, 20 Mont. 424, 437, 51 Pac. 1034.

The purpose of requiring singleness of subject is to prevent the practice, which was common in all legislative bodies where no such restriction existed, of embracing in the same bill incongruous matters, having no relation to each other or to the subject specified in the title, by which measures were often adopted without attracting attention. Jobb v. County of Meagher, 20 Mont. 424, 437, 51 Pac. 1034.

The act of March 4, 1897, entitled "An act to provide for the organization * * * of building and loan associations * * *," is a general revision of the laws relating to one subject embraced therein, and provides that corporations then existing should not be affected by the law unless they elected to come within its provisions. The omission in the title of this proviso did not nullify the act. Home B. & L. Assoc. v. Nolan, 21 Mont. 205, 214, 53 Pac. 738.

The title of the act of March 7, 1895, entitled "An act to amend sections 364 and 365 of the Fifth Divison of the Compiled Statutes of Montana and the amend-

ments thereto, approved September 14, 1887," relating to the qualifications of mayors and aldermen, and declaring the same, does not conflict with this section. Dowty v. Pittwood, 23 Mont. 113, 117, 57 Pac. 727.

Laws of 1897, p. 245, entitled "An act to amend section 705 of title X, of the Penal Code of the state of Montana, to have the cages in all mines cased in," making it unlawful for any corporation to sink or work through any vertical shaft where mining cages are used to a greater depth than three hundred feet, unless such shaft shall be provided with an iron-bonneted safety-cage, sufficiently expresses the subject-matter of the act in the title, within the meaning of this section. State v. Anaconda Copper Min. Co., 23 Mont. 498, 500, 59 Pac. 854.

The purposes of this section are to restrict the legislature to the enactment of laws the objects of which legislators and the public as well may be advised of, to the end that any who are interested, whether as representatives or those represented, may be intelligently watchful of the course of the pending bill. The limitation is likewise designed to prevent legislators and the people from being misled by false or deceptive titles, and to guard against fraud in legislation by way of incorporating into a law provisions concerning which neither legislators nor the public have any intimation through the title read or published. State v. Anaconda Copper Min. Co., 23 Mont. 498, 501, 59 Pac. 854; State v. Brown, 29 Mont. 179, 208, 74 Pac. 366; Yegen v. Board of County Commrs., 34 Mont. 79, 83, 85 Pac. 740; Russell v. Chicago, Burlington & Quincy Ry. Co., 37 Mont. 1, 10, 14, 94 Pac. 501; State ex rel. Holliday v. O'Leary, 43 Mont. 157, 165, 115 Pac. 204; State v. Hopkins, 54 Mont. 52, 58, 166 Pac. 304, Ann. Cas. 1918D, 956.

By this constitutional notice it is only intended that the subject of the bill shall be fairly expressed in the title. It is not necessary—for the constitution has not so declared—that a title shall embody the exact limitations or qualifications contained in the bill itself which are germane to the purpose of the legislature, if the general subject of the measure is clearly expressed in the title. Upon the highest authority it is held that, under constitutional provisions substantially like that referred to in Montana, where the degree of particularity necessary to be expressed in the title of a bill is not indicated by the constitution itself, the courts ought not to "embarrass legislation by technical interpretations based upon mere form of phraseology. The objections should be grave, and the conflict between the statute and the constitution palpable, before the judiciary should disregard a legislative enactment upon the sole ground that it embraced more than one object, or, if but one object, that it was not sufficiently expressed by the title." State v. Anaconda Copper Min. Co., 23 Mont. 498, 501, 59 Pac. 854; Yegen v. Board of County Commrs., 34 Mont. 79, 84, 85 Pac. 740; Evers v. Hudson, 36 Mont. 135, 143, 92 Pac. 462.

The act approved March 6, 1897, entitled "An act to amend sections 4063, 4064, 4065, 4068 and 4083 of the Political Code of Montana, and to add to article 11, chapter XII, title X, part III, of the Political Code, a section to be numbered 4084 regarding licenses," contained provisions relating to licenses of wholesale and retail liquor dealers. The subject was clearly expressed in the title. If any subject is embraced in an act, which is not expressed in its title, such act is void only as to so much as is not so expressed, as this section of the constitution should receive a liberal construction. State v. Courtney, 27 Mont. 378, 386, 71 Pac. 308.

The act approved March 18, 1895, entitled "An act providing for unlawful levy and collection of public revenue," is not in violation of the provisions of this section requiring the subject-matter of acts to be clearly expressed in their titles, the words "providing for unlawful levy," etc., being construed as meaning "providing a remedy for unlawful levy," etc. Western Ranches v. Custer County, 28 Mont. 278, 284, 72 Pac. 659.

If the title of an act is single, and directs the mind to the subject of the law in a way calculated to direct the attention truly to the matter which is proposed to be legislated upon, the object of the provision is satisfied. It is not satisfied unless the object of the legislation is clearly so expressed. Western Ranches v. Custer County, 28 Mont. 278, 284, 72 Pac. 659; State v. Brown, 29 Mont. 179, 208, 74 Pac. 366; State v. Cunningham, 35 Mont. 547, 550, 90 Pac. 755.

Chapter 58, Laws of 1903, approved March 4, 1903, amending the game laws, is in conflict with this section and void. The subject of the act is not clearly expressed in the title, and the intent of the legislature cannot be inferred therefrom. State v. Brown, 29 Mont. 179, 207, 74 Pac. 366.

Laws of 1903, chapter 120, p. 232, section 15, entitled "An act to create the office of meat and milk inspector for the state of Montana, and prescribing his powers and duties and compensation therefor," imposing a license on persons selling milk, is not in violation of this section. State v. McKinney, 29 Mont. 375, 380, 74 Pac. 1095, 1 Ann. Cas. 579.

The purposes of this constitutional provision are to prevent the legislature from the enactment of laws surreptitiously; to prevent "log-rolling" legislation; to give

to the people general notice of the character of proposed legislation, so they may not be misled; to give all interested an opportunity to appear before committees of the legislature and be heard upon the advisability of the proposed legislation; to advise members of the legislature of the character of the proposed legislation, and give each an opportunity to intelligently watch the course of the proposed bill; to guard against fraud in legislation, and against false and deceptive titles. State v. McKinney, 29 Mont. 375, 380, 74 Pac. 1095, 1 Ann. Cas. 579; State v. Hopkins, 54 Mont. 52, 58, 166 Pac. 304, Ann. Cas. 1918D, 956.

The legislature is the judge, to a great extent, at least, of the title which it will prefix to a bill; and the court has no right to hold a title void because, in its opinion, a better one might have been used. State v. McKinney, 29 Mont. 375, 381, 74 Pac. 1095, 1 Ann. Cas. 579.

The title is generally sufficient if the body of the act treats only, directly or indirectly, of the subjects mentioned in the title, and of other subjects germane thereto, or of matters in furtherance of or necessary to accomplish the general objects of the bill, as mentioned in the title. Details need not be mentioned. The title need not contain a complete list of all matters covered by the act. State v. McKinney, 29 Mont. 375, 381, 74 Pac. 1095, 1 Ann. Cas. 579; Yegen v. Board of County Commrs., 34 Mont. 79, 84, 85 Pac. 740.

Sections 11, 25, and 26 of the act approved March 15, 1901, the purpose of which was to create a state board of health, define its powers and duties, and provide for the compensation of its officers and for the enforcement of its rules, while the body of the statute, among other things, confers upon county boards of health power to declare quarantine against contagious diseases and confine persons affected with such diseases in suitable detention hospitals, for which power is also granted, is unconstitutional as in contravention of this section. Yegen v. Board of County Commrs., 34 Mont. 79, 83, 85 Pac. 740.

A penalty clause may be incorporated in an act without being designated in its title. In re Terrett, 34 Mont. 325, 331, 86 Pac. 266.

The "estray law," p. 30 of Laws of 1903, entitled "An act to define the word 'estray' and to provide a penalty for the taking up, using, or disposing of estrays upon the 'public domain,'" section 1 of which defines an estray as an animal "which is away from its accustomed range," section 2 of which makes it a misdemeanor to take from the range any estray animal, and section 3 of which provides that one who, with intent to steal, disposes of or attempts to dispose of any estray, shall be guilty of grand larceny, is void as violative of this section of the constitution, in that it embraces a subject not expressed in its title, the terms "public domain" and "range" not being synonymous. State v. Cunningham, 35 Mont. 547, 549, 90 Pac. 755.

Meaningless words or phrases in the title of an act may be discarded by construction, and if, after such elimination, the title clearly expresses the subject embraced in the act, it is not objectionable to this section. Evers v. Hudson, 36 Mont. 135, 142, 92 Pac. 462.

The act of 1907, chapter 29, p. 50, relating to the establishment and maintenance of county free high schools, does not contain more than one subject, namely provision for the establishment and maintenance of such schools, and for validating all acts done under enactments of the legislature passed on the subject at prior sessions. Evers v. Hudson, 36 Mont. 135, 145, 92 Pac. 462.

The object of this constitutional provision is not to embarrass honest legislation, but to prevent the vicious practice, which prevailed in states which did not have such inhibitions, of joining in one act incongruous and unrelated matters. The rule of interpretation now quite generally adopted is that, if all parts of the statutes have a natural connection and can reasonably be said to relate, directly or indirectly, to one general and legitimate subject of legislation, the act is not open to the charge that it violates this constitutional provision; and this is true no matter how extensively or minutely it deals with the details looking to the accomplishment of the main legislative purpose. Or, stating the converse of the proposition, it may be said that if, after giving the act the benefit of all reasonable doubts, it is apparent that two more independent and incongruous subjects are embraced in its provisions, the act will be held to transgress the constitutional provision, and to be void by reason thereof. Evers v. Hudson, 36 Mont. 135, 145, 92 Pac. 462, State v. Ross, 38 Mont. 319, 322, 99 Pac. 1056.

In determining the question whether an act offends against the constitutional inhibition that no bill shall be passed containing more than one subject, the object sought to be accomplished by the legislation is a proper subject of inquiry. Evers v. Hudson, 36 Mont. 135, 145, 92 Pac. 462.

The act of March 7, 1899 (Laws 1899, p. 79), "relating to bonds of officers and other bonds," in so far as it applies to undertakings on appeal, runs counter to the provisions of this section of the constitution, and is, to that extent, invalid. Russell v. Chicago, Burlington & Quincy Ry. Co., 37 Mont. 10, 13, 94 Pac. 501.

Laws of 1907, chapter 115, p. 287,

prohibiting certain forms of gambling, is not open to the constitutional objection that it contains more than one subject. State v. Ross, 38 Mont. 319, 322, 99 Pac. 1056.

The so-called "non-partisan judiciary act," Laws of 1909, chapter 113, is not in harmony with the constitutional requirement that the purpose of a statue shall be clearly expressed in the title; the title of the enactment is, "An act to provide for non-partisan nominations for judicial offices," whereas the body of it discloses the purpose of the legislation was not to provide for non-partisan nominations, for which provision was already made, but to prohibit judicial nominations by partisan political organizations. State ex rel. Holliday v. O'Leary, 43 Mont. 157, 165, 115 Pac. 204.

Section 3657, Revised Codes of 1907 (section 91, Civil Code of 1895, as reported by the code commissioner), regulating remarriage of divorced persons, was repealed by House Bill 142, approved March 6, 1895, an act to amend certain sections of the Civil Code dealing with the subject of divorce, though the title of the repealing act did not contain any reference to section 91. State ex rel. Cotter v. District Court, 49 Mont. 146, 149, 153, 140 Pac. 732.

The obvious reason for the exception of appropriation bills and bills for the codification and general revision of the laws is that the first are necessary for the maintenance of the government, and hence their validity ought not to be open to question for informality; and the latter are so extraordinary in their character that both the members of the legislative body and the public are presumed to know what is being done. It would be impracticable to formulate a title which would cover every subject embraced in such a bill, and a bill of either class does not fall within the prohibition of this section. State ex rel. Cotter v. District Court, 49 Mont. 146, 151, 140 Pac. 732.

The title of chapter 96, Laws of 1915, known as the workmen's compensation act, fairly indicates the general subject of the act, is comprehensive enough in its scope reasonably to cover all the provisions thereof, and is not calculated to mislead either the legislature or the public and is therefore sufficient to meet the requirements of this section. Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 11, 155 Pac. 268, L. R. A. 1916D, 628.

The act regulating the practice of osteopathy, approved March 1, 1905, and the act amendatory thereof, approved March 6, 1907, are not repugnant to this section, on the ground that there is nothing in the titles of the acts indicating an intention to include "chiropractic;" the latter, like the former, having to do with the art of healing by the use of the hands, falls within the definition of "osteopathy," and must be held to have been intended as included within it. State v. Hopkins, 54 Mont. 52, 56, 166 Pac. 304, Ann. Cas. 1918D, 956.

Chapter 21, extra session Laws of 1918, known as the war defense act, has to do with but one subject, which is clearly expressed in its title namely, "to assist the United States in carrying on and prosecuting the war now existing between the United States and the German and Austrian empires," and does not contravene the provisions of this section. State ex rel. Campbell v. Stewart, 54 Mont. 504, 509, 171 Pac. 755, Ann. Cas. 1918D, 1101.

Cited or applied in State ex rel. Peyton v. Cunningham, 39 Mont. 197, 200, 103 Pac. 497, 18 Ann. Cas. 705.

Sufficiency of title of statute relating to fencing and stock districts, see 6 A. L. R. 215.

Construction of constitutional provisions relative to titles of statutes, see 1 Ann. Cas. 584; Ann. Cas. 1915A, 79.

Validity of statute having title more comprehensive than act itself, see Ann. Cas. 1912A, 102.

Power of legislature to enact a code or compilation of laws, or amend many or undesignated sections thereof, by single statute, see 55 L. R. A. 833.

Necessity and sufficiency of reference in title of statute to appropriations to put its purpose into effect, see L. R. A. 1917B, 812.

Sufficiency of title of act as to licensing automobiles, see 52 L. R. A. (N. S.) 956.

Sec. 24. No bill shall become a law except by a vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

Under this section, the act of March 11, 1901, relating to the limitation of time within which actions may be brought, did not become a law, it appearing from the journal of the senate that the names of the members of that branch of the legislature voting on the measure were not entered on the journal. Palatine Ins. Co. v. Northern Pacific Ry. Co., 34 Mont. 268, 273, 85 Pac. 1032, 9 Ann. Cas. 579.

The journal of either house of the legislature imports verity, and may be looked to to determine whether or not a bill, valid on its face, signed by the presiding offi-

cer of each house, approved by the governor, and deposited in the office of the secretary of state, was in fact passed in compliance with the requirements of this section. Palatine Ins. Co. v. Northern Pacific Ry. Co., 34 Mont. 268, 273, 85 Pac. 1032, 9 Ann. Cas. 579.

It is the rule in this state that the courts will not go behind the duly authenticated enrolled bill, except to determine whether on its final passage the names of those voting were entered on the journal. Palatine Ins. Co. v. Northern Pacific Ry. Co., 34 Mont. 268, 274, 85 Pac. 1032, 9 Ann. Cas. 579; State ex rel. Gregg v. Erickson, 39 Mont. 280, 288, 102 Pac. 336; Barth v. Pock, 51 Mont. 418, 426, 155 Pac. 282.

After a bill has, on third reading, passed the house in which it originated, the vote being taken by ayes and noes and the names of those voting entered on the journal, as required by this section, and is amended in the other house of the legislative assembly, and then returned to the first for action on the amendments, it is not necessary that the vote on the adoption of the amendments thus made be again taken by ayes and noes, and the names entered on the journal. Johnson v. City of Great Falls 38 Mont. 369, 371, 99 Pac. 1059, 16 Ann. Cas. 974.

The act approved March 8, 1897, authorizing cities and towns, among other things, to impose a license tax upon professions and occupations, is not open to the constitutional objection that it was not passed as required by this section. Johnson v. City of Great Falls, 38 Mont. 369, 371, 99 Pac. 1059, 16 Ann. Cas. 974.

Under the rule that where the constitutionality of an act is questioned on the ground of irregularity in its passage, the only purpose for which courts may go behind the enrolled bill is to ascertain whether the aye and no vote was entered in the journals of the legislative assembly, it is not permissible to determine whether an amendment to a bill made by a joint conference committee was considered by either house before passage upon third reading. State ex rel. Woodward v. Moulton et al., 57 Mont. 414, 189 Pac. 59.

Sec. 25. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.

This section has no application to an act which does not purport to be an amendment to or a revision of a prior act, but which is an additional and independent piece of legislation, impliedly amending, and hence repealing, so much of the prior act as is in conflict with it. The object sought to be attained by this prohibition of the constitution was to remedy a well-known evil. Many statutes were amended by merely striking out or adding words or phrases, the amendatory statute giving no intimation of the language of the statute so amended. To obviate the confusion and uncertainty consequent upon that mode of amendment, this section requires that the statute as amended shall be re-enacted and published at length. King v. Pony Gold Min. Co., 24 Mont. 470, 478, 62 Pac. 783.

The laws of the third legislative assembly, 1893, are not amendments to the code, but the laws of the land at the time of the passage of the codes, and continued in force. This section has no application to the act approved March 9, 1893, relating to the limitation of time within which certain actions must be brought, appearing as section 524 of the Code of Civil Procedure of 1895. Palatine Ins. Co. v. Northern Pacific Ry. Co., 34 Mont. 268, 275, 85 Pac. 1032, 9 Ann. Cas. 579.

The act of 1907, empowering foreign corporations to exercise the right of eminent domain, is not in violation of this section. Spratt v. Helena Power Transmission Co., 37 Mont. 60, 79, 94, Pac. 631.

An act, original in form, which grants some power, confers some right, or creates some burden or obligation, is not in conflict with the provisions of this section, even though it does refer to some other existing statute, general or local, for the purpose of pointing out the procedure or some administrative detail necessary for the execution of the power, the enforcement of the right, or the discharge of the burden or obligation. Spratt v. Helena Power Transmission Co., 37 Mont. 60, 86, 94 Pac. 631.

In order to amend section 3119 of the Revised Codes of 1907, as it referred to the salaries of jailers, so as to change the language from "at a salary not to exceed ninety dollars per month" to "and receive the same salary as other deputy sheriffs," it was required, in compliance with this part of the constitution, that the entire section as amended should be re-enacted and published at length. State ex rel. Hay v. Hindson, 40 Mont. 353, 356, 106 Pac. 362.

The fact that the "non-partisan judiciary act" of 1909 amends or revises a previous statute by reference to its title only should render it void irrespective of its other constitutional defects. State ex rel. Holliday v. O'Leary, 43 Mont. 157, 168, 115 Pac. 204.

This section is absolute in its terms. It means that under no possible set of circumstances may a law be revised or

amended by reference to its title only, and any act passed in violation of its provisions is absolutely void. State ex rel. Ford v. Schofield, 53 Mont. 502, 508, 165 Pac. 594.

An act which does not assume to be an amendment, nor re-enact that portion of a prior statute claimed to be amended by it, does not, under this section, have the effect of an amendment. State v. Centennial Brewing Co., 55 Mont. 500, 512, 179 Pac. 296.

Cited or applied in State v. Mitchell, 17 Mont. 67, 75, 42 Pac. 100; Dowty v. Pittwood, 23 Mont. 113, 117, 57 Pac. 727.

Necessity of re-enacting statute after removal of constitutional objections thereto, see 48 L. R. A. (N. S.) 349.

Necessity of re-enacting and publishing at full length code or compilation of laws sought to be amended, see 55 L. R. A. 853.

Sec. 26. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions, or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever; for the punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or imparing of liens; creating offices, or prescribing the powers or duties of officers in counties, cities, township or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable, no special law shall be enacted.

This section embodies an express restriction upon the powers of the legislative assembly. Lloyd v. Silver Bow County, 11 Mont. 408, 413, 28 Pac. 453.

The proviso to section 794, Fifth Division, of the Compiled Statutes of 1887, enacted by the territorial legislature, which excepts the county of Missoula from the provisions of the law fixing the rate of interest on county warrants, is in conflict with the provisions of this section prohibiting the passage of local or special laws regulating county affairs and the rate of interest on money. Hotchkiss v. Marion, 12 Mont. 218, 224, 29 Pac. 821.

The creation of a new county by special act is not forbidden by this section, and matters necessarily incidental to the creation of a new county which are provided for in the act creating it, solely for the purpose of organizing the new

county, and setting it in motion as one of the governmental subdivisions of the state, do not come within either the letter or the spirit of its inhibitions. Holliday v. Sweet Grass County, 19 Mont. 364, 48 Pac. 553.

A law which classifies school districts according to population, and provides a system for the election of trustees which is uniform for all districts within the same class, is not a local or special law within the meaning of this section, although the law provides that the elections in the different classes shall be held under different supervision. State ex rel. Bray v. Long, 21 Mont. 26, 30, 52 Pac. 645.

A proviso that an act, approved March 4, 1897, shall not affect any building and loan association heretofore organized under the laws of Montana, unless such association elects to come under its provisions, operates alike on all corporations, and is valid. The proviso is neither local nor special, and does not purport to charter an association. Home B. & L. Assoc. v. Nolan, 21 Mont. 205, 215, 53 Pac. 738.

The act of March 9, 1893, which by sections 1 and 2 (9826 and 9827) authorizes any corporation incorporated in the state for guarantying or becoming a surety on bonds to become a sole surety, without an affidavit showing qualifications, is not a special law regulating the practice in courts of justice, or granting to a corporation a special or exclusive privilege. King v. Pony Gold Min. Co., 24 Mont. 470, 476, 62 Pac. 783.

The provision of this section, prohibiting the legislature from passing local or special laws changing the names of persons or "places," applies to the names of counties, notwithstanding section 4, article VI, and sections 1 and 3, article XVI, of the constitution, recognize the power of the legislature to create new counties, and to change those already established. State ex rel. Sackett v. Thomas, 25 Mont. 226, 240, 64 Pac. 503.

Under the constitution, the legislature has the power to create counties and give them names, or destroy them, but after they are created they may not be disturbed by special or local legislation, except incidentally in the exercise of the creative power, or in cases where a general law cannot be made applicable. State ex rel. Sackett v. Thomas, 25 Mont. 226, 240, 64 Pac. 503.

The word "persons," as used in this section, embraces all persons, whether natural or artificial. State ex rel. Sackett v. Thomas, 25 Mont. 226, 241, 64 Pac. 503.

A person who is not one of a class whose rights are said to have been discriminated against by an alleged special act of the legislature, contrary to the provisions of this section, will not be heard to complain of its unconstitutionality on that account. Spratt v. Helena Power Transmission Co., 37 Mont. 60, 88, 94 Pac. 631.

One charged with having aided and abetted in recording, reporting, and registering a bet on a horse-race held without the state, contrary to the provisions of chapter 92, Laws of 1909, may not call the constitutionality of the act in question, on the ground that its provisions having to do with speed contests within the state, are a denial of the equal protection of the laws guaranteed by the federal constitution, and local or special in their character. State v. Rose, 40 Mont. 66, 71, 105 Pac. 82.

The words "changing" and "removing" found in the constitution and the statute laws refer to the act of changing or removing a county seat that has been definitely located, and have no reference to a so-called temporary or provisional county seat. State ex rel. Geiger v. Long, 43 Mont. 401, 412, 117 Pac. 104.

The constitution makes it impossible for a private corporation to be created in this state by a special act of the legislature. In re Beck's Estate, 44 Mont. 561, 573, 121 Pac. 784.

Since section 2897, Revised Codes of 1907, requiring county printing to be done within the state, applies to all counties and to all county printing, it is neither a local nor special statute within the meaning of this section. Hersey v. Neilson, 47 Mont. 132, 147, 131 Pac. 30, Ann. Cas. 1914C, 963.

Sections 10813 and 10814, awarding the successful party in an election contest attorney's fees, etc., are not open to constitutional objections that they deny to the unsuccessful one the equal protection of the laws, grant to the former a special privilege not enjoyed by successful litigants in other cases, violate the provision that justice shall be administered without sale, denial, or delay, and constitute an attempt to delegate legislative power to the courts. Doty v. Reece, 53 Mont. 404, 408, 164 Pac. 542.

Chapter 56, Laws of 1917, creating Carter county, is not invalid as violative of this section, forbidding special legislation where a general law can be made applicable; the act creating the county being an implied legislative determination that the general law providing for the creation of new counties is no longer applicable under present conditions. State ex rel. Ford v. Schofield, 53 Mont. 502, 508, 165 Pac. 594.

The concluding sentence of this section

does not prohibit special legislation altogether, but does seek to curtail it. It forbids special laws where general laws can be made applicable. State ex rel. Ford v. Schofield, 53 Mont. 502, 508, 165 Pac. 594.

Chapter 95, Laws of 1915 (1113-1132), providing for teachers' pensions, is not invalid as in contravention of this section. Trumper v. School District No. 55, 55 Mont. 90, 93 173 Pac. 946.

Cited or applied in State ex rel. Lambert v. Coad, 23 Mont. 131, 139, 57 Pac. 1092; In re O'Brien, 29 Mont. 530, 537, 75 Pac. 196, 1 Ann. Cas. 373; State ex rel. Hay v. Alderson, 49 Mont. 387, 390, 142 Pac. 210, Ann. Cas. 1916B, 39; Poe v. Sheridan County, 52 Mont. 279, 288, 157 Pac. 185; Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 88, 173 Pac. 1062.

Moratory statute as special legislation, see 9 A. L. R. 14.

Statutes relating to fencing or stock districts as local or special laws, see 6 A. L. R. 222.

What constitutes "local" statutes, see 4 Ann. Cas. 659.

Province of legislature to determine whether special law is necessary in given case, see 6 Ann. Cas. 926.

General laws must be enacted where applicable; legislative discretion, see 14 L. R. A. 566.

Local and special civil service law, see 34 L. R. A. (N. S.) 483.

Sec. 27. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislative assembly immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

Where the enrolled bill bore the signature of the presiding officer of each house, but the journal failed to show that the bill was signed as required by this section, and no claim was made that the bill was not duly signed, the presumption is that the legislature and the presiding officers did their duty, and that the bill was regularly passed, State ex rel. Bray v. Long, 21 Mont. 26, 35, 52 Pac. 645.

Cited or applied in State ex rel. Gregg v. Erickson, 39 Mont. 280, 288, 102 Pac. 336.

Necessity of signatures of presiding officers to bills passed by legislature, see 4 Ann. Cas. 905.

Sec. 28. The legislative assembly shall prescribe by law the number, duties and compensation of the officers and employees of each house; and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

Requisites of appropriation for official salary or expenses, see 16 L. R. A. (N. S.) 631; 27 L. R. A. (N. S.) 537; 49 L. R. A. (N. S.) 67.

Sec. 29. No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the state without previous authority of law, except as may be otherwise provided herein.

This section embodies an express restriction upon the powers of the legislative assembly. Lloyd v. Silver Bow County, 11 Mont. 408, 413, 28 Pac. 453.

Sec. 30. All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, shall be furnished, and the printing, and binding and distribution of the laws, journals, and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislative assembly, and its committees shall be performed under contract, to be given to the lowest responsible bidder below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and state treasurer.

A compliance with this section, providing for the approval by the governor and state treasurer of a contract for public printing, is indispensable to its validity. State ex rel. State Pub. Co. v. Hogan, 22 Mont. 384, 389, 56 Pac. 818.

The duty of the governor and state treasurer to approve a contract for state printing is not ministerial, but involves judicial discretion, and cannot be controlled by mandamus. State ex rel. State Pub. Co. v. Smith, 23 Mont. 44, 50, 57 Pac. 449.

Section 705 of the Political Code of 1895 (257), declaring that, before any contract for the furnishing of supplies to the state is let, the state furnishing board must advertise for proposals for twenty days in two daily newspapers printed in the state, is not in conflict with this section. State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 36, 66 Pac. 496; 91 Am. St. Rep. 386, 55 L. R. A. 644.

Advertisements for proposals to furnish supplies are not public printing within the language or spirit of this section. State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 36, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

Validity of contract made by public officers individually, see Ann. Cas. 1912A, 867.

Validity of contract with state in which member is interested, see Ann. Cas. 1916A, 237.

Sec. 31. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment: provided, that this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution.

Where the constitution itself does not fix the compensation of a public officer first elected thereunder, an act of the state legislature decreasing the emoluments of his office during his term, by amending the territorial statute in which they are prescribed, is not in contravention of this section; and it cannot be said that the compensation of such an officer is fixed by the constitution, within the meaning of the proviso contained in this section, by force of section 1 of article XX of the constitution, adopting the laws of the territory as the laws of the state, as such adoption is made only until such laws may be altered or repealed. Lloyd v. Silver Bow County, 11 Mont. 408, 411, 28 Pac. 453.

The proviso contained in this section is not an inhibition, but a reservation of the right of the legislative assembly to alter the statutes and fix the salary or emoluments of the sheriff, or any other officers of the same class, who were elected when the constitution was adopted. Lloyd v. Silver Bow County, 11 Mont. 408, 414, 28 Pac. 453.

If a section of the act, approved March 6, 1897, attempts to increase the salary of school trustees, elected prior to 1897, and who hold over, no other parts of the law can be held invalid. State ex rel. Bray v. Long, 21 Mont. 26, 33, 52 Pac. 645.

The legislative assembly is not prohibited by this section from adding duties to the office of county surveyor and providing compensation therefor, and thereafter taking away such duties and emoluments from a surveyor elected subsequently and before the last act was passed. The emoluments of a county surveyor, paid by fees or a per diem compensation, are not diminished by a statute, taking effect after his election, which relieves him of the obligation to perform certain duties, and destroys the compensation therefor. State ex rel. Donyes v. Board of Commrs. of Granite County, 23 Mont. 250, 252, 58 Pac. 439.

A provision such as is contained in the above section, prohibiting any law increasing or diminishing the salary or emolument of a public officer after his election or appointment, does not forbid the allowance of compensation for new and different services exacted from him during his term, where the statute imposing the duties also prescribes the compensation for their performance. The constitutional limitation in question was intended to apply only to the salary and emolument to which the officer was entitled for services required of him by the law in force at the time of his election or appointment, unless the salary then provided was intended as compensation for all services which the officer, as such, might render. State ex rel. Donyes v. Board of Commrs. of Granite County, 23 Mont. 250, 254, 58 Pac. 439.

A sheriff, who was elected in November, 1904, was allowed mileage by the law then in force at the rate of ten cents per mile actually and necessarily traveled, and ten cents per mile for each person transported to the state prison, reform school, and insane asylum. This

law having been amended in 1905 so as to allow sheriffs only actual traveling expenses for such transportation, it was held not to violate the above section, and to apply to a sheriff elected prior to its passage. Scharrenbroich v. Lewis and Clark County, 33 Mont. 250, 256, 83 Pac. 482.

The amendment to section 4 of article XVI of the constitution, changing the tenure of county commissioners from four years to six years, and extending the tenure of the then incumbents, approved February 26, 1901, is not violate this section, providing that no law shall extend the term of office of any public officer after his election, the term "law," as used in this connection, having reference to legislative enactments only. State ex rel. Teague v. Board of Commrs. 34 Mont. 426, 430, 87 Pac. 450.

This section does not apply to the provision of the act of 1907, commonly called the "Police Commission Bill," that an officer then serving on the force may be reappointed, such appointment to hold during good behavior, or until the incumbent shall become incapacitated, whereby such officer is practically insured an indeterminate tenure, since prior to his appointment under the provisions of the act he is obliged to pass an examination and serve a probationary period of six months, the same as any other applicant for such a position. State ex rel. Quintin v. Edwards, 38 Mont. 250, 258, 99 Pac. 940.

The purpose of the constitutional limitation against the passage of laws increasing (or diminishing) the salaries of certain public officers during the term for which they were elected, is to remove the temptation from the legislature to control the executive and judicial branches of government by promises of reward in the form of increased compensation (or threats of punishment by way of reduced salaries). State ex rel. Jackson v. Porter, 57 Mont. 343, 188 Pac. 375.

Cited or applied in State ex rel. Rotwitt v. Hickman, 9 Mont. 370, 374, 23 Pac. 740; 8 L. R. A. 403; In re Dewar's Estate, 10 Mont. 426, 442, 25 Pac. 1026.

Who is public officer within constitutional or statutory prohibition against change of salary during term, see Ann. Cas. 1914C, 214.

Sec. 32. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills.

The act regulating the sale and redemption of transportation tickets of common carriers, passed in 1893, and requiring every agent to pay to the secretary of state a license fee of one dollar, is in the nature of a police regulation, and is not for revenue purposes. The fact, therefore, that the bill originated in the senate is not in violation of this section, providing that all bills for raising revenue shall originate in the house of representatives. State v. Bernheim, 19 Mont. 512, 515, 49 Pac. 441. See Evers v. Hudson, 36 Mont. 135, 146, 92 Pac. 462.

In State v. Bernheim, 19 Mont. 512, 49 Pac. 441, it was held that this provision of the constitution must be confined in its meaning to bills to levy taxes in the strict sense of the words, and it has not been understood to extend to bills for other purposes which may incidentally create revenue. And this is the interpretation now generally adopted. Evers v. Hudson, 36 Mont. 135, 146, 92 Pac. 462.

The act of 1907, chapter 29, p. 50, relating to the establishment and maintenance of county free high schools, which originated in the senate, and which, in sections 8 and 9, makes provision for a tax to supply funds for the current expenses of such schools, and for bond issues which may be necessary to raise money to build or purchase school property, does not run counter to this section. Evers v. Hudson, 36 Mont. 135, 146, 92 Pac. 462.

Attack on enrolled bill for improper origin, see 40 L. R. A. (N. S.) 13.

What are acts for raising revenue which must originate in the lower branch of the legislature, see 35 L. R. A. 188.

Sec. 33. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

The term "public debt" includes warrants as well as bonds. State ex rel. Palmer v. Hickman, 11 Mont. 541, 29 Pac. 92.

Where an appropriation is a mere incident to a larger, but single subject of legislation, such as the creation of a farm loan commission under chapter 28, Laws of 1915, and providing funds for its inauguration and conduct, it need not be made by separate bill as otherwise required by this section. Hill v. Rae, 52 Mont. 378, 388, 158 Pac. 826, Ann. Cas. 1917E, 210, L. R. A. 1917, 495.

Chapter 21, Extra Session Laws of 1918, known as the war defense act, is not subject to the constitutional objection that, while it appropriates money, such appropriation is not made by a separate bill embracing one subject, as required by this section. State ex rel. Campbell v. Stewart, 54 Mont. 504, 509, 171 Pac. 755; Ann. Cas. 1918D, 1101.

Validity of statute or ordinance authorizing appropriation of money for two or more purposes, see 14 L. R. A. (N. S.) 519.

Sec. 34. No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt.

Where the state treasurer refused to pay a warrant drawn on him by the state auditor in favor of the relator for his quarterly salary as secretary of state, upon the ground that no appropriation had been made by law for the payment of any warrant issued to state officers for their services, the state treasurer was required to pay such warrant, as the provision of the constitution that certain enumerated officers shall receive the compensations specified therein is an appropriation made by law, and no legislative act is necessary. State ex rel. Rotwitt v. Hickman, 9 Mont. 370, 374, 23 Pac. 740; 8 L. R. A. 403. See, also, State ex rel. Buck v. Hickman, 10 Mont. 497, 499, 24 Pac. 93.

Where the relator applied for a writ of mandate to compel the state auditor to draw his warrant for the payment of an account due it for public printing, under a statute providing that the governor and auditor shall examine the "itemized accounts" of the contractor, which shall be rendered "once in each month," and "if they find it to be correct and in accordance with the provisions of the law, the auditor shall draw his warrant on the territorial treasurer for the payment of the same, the relator was not entitled, under this section and section 10 of article XII of the constitution, to the relief demanded in the absence of a lawful appropriation. State ex rel. Journal Pub. Co. v. Kenney, 9 Mont. 389, 394, 24 Pac. 96.

The term "public debt" embraces the floating debt of the state evidenced by warrants as well as the bonded indebtedness of the state. State ex rel. Palmer v. Hickman, 11 Mont. 541, 29 Pac. 92.

Where a judgment ordered the state auditor to draw his warrant on the treasurer for the payment of money held as escheated property, as provided in chapter 132, Laws of 1913 (9962), although the legislature had not made an appropriation for that purpose, it was invalid as in direct conflict with this section. In re Pomeroy, 51 Mont. 119, 125, 151 Pac. 333.

Cited or applied in State ex rel Donovan v. Barret, 30 Mont. 203, 205, 81 Pac. 349; Hill v. Rae, 52 Mont. 378, 388, 158 Pac. 826, Ann. Cas. 1917E, 210, L. R. A. 1917A, 495.

What constitutes "appropriation of public money within the constitutional provision relating thereto, see Ann. Cas. 1915A, 1240.

Sec. 35. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

The provision of chapter 28, laws of 1915, appropriating twenty thousand dollars to serve as a guaranty fund to assure prompt payment of interest on farm loan bonds, is void under this section, because the funds thus appropriated are "not under the absolute control of the state." Hill v. Rae, 52 Mont. 378, 388, 158 Pac. 826, Ann. Cas. 1917E, 210, L. R. A. 1917A, 495.

This section does not affect the seed-grain law of 1915, designed to furnish aid to persons engaged in agriculture who, because so reduced in circumstances by natural or other conditions beyond their control that they have no means wherewith to purchase seed, since the legislature made no appropriation for the purpose sought to be served by the act. State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 394, 398, 170 Pac. 942.

Chapter 21, Extra Session Laws of 1918, known as the war defense act, is not objectionable as appropriating money

for charitable, industrial, or benevolent purposes "to any person, corporation, or community not under the absolute control of the state," within the meaning of this section. State ex rel. Campbell v. Stewart, 54 Mont. 504, 509, 171 Pac. 755, Ann. Cas. 1918D, 1101.

Validity of statute appropriating public funds for fairs, see 9 Ann. Cas. 52.

Sec. 36. The legislative assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal functions whatever.

The act of 1907 establishing a police commission in cities and towns, commonly called the "Police Commission Bill," is not in violation of this section, since the board created by such act is not a "special commission." State ex rel. Quintin v. Edwards, 38 Mont. 250, 261, 99 Pac. 940.

Chapter 106, Laws of 1905, providing for the creation and maintenance of drainage districts, is not open to the constitutional objection that it confers upon the drain commissioner the power to levy taxes. Billings Sugar Co. v. Fish, 40 Mont. 256, 276, 106 Pac. 565, 720 Ann. Cas. 264, 26 L. R. A. (N. S.) 973.

Section 3879 et seq., creating a public service commission and defining its powers, does not infringe the provisions of this section, the public service commission not being a "special commission" within the meaning thereof. Public Service Commission v. City of Helena, 52 Mont. 527, 539, 159 Pac. 24.

Delegation of matter of building regulations to private individuals or associations, see 2 A. L. R. 882.

Illegal delegation of power by statute relating to fencing districts, see 6 A. L. R. 218.

General delegation of power to guard against spread of contagious disease, see 8 A. L. R. 836.

Delegation of legislative power to regulate internal management of corporations, see 10 L. R. A. (N. S.) 251.

Sec. 37. No act of the legislative assembly shall authorize the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation.

Right of fiduciary to invest funds in private corporate stock, see 16 Ann. Cas. 69.

Investments a trustee may make without incurring liability in case of loss, see 132 A. S. R. 372.

Sec. 38. The legislative assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

Appropriation in aid of railroad as within constitutional provision against giving or loaning of money or credit of state or municipality, see Ann. Cas. 1913C, 1233.

Sec. 39. No obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

The code section making the statute of limitations applicable to actions brought in the name of the state, or for the benefit of the state, in the same manner as to action by private parties, is not in conflict with this constitutional provision; and, since a demand for taxes is a liability created by statute, the statute of limitations may be properly invoked in an action to recover taxes by the state, or for the use and benefit of the state. Board of County Commrs. v. Story, 26 Mont. 517, 520, 69 Pac. 56.

Sec. 40. Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or

relating solely to the transaction of the business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill.

Joint resolution of legislature as having force and effect of law, see 18 Ann. Cas. 706.

Sec. 41. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced into the legislative assembly, in consideration or upon condition that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence, in favor of or against any other measure or proposition pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced in such legislative assembly, or offer, promise or assent so to do, upon condition that any other member will give, or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such legislative assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery; and any member of the legislative assembly, or person elected thereto, who shall be guilty of either such offenses, shall be expelled and shall not thereafter be eligible to the legislative assembly, and on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

For text treatment of this subject, see article on Bribery in Cal. Jur.

Solicitation of bribery, see 25 L. R. A. 439.

Sec. 42. Any person who shall directly or indirectly offer, give or promise any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the legislative assembly, to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

For text treatment of this subject, see article on Bribery in Cal. Jur.

Sec. 43. The offense of corrupt solicitation of members of the legislative assembly, or of public officers of the state, or of any municipal division thereof, and the occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

For text treatment of this subject, see article on Bribery in Cal. Jur.

Sec. 44. A member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

Sec. 45. When vacancies occur in either house the governor or the person exercising the functions of the governor shall issue writs of election to fill the same.

This section provides the only means for filling a vacancy caused by death or resignation of a member of either house of the legislative assembly, and the governor has no power to fill the vacancy by appointment. State ex rel. Cutts v. Hart, 56 Mont. 571, 574, 185 Pac. 769, 7 A. L. R. 1678.

ARTICLE VI.

APPORTIONMENT AND REPRESENTATION.

Section 1. One representative in the congress of the United States shall be elected from the state at large, the first Tuesday in October, 1889, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new apportionment shall be made by congress the legislative assembly shall divide the state into congressional districts accordingly.

Sec. 2. The legislative assembly shall provide by law for an enumeration of the inhabitants of the state in the year 1895, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for representatives on the basis of such enumeration according to ratios to be fixed by law.

Sec. 3. Representative districts may be altered from time to time as public convenience may require. When a representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be. No county shall be divided in the formation of representative districts.

Sec. 4. Whenever new counties are created, each of said counties shall be entitled to one senator, but in no case shall a senatorial district consist of more than one county.

The constitution recognizes the power of the legislature to create new counties, to change those already established, and to alter their boundaries. State ex rel. Sackett v. Thomas, 25 Mont. 226, 240, 64 Pac. 503; State ex rel. Geiger v. Long, 43 Mont. 401, 409, 117 Pac. 104.

Sec. 5. The senatorial districts of the state shall be constituted and numbered as follows:

The county of Beaverhead shall constitute the First district, and be entitled to one senator.

The county of Madison shall constitute the Second district, and be entitled to one senator.

The county of Gallatin shall constitute the Third district, and be entitled to one senator.

The county of Jefferson shall constitute the Fourth district, and be entitled to one senator.

The county of Deer Lodge shall constitute the Fifth district, and be entitled to one senator.

The county of Missoula shall constitute the Sixth district, and be entitled to one senator.

The county of Lewis and Clark shall constitute the Seventh district, and be entitled to one senator.

The county of Choteau shall constitute the Eighth district, and be entitled to one senator.

The county of Meagher shall constitute the Ninth district, and be entitled to one senator.

The county of Silver Bow shall constitute the Tenth district, and be entitled to one senator.

The county of Custer shall constitute the Eleventh district, and be entitled to one senator.

The county of Yellowstone shall constitute the Twelfth district, and be entitled to one senator.

The county of Dawson shall constitute the Thirteenth district, and be entitled to one senator.

The county of Fergus shall constitute the Fourteenth district, and be entitled to one senator.

The county of Park shall constitute the Fifteenth district, and be entitled to one senator.

The county of Cascade shall constitute the Sixteenth district, and be entitled to one senator.

Sec. 6. Until an apportionment of representatives be made in accordance with the provisions of this article, they shall be divided among the several counties of the state in the following manner:

The county of Beaverhead shall have two (2).
The county of Madison shall have two (2).
The county of Gallatin shall have two (2).
The county of Jefferson shall have three (3).
The county of Deer Lodge shall have seven (7).
The county of Missoula shall have five (5).
The county of Lewis and Clark shall have eight (8).
The county of Choteau shall have two (2).
The county of Meagher shall have two (2).
The county of Silver Bow shall have ten (10).
The county of Custer shall have two (2).
The county of Yellowstone shall have one (1).
The county of Fergus shall have two (2).
The county of Park shall have two (2).
The county of Cascade shall have two (2)
The counties of Dawson and Cascade shall have one (1) jointly.
The counties of Deer Lodge and Beaverhead shall have one (1) jointly.
The counties of Jefferson and Gallatin shall have one (1) jointly.

ARTICLE VII.

EXECUTIVE DEPARTMENT

Section 1. The executive department shall consist of a governor, lieutenant-governor, secretary of state, attorney general, state treasurer, state auditor and superintendent of public instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified, beginning on the first Monday of January next succeeding his election,

except that the terms of office of those who are elected at the first election, shall begin when the state shall be admitted into the union, and shall end on the first Monday of January, A. D. 1893. The officers of the executive department, excepting the lieutenant-governor, shall during their terms of office reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed in this constitution and by the laws of the state. The state treasurer shall not be eligible to his office for the succeeding term.

The attorney-general is required by this section to perform such duties as are prescribed in the constitution and laws of the state. Inasmuch, however, as there appear to be by the constitution no powers or duties specifically delegated to that officer whereby he is clothed with supervisory powers over other or inferior legal officers of the state, or any subordinate government therein, or directing him to assist such other and inferior officers in the performance of their duties, the laws must be consulted to ascertain what, if any, such duties are prescribed, and what are the extent and limitations of his official authority. State ex rel. Nolan v. District Court, 22 Mont. 25, 27, 55 Pac. 916.

This section regulates the terms of state executive officers. State ex rel. Jones v. Foster, 39 Mont. 583, 590, 104 Pac. 860.

The office of the attorney-general, as it existed in England under the common law, was adopted as a part of the governmental machinery of this state, and in the absence of express restrictions, the common-law duties of that officer attach themselves to the office, in so far as they are applicable and in harmony with our system of government. State ex rel. Ford v. Young, 54 Mont. 401, 403, 170 Pac. 947.

The authority of the attorney-general conferred by the constitution, the statutes, and the common law, to institute and prosecute, in the name of the state, proceedings to abate, as nuisances, buildings used as common brothels or bawdy-houses, was not abridged by the provision of chapter 95, Laws of 1917 (11123 et seq.), under which the county attorney must, or any citizen of the county may, maintain a like action, the purpose of such provision being to supplement, and not to supersede, existing statutes. State ex rel. Ford v. Young, 54 Mont. 401, 404, 170 Pac. 947.

The fact that the state auditor is a member of the industrial accident board does not render the workmen's compensation act unconstitutional on the ground that he thus holds two offices, since the only limitation upon the legislature in imposing duties upon that officer, under section 1 of article IV of the constitution, prohibits the imposition of duties appertaining to the legislative or judicial—not the executive—departments of government. Shea v. North-Butte Min. Co., 55 Mont. 522, 538, 179 Pac. 499.

Cited or applied in State ex rel. Rotwitt v. Hickman, 9 Mont. 370, 374, 23 Pac. 740, 8 L. R. A. 403; State ex rel. Chenoweth v. Acton, 31 Mont. 37, 42, 77 Pac. 299; State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

Sec. 2. The officers provided for in section 1 of this article, shall be elected by the qualified electors of the state at the time and place of voting for members of the legislative assembly, and the persons respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislative assembly, at its next regular session, shall forthwith by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

Cited or applied in State ex rel. Chenoweth v. Acton, 31 Mont. 37, 42, 77 Pac. 299.

Sec. 3. No person shall be eligible to the office of governor, lieutenant-governor, or superintendent of public instruction, unless he shall have

attained the age of thirty years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the state, or territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have resided within the state or territory two years next preceding his election.

Requirement as to eligibility of public officer as relating to time of election or time of taking office, see 11 Ann. Cas. 950, 20 Ann. Cas. 992.

Power of court to determine whether appointee to office possesses prescribed qualifications, see Ann. Cas. 1915A, 565.

Sec. 4. Until otherwise provided by law, the governor, secretary of state, state auditor, treasurer, attorney-general and superintendent of public instruction, shall quarterly, as due, during their continuance in office, receive for their services compensation, which is fixed as follows:

Governor, five thousand dollars per annum;

Secretary of state, three thousand dollars per annum;

Attorney-general, three thousand dollars per annum;

State treasurer, three thousand dollars per annum;

State auditor, three thousand dollars per annum;

Superintendent of public instruction, two thousand five hundred dollars per annum.

The lieutenant-governor shall receive the same per diem as may be prescribed by law for the speaker of the legislative assembly, to be allowed only during the sessions of the legislative assembly.

The compensation enumerated shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office, and the salary of no official shall be increased during his term of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees fixed by law for the performance by any officer of any official duty, shall be collected in advance, and deposited with the state treasurer quarterly to the credit of the state. No officer mentioned in this section shall be eligible to, or hold any other public office, except member of the state board of education during his term of office.

This section embodies an express restriction upon the powers of the legislative assembly. Lloyd v. Silver Bow County, 11 Mont. 408, 413, 28 Pac. 453.

The language used in the first paragraph of this section, "shall quarterly, as due, during their continuance in office, receive for their services," etc., appears to indicate that the officer may claim his salary whether he serves or not, provided he has title to the office. Peterson v. City of Butte, 44 Mont. 401, 409, 120 Pac. 483, Ann. Cas. 1913B, 538.

Cited or applied in State ex rel. Rotwitt v. Hickman, 9 Mont. 370, 373, 23 Pac. 740, 8 L. R. A. 403; State ex rel. Jackson v. Porter, 57 Mont. 343, 188 Pac. 375.

Right to hold two offices at the same time, see 2 Ann. Cas. 380; 10 Ann. Cas. 697, 1915A, 525.

Constitutional provision against increasing compensation during term of office as applicable where new duties are imposed on officer after taking office, see 18 Ann. Cas. 403.

Sec. 5. The supreme executive power of the state shall be vested in the governor, who shall see that the laws are faithfully executed.

Cited or applied in In re McDonald, 49 Mont. 454, 460, 143 Pac. 947; Ann. Cas. 1916A, 1166, L. R. A. 1915B, 988; Herlihy v. Donohue, 52 Mont. 601, 609, 161 Pac. 164, Ann. Cas. 1917C, 29, L. R. A. 1917B, 702.

For text treatment of this subject, see 12 R. C. L. 998; also, article on Governor in Cal. Jur.

Sec. 6. The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to cut out any part or the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.

The constitution and laws of the state are the charters of the governor's powers, and in them he must find the authority for his official acts. Herlihy v. Donohue, 52 Mont. 601, 609, 161 Pac. 164, Ann. Cas. 1917C, 29, L. R. A. 1917B, 702.

Power of governor to declare martial law, see Ann. Cas. 1914C, 24.

Power of governor, in exercise of power to suppress insurrection, to authorize arrest and detention of persons without turning them over to the civil authorities, see 12 L. R. A. (N. S.) 979.

Sec. 7. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occur in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of secretary of state, state auditor, state treasurer, attorney-general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified.

The power to appoint or delegate the appointing power is reserved to the people, acting through the legislature, in every instance, excepting those enumerated in the constitution. Bounty inspectors are not officers whose appointment is "otherwise provided for" in this section, and the legislature had the power, by the act of March 6, 1903, to delegate the selection of three stockgrowers in each county to appoint bounty inspectors to the district judges. In re Terrett, 34 Mont. 325, 333, 86 Pac. 266.

There is no limit to the term of officers whose offices are established by the constitution or which may be created by law, except as provided in the various portions of the constitution which deal with particular officers. State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

As soon as a vacancy occurs, the appointing power may act, but since the constitution does not distinguish vacancies into different classes on account of the exigencies which occasion them, the term for which the appointment holds good is governed by the limitations upon the appointing power therein prescribed. State ex rel. Patterson v. Lentz, 50 Mont. 322, 336, 146 Pac. 962.

Cited in State ex rel. McGowan v. Sedgwick, 46 Mont. 187, 189, 127 Pac. 94.

Right of governor to make an ad interim appointment to an office whose fixed term expires before the senate's adjournment, where the incumbent is authorized to hold over until his successor is appointed, see 46 L. R. A. (N. S.) 1202.

Power of governor to appoint to office in the absence of constitutional or statutory authority, see 19 Ann. Cas. 823.

Sec. 8. The legislative assembly shall provide for a state examiner, who shall be appointed by the governor and confirmed by the senate. His duty shall be to examine the accounts of state treasurer, supreme court clerks, district court clerks, and all county treasurers and treasurers of such other public institutions as may be prescribed by law, and shall perform such other duties as the legislative assembly may prescribe. He shall report at

least once a year and oftener if required to such officers as may be designated by the legislative assembly. His compensation shall be fixed by law.

Cited or applied in Lloyd v. Silver Bow County, 11 Mont. 408, 415, 28 Pac. 453; in State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

Sec. 9. The governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of the state: provided, however, that before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the governor concerning the same shall be approved by a board, or a majority thereof, composed of the secretary of state, attorney general and state auditor, who shall be known as the board of pardons. The legislative assembly shall by law prescribe the sessions of said board, and regulate the proceedings thereof. But no fine or forfeiture shall be remitted, and no commutation or pardon granted, except upon the approval of a majority of said board after a full hearing in open session and until notice of the time and place of such hearing, and of the relief sought, shall have been given by publication in some newspaper of general circulation in the county where the crime was committed, at least once a week for two weeks. The proceedings and decisions of the board shall be reduced to writing, and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by them and filed, with all papers used upon the hearing, in the office of the secretary of state. The governor shall communicate to the legislative assembly, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same and the objections, if any, of any member of the board made thereto.

In the exercise of the pardoning power, the governor is authorized to impose conditions without restriction, so long as they are not illegal, immoral, or impossible of performance. In re Sutton, 50 Mont. 88, 93, 145 Pac. 6, Ann. Cas. 1917A, 1223.

Power of executive to remit fines and forfeitures, see 17 Ann. Cas. 603.

Power of governor to pardon as confined to offenses against the state, see 16 Ann. Cas. 115, Ann. Cas. 1914A, 484.

Sec. 10. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The governor shall at the beginning of each session, and from time to time, by message, give to the legislative assembly information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the legislative assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him. He shall also

at the beginning of each session present estimates of the amount of money required to be raised by taxation for all purposes of the state.

The utmost extent of the governor's authority, so far as constructive legislative work is concerned, is to recommend such measures as he shall deem expedient. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 535, 77 Pac. 312.

Sec. 11. He may on extraordinary occasions convene the legislative assembly by proclamation, stating the purposes for which it is convened, but when so convened, it shall have no power to legislate on any subjects other than those specified in the proclamation, or which may be recommended by the governor, but may provide for the expenses of the session and other matters incidental thereto. He may also by proclamation convene the senate in extraordinary session for the transaction of executive business.

When convened in extraordinary session, the power of the legislature is as absolute as when convened in regular session, except that it is then limited to enacting laws affecting those subjects only that are enumerated in the governor's call, or in his message. In order to determine whether legislation passed at an extraordinary session of the legislature is germane to the subject specified in the proclamation, it is incumbent on the court to examine the proclamation as a whole, giving to the language used its ordinary meaning, and a rule of liberal interpretation should be applied, to the end that the legislation be operative. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 535, 77 Pac. 312.

Where a proclamation of the governor convened the legislature in extra session, for the purpose of enacting general legislation by which the bias and prejudice of district judges should be made a disqualification of such judges to try any case that may come before them, as well as legislation making suitable provision for the trial of such case or cases in such event, and the legislature met and passed the act of December 10, 1903, amending section 180 of the Code of Civil Procedure of 1895, so as to provide that, on the filing of an affidavit of prejudice against a district judge, he should no longer act, and also amending section 615 of the same code, so as to provide that in such case, if a jualified judge should be called to try the cause within thirty days after such disqualification, no change of venue therefor should be had, such legislation was germane to the governor's call, as required by this section of the constitution. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 536, 77 Pac. 312.

Although, for ordinary purposes, the legislature may convene only once in every two years, the governor may call it into extra session at other times for extraordinary purposes. State ex rel. Bennett v. State Board of Examiners, 40 Mont. 59, 62, 104 Pac. 1055.

Cited or applied in State ex rel. Boston & M. Co. v. Clancy, 30 Mont. 193, 201, 76 Pac. 10.

Validity of statute passed at special or extra session of legislature, see 21 Ann. Cas. 409.

Sec. 12. Every bill passed by the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house it shall become a law notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. If any bill shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly shall by their adjournment prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final ad-

journment of the legislative assembly, unless approved by the governor within fifteen days after such adjournment. In case the governor shall fail to approve of any bill after the final adjournment of the legislative assembly it shall be filed, with his objections, in the office of the secretary of state.

The act of 1907, page 50, relating to the establishment of county free high schools, provides that it "shall take effect and be in full force from and after its passage and approval by the governor." It was never expressly approved by the governor, but became a law pursuant to this section. The provision of the section, that if any bill be not returned by the governor within five days after presentment to him, it shall be a law, in like manner as if he had signed it, being binding upon the legislature, the act in question became a law notwithstanding the above provision therein contained. Evers v. Hudson, 36 Mont. 135, 153, 92 Pac. 462.

A measure having been passed on the last day of a legislative session, and not acted upon by the executive until after final adjournment, would require the governor's signature to make it operative. State ex rel. Hay v. Hindson, 40 Mont. 353, 357, 106 Pac. 362.

Chapter 56, Laws of 1917, creating Carter county, became a law without the approval of the governor, pursuant to this section. State ex rel. Ford v. Schofield, 53 Mont. 502, 508, 165 Pac. 594.

Cited or applied in Mutual Benefit Life Ins. Co. v. Winne, 20 Mont. 20, 35, 49 Pac. 446; State ex rel. Esgar v. District Court, 56 Mont. 464, 470, 185 Pac. 157.

Right of executive to withdraw approval of bill, see 13 Ann. Cas. 230.

Computation of time allowed executive to sign or reject bill passed by legislature, see 6 Ann. Cas. 717, Ann. Cas. 1912A, 801.

Right of executive to sign a bill after the adjournment of the legislative bodies, see 37 L. R. A. 391.

Sec. 13. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law, and the item or items disapproved shall be void, unless enacted in the manner following: If the legislative assembly be in session he shall within five days transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Power of governor to veto part only of statute, see 55 L. R. A. 882.

Sec. 14. In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor.

The only instance in the constitution in which authority is given to one called upon to fill vacancy to hold for the residue of the term is in case of a vacancy in the office of governor, and in that instance the lieutenant-governor becomes governor by right of succession, and not of appointment. State ex rel. McGowan v. Sedgwick, 46 Mont. 187, 189, 190, 127 Pac. 94.

Effect of death of person elected before taking office, or of his failure to qualify, see 50 L. R. A. (N. S.) 374.

Sec. 15. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor, from any cause which applies to the governor, or when he shall hold the office of governor, then the presi-

dent pro tempore of the senate shall perform the duties of the lieutenant-governor until the vacancy is filled or the disability removed.

Sec. 16. In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both the governor and the lieutenant-governor, the duties of the governor shall devolve upon the president pro tempore of the senate until such disqualification of either the governor or lieutenant-governor be removed, or the vacancy filled, and if the president pro tempore of the senate, for any of the above-named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

Sec. 17. The first legislative assembly shall provide a seal for the state, which shall be kept by the secretary of state and used by him officially, and known as the great seal of the state of Montana.

Sec. 18. All grants and commissions shall be in the name and by the authority of the state of Montana, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

Where the commission of the state land agent was signed by the governor, but the secretary of state refused to countersign it and seal it with the great seal, as required by this section, the appointment was legal notwithstanding such refusal on the part of the secretary of state. The refusal of the latter official to do the acts enjoined upon him cannot affect the validity of the appointment, or destroy the efficacy of the governor's acts. State ex rel. Neill v. Page, 20 Mont. 238, 248, 50 Pac. 719.

Sec. 19. An account shall be kept by the officers of the executive department, and of all public institutions of the state of all moneys received by them, severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislative assembly, make full and complete reports of their official transactions to the governor, who shall transmit the same to the legislative assembly.

Although this section provides that the qualifications of a county attorney shall be the same as are required for a judge of the district court, and section 35 of this article prohibits a district judge from holding any other office while he remains in the office to which he has been elected or appointed, a county attorney may hold the office of notary public, and it is no objection to an affidavit used by the state, on a motion for a new trial, that the notary before whom it was taken was the county attorney. State v. Jackson, 9 Mont. 508, 518, 24 Pac. 213.

Sec. 20. The governor, secretary of state and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prisons as may be prescribed by law. They shall constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the state, except for salaries and compensation of officers fixed by law, shall be passed upon by the legislative assembly without first having been considered and acted upon by said board. The legislative assembly may provide for the temporary suspension of the

state treasurer by the governor, when the board of examiners deem such action necessary for the protection of the moneys of the state.

The compensation of members of the legislative assembly is fixed by the constitution, and is not a claim against the state which must be considered and acted upon by the state board of examiners. State ex rel. Thompson v. Kenney, 9 Mont. 223, 242, 23 Pac. 733.

Where the compensation of a state officer as fixed by law, the claim for his services and mileage cannot be passed upon by the state board of examiners. State ex rel. Bickford v. Cook, 17 Mont. 529, 43 Pac. 928.

The board of examiners have no control over the funds realized from the sale of bonds for the erection of buildings at the state university, and the state treasurer is required to pay any warrants properly drawn against that fund without requiring action on a claim therefor by the state board of examiners. State v. Collins, 21 Mont. 448, 53 Pac. 1114.

The funds and income derived from the grant by act of congress of certain lands for the state agricultural college are trust funds, disbursed through the agency of the state, and are not subject to the provisions of this section relative to the auditing of claims by the state board of examiners. State ex rel. Koch v. Barret, 26 Mont. 62, 68, 66 Pac. 504.

This section, empowering the governor, secretary of state, and attorney-general a board of examiners, cannot be regarded as one of the exceptions contemplated by the constitution, in providing against the invasion of one department of government by another, so as to allow this board to interfere with the supreme court in regard to the appointment, etc., of a stenographer for the court. State ex rel. Schneider v. Cunningham, 39 Mont. 165, 167, 101 Pac. 962.

This section applies to unliquidated claims, and not to those the amounts of which have been fixed specifically by contract or by any department of the state government having authority to fix them. State ex rel. Schneider v. Cunningham, 39 Mont. 165, 172, 101 Pac. 962.

Cited or applied in State ex rel. Journal Pub. Co. v. Kenney, 10 Mont. 488, 495, 26 Pac. 383; State ex rel. Palmer v. Hickman, 11 Mont. 541, 553, 29 Pac. 92.

ARTICLE VIII.

JUDICIAL DEPARTMENTS.

Section 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, and such other inferior courts as the legislative assembly may establish in any incorporated city or town.

The act of March 6, 1891, conferring on clerks of the district courts the power in vacation to grant letters of guardianship, where no protests or objections are filed thereto, cannot be construed to clothe the clerk of a district court with authority to hear evidence and adjudicate a person mentally incompetent to care for himself or to manage his property, as such authority would involve the exercise of judicial power, which, under the constitution and law of the state, is vested in the judge of the district court. In re Kane's Estate, 12 Mont. 197, 203, 29 Pac. 424.

The district courts of this state are distinct entities, and the transfer of a cause from one district to another would amount to a change of venue. State ex rel. Boston & M. Co. v. Clancy, 30 Mont. 193, 199, 76 Pac. 10.

There is a well-defined distinction between a particular district court and the judges of that court, but the authority of the justice of the peace and of the justice of the peace court, so far as judicial matters are concerned, is identical. State ex rel. Grissom v. Justice Court, 31 Mont. 258, 261, 78 Pac. 498.

A state senator is a member of the legislative department, though the senate, when sitting as a court of impeachment, is a court exercising judicial functions, with power to judge the law and the evidence, and the term "judicial officers," as used in chapter 113, Laws of 1909, requiring nominations for judicial offices to be made by petition only, as provided by section 524, Revised Codes of 1907, does not include a senator, the term "judicial officers" being limited to judges of the supreme and district courts, justices of the peace, and judges of other inferior courts. State ex rel. Haviland v. Beadle, 42 Mont. 174, 179, 111 Pac. 720.

"Judicial power," within the meaning of this section, is the power of a court to decide and pronounce a judgment and carry it into effect between persons and

parties who bring a case before it for decision. Shea v. North-Butte Min. Co., 55 Mont. 522, 537, 179 Pac. 499.

Cited or applied in May v. Northern Pacific Ry. Co., 32 Mont. 522, 533, 81 Pac. 328, 4 Ann. Cas. 605, 70 L. R. A. 111; State ex rel. Powers v. Dale, 47 Mont. 227, 229, 131 Pac. 670, Ann. Cas. 1914D, 227; State ex rel. Jacobson v. Board of County Commrs., 47 Mont. 531, 535, 134 Pac. 291.

For text treatment of this subject, see 7 R. C. L. 969; also, article on Courts in Cal. Jur.

What is judicial power within constitutional theory as to separation of powers of government, see Ann. Cas. 1913E, 1097.

SUPREME COURT.

Sec. 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by law.

State lands, after sale, but before the price is fully paid, are subject to taxation as the property of the purchaser, notwithstanding this section exempts the property of the state from taxation and the state holds the legal title as security for the deferred payments. Courtney v. Missoula County, 21 Mont. 591, 55 Pac. 359.

The fact that the constitution gives the supreme court supervisory control over inferior courts does not authorize it to grant a writ of prohibition, prohibiting a district court from appointing a receiver of a corporation merely to avert probable injury to the applicants for the writ. State ex rel. Boston & M. C. C. & S. M. Co. v. District Court, 22 Mont. 220, 240, 56 Pac. 219.

Except as otherwise provided in the constitution, the supreme court has appellate jurisdiction only. State ex rel. Scharnikow v. Hogan, 24 Mont. 379, 381, 62 Pac. 493, 51 L. R. A. 958.

Under the last clause of this section, the legislature cannot decrease the power granted to the supreme court, but has power to provide the mode of procedure to be employed, by which, and the limitation as to time within which the power granted should be exercised. State ex rel. Whiteside v. District Court, 24 Mont. 539, 563, 63 Pac. 395.

It seems that the supervisory powers of the supreme court cannot be rendered of no avail by the failure of the legislature to act, and that said court may, in the absence of legislation, establish rules for the exercise of its appellate and supervisory jurisdiction. State ex rel. Whiteside v. District Court, 24 Mont. 539, 563, 63 Pac. 395.

The grant of appellate jurisdiction to the supreme court implies all the instrumentalities necessary to make it effective. The provision of this section, that the supreme court "shall have a general supervisory control over all inferior courts," is a distinct and separate grant of jurisdiction, independent of any other power granted. State ex rel. Whiteside v. District Court, 24 Mont. 539, 558, 63 Pac. 395. See State ex rel. Shores v. District Court, 27 Mont. 349, 352, 71 Pac. 159.

One of the functions of the supervisory power of the supreme court is to control the course of litigation in the inferior courts, where those courts are proceeding within their jurisdiction, but by a mistake of law, or wilful disregard of it, are doing a gross injustice, and there is no appeal, or the remedy by appeal is inadequate. State ex rel. Whiteside v. District Court, 24 Mont. 539, 563, 63 Pac. 395; State ex rel. Shores v. District Court, 27 Mont. 349, 352, 71 Pac. 159.

The proper instrument by which the supreme court exercises its power of supervisory control over inferior courts is the "supervisory writ," which must be framed when the case properly arises. State ex rel. Whiteside v. District Court, 24 Mont. 539, 565, 63 Pac. 395.

The writ of mandate will not be made to serve the office of a supervisory control writ. Montana Ore Purchasing Co. v. Lindsay, 25 Mont. 24, 29, 63 Pac. 715.

A writ of supervisory control will not be granted to command a district court to sustain a motion for judgment on the pleadings, since the party has a remedy if he should finally be defeated in the action. State ex rel. Moore v. District Court, 25 Mont. 31, 32, 63 Pac. 686.

The power of supervisory control is a distinct power, and may be exercised to control the discretion of an inferior court in making an order from which no appeal would lie, and for which the writs appertaining to the appellate jurisdiction furnish no remedy. State ex rel. Anaconda

C. M. Co. v. District Court, 25 Mont. 504, 522, 65 Pac. 1020.

Where defendant sued relators, alleging that they were removing ore from certain premises the right to which was in defendant, but the evidence showed that the prima facie right was in relators, an order granting defendant and his employees the right to enter and inspect all of relators' surrounding mines for the period of forty days for the purpose of obtaining evidence, being an order not appealable nor subject to control by any of the specified writs within the jurisdiction of the supreme court, it was a proper case for the supreme court to exercise the power of supervisory control over the inferior court conferred by this section. State ex rel. Anaconda C. M. Co. v. District Court, 25 Mont. 504, 521, 65 Pac. 1020. See State ex rel. Shores v. District Court, 27 Mont. 349, 353, 71 Pac. 159.

The words "limitations" and "regulations," as used in this section, means restrictions of power and rules of conduct or proceeding. The legislature has no power to regulate the physical form of the pleadings and instruments to be filed with the supreme court, and the acts, approved March 9, 1901, providing that transcripts on appeal may be printed or typewritten, at the election of appellant, is invalid. Jordan v. Andrus, 26 Mont. 37, 39, 66 Pac. 502, 91 Am. St. Rep. 396.

The supreme court is without power, either inherent or constitutionally conferred, to allow temporary alimony or suit money pending an appeal in a divorce case. After an appeal is taken the action is still in the district court, the primary forum. The allowance of suit money or temporary alimony is not within the original jurisdiction of the supreme court, nor is it necessary or proper to the complete exercise of its appellate jurisdiction. Bordeaux v. Bordeaux, 26 Mont. 533, 535, 69 Pac. 103. See Finlen v. Heinze, 27 Mont. 107, 118, 69 Pac. 829, 70 Pac. 517; Bordeaux v. Bordeaux, 29 Mont. 478, 482, 75 Pac. 359.

The power of limitation given the legislature does not extend to the right of appeal from final judgments, or to the power of the court on such appeals, but merely to the time when and within which appeals may be taken, to matters of procedure, and to the extent of relief to be granted on appeals from interlocutory orders. Finlen v. Heinze, 27 Mont. 107, 113, 69 Pac. 829, 70 Pac. 517.

Under the provision of this section conferring appellate jurisdiction on the supreme court "under such regulations as may be prescribed by law," if the legislature fails to provide the necessary appellate procedure, the court may adopt rules for itself in the place thereof. Finlen v. Heinze, 27 Mont. 107, 114, 69 Pac. 829, 70 Pac. 517.

Contempt proceedings are not, within the meaning of the constitution, cases at law or in equity which, in the absence of legislative action authorizing it, may be reviewed by appeal. State ex rel. Sutton v. District Court, 27 Mont. 128, 130, 69 Pac. 988.

If section 2183, Code of Civil Procedure of 1895 (9921), providing that the judgment in a case of contempt is final and conclusive, and there is no appeal, but the action of a district court can be reviewed on a writ of certiorari by the supreme court, is intended to preclude the supreme court from reviewing except by certiorari, a judgment of contempt, it violates the provision of this section giving the supreme court a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by statute; a writ of supervisory control being the only means by which the question whether there is evidence to support a judgment of contempt can be determined. State ex rel. Sutton v. District Court, 27 Mont. 128, 130, 69 Pac. 988.

The ordinary appellate power of the supreme court is limited to a review of the decision of the lower court, and a judgment affirming, modifying, or reversing such decision, with the strictly ancillary power to issue, hear, and determine such original and remedial writs as may be necessary or proper to the complete exercise of this appellate jurisdiction. In re Weston, 28 Mont. 207, 215, 72 Pac. 512.

The power of supervisory control is lodged in the supreme court sitting as an organized judicial body, and such power operates only upon inferior courts; it cannot extend to or affect any other body or any individual or individuals. In re Weston, 28 Mont. 207, 215, 72 Pac. 512.

Under this section and sections 3 and 15 of this article, the supreme court has jurisdiction to entertain appeals or writs of error only when the statutory requirements have been complied with. Featherman v. Granite County, 28 Mont. 462, 463, 72 Pac. 972.

The regulations which "may be prescribed by law," mentioned in this section, refer to statutes adopted or to be enacted, providing the methods by which appeals and proceedings upon writs of error may be perfected. Featherman v. Granite County, 28 Mont. 462, 463, 72 Pac. 972.

The purpose of the body that formulated the state constitution was to estab-

lish a court exclusively one of review, with all the auxiliary powers necessary to the exercise of this jurisdiction, except in so far as it expressly declared otherwise. State ex rel. City of Helena v. Helena W. W. Co., 43 Mont. 169, 172, 115 Pac. 200.

The appellate jurisdiction granted the supreme court in this section is properly invoked by appeal only, or perhaps by writ of error, and is confined in its exercise to a review of cases which have been decided by the district courts. State ex rel. City of Helena v. Helena W. W. Co., 43 Mont. 169, 173, 115 Pac. 200.

The supervisory power of the supreme court granted by this section was designed to control summarily the course of litigation in the inferior courts and prevent injustice being done through a mistake of law or a wilful disregard of it, where there is no appeal from the erroneous action, or where, there being an appeal, the relief obtained thereby would be inadequate. State ex rel. City of Helena v. Helena W. W. Co., 43 Mont. 169, 173, 115 Pac. 200.

While, under the provisions of this section and section 15 of this article, all the decisions of district courts are subject to review by the supreme court by some appropriate procedure, causes may be removed to it by appeal only under the limitations and regulations prescribed by statute. Pierson v. Daly, 49 Mont. 478, 480, 143 Pac. 957.

By reason of this section, the legislature is without authority to provide that a cause appealed to the supreme court under the provisions of 2962, shall be tried anew upon the record made in the district court and before the Industrial Accident Board. Willis v. Pilot Butte Min. Co., 58 Mont. 26, 34, 190 Pac. 124.

Cited or applied in Raleigh v. District Court, 24 Mont. 306, 310, 61 Pac. 129, 81 Am. St. Rep. 431; Emerson v. McNair, 28 Mont. 578, 579, 73 Pac. 121; In re Estate of Murphy, 57 Mont. 273, 282, 188 Pac. 146; State ex rel. Rankin v. District Court, 58 Mont. 276, 289, 191 Pac. 772.

Superintending control and supervisory jurisdiction over inferior courts, see 51 L. R. A. 33; 20 L. R. A. (N. S.) 942.

Sec. 3. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo-warranto, certiorari, prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the supreme court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

This section cannot be construed to restrict the supreme court to the use of a writ of certiorari in the exercise of its appellate jurisdiction only, as the clause "necessary and proper to complete exercise of its appellate jurisdiction" relates to "such other original and remedial writs," and not to the writs specifically named therein. In re MacKnight, 11 Mont. 126, 132, 27 Pac. 336, 28 Am. St. Rep. 451.

The framers of the constitution, in referring to the writ of certiorari, contemplated that proceeding as defined in our jurisprudence, as to its office and the conditions under which it may be invoked. In re MacKnight, 11 Mont. 126, 132, 27 Pac. 336; 28 Am. St. Rep. 451; In re Finkelstein, 13 Mont. 425, 427, 34 Pac. 847.

The scope of the writ of certiorari is not enlarged by this section so as to permit a review by the supreme court of an order of the district court for the payment of alimony where imprisonment for contempt is involved, notwithstanding the

relator had a remedy by appeal from such order. In re Finkelstein, 13 Mont. 425, 427, 34 Pac. 847.

The supreme court has power, in its discretion, to issue, hear, and determine writs of prohibition. State ex rel. Scharnikow v. Hogan, 24 Mont. 379, 381, 62 Pac. 493, 51 L. R. A. 958.

Under the constitutional grant of original jurisdiction to the supreme court, the writ of injunction is the equity arm of the court's original jurisdiction, and it, with the other writs granted, fully equip the court as a court of first resort on all judicial questions affecting the sovereignty of the state, its franchises or prerogatives, or the liberties of the people. The writ is made correlative with that of mandamus, and thus it may be resorted to to restrain excess, just as the writ of mandamus may be used in the same class of cases to compel action and supply defacts. State ex rel. Clarke v. Moran, 24 Mont. 433, 439, 63 Pac. 390.

Under the constitutional grant of original jurisdiction to the supreme court, the writ of injunction may properly be used to control a public officer in the exercise of his duties under the election law, that is, to restrain him from proceeding under a valid election law to act in excess of his duty. Mandamus will not lie to restrain a public officer who is proceeding to do what the law does not permit. State ex rel. Clarke v. Moran, 24 Mont. 433, 440, 63 Pac. 390.

Under the constitutional grant of original jurisdiction to the supreme court, where the facts stated, in an application for the writ of injunction, present a case affecting the interests of the whole people of the state, the court has jurisdiction to issue the writ. State ex rel. Clarke v. Moran, 24 Mont. 433, 442, 63 Pac. 390.

The supreme court has no authority, by virtue of its supervisory control, to vacate under a writ of certiorari an order of the district court discharging a prisoner in habeas corpus proceedings, since the supervisory control constitutes a grant of power independent of the court's appellate jurisdiction or power to issue original writs, and cannot be exercised under any original writ specified in this section. State ex rel. Whiteside v. District Court, 24 Mont. 539, 558, 63 Pac. 395.

The provision of this section, authorizing the supreme court in its discretion to issue and to hear and determine the writs therein specified, is a grant of power without limitation or qualification, authorizing such court to issue these writs for whatever purposes they are suitable. State ex rel. Whiteside v. District Court, 24 Mont. 539, 562, 63 Pac. 395.

The supreme court is not authorized to suspend the operation of, vacate, or set aside a prohibitory injunction order restraining parties from entering or mining in a lode claim, during the pendency of an appeal therefrom. Maloney v. King, 26 Mont. 487, 491, 68 Pac. 1012.

No appeal lies from a refusal of a district judge to grant a certificate of probable cause in a criminal case, but a justice of the supreme court can issue such certificate upon such refusal. State v. Broadbent, 27 Mont. 63, 65, 69 Pac. 323.

The writ of injunction is a jurisdictional, prerogative writ, correlative with the writ of mandamus; the writ of injunction, used as a judicial writ in aid of jurisdiction, and not as a prerogative writ, is one of the writs classed with "other original and remedial writs." Finlen v. Heinze, 27 Mont. 107, 119, 69 Pac. 829, 70 Pac. 517.

Under this section, the supreme court may enjoin the operation of a mine, and require it to be preserved in statu quo pending an appeal involving the title thereto. Finlen v. Heinze, 27 Mont. 107, 120, 69 Pac. 829, 70 Pac. 517.

Under this section, the authority to preserve the subject of litigation pending an appeal to the supreme court is exclusively vested in such court from the moment the trial court has entered its final judgment therein, and the trial court has no power whatever to issue an injunction in aid of the appeal. Finlen v. Heinze, 27 Mont. 107, 122, 69 Pac. 829, 70 Pac. 517.

The power of limitation given to the legislature by this section does not authorize it to limit absolutely the appellate jurisdiction of the supreme court, to the extent of cutting off all right of appeal, but merely enables the legislature to enact reasonable regulations as to the time in which and the mode by which an appeal is to be taken. Finlen v. Heinze, 27 Mont. 107, 126, 69 Pac. 829, 70 Pac. 517.

The appellate jurisdiction of the supreme court may be exercised only under limitations and regulations prescribed by law touching the time within which, and the mode by which, appeals may be taken. Cornell v. Matthews, 28 Mont. 457, 459, 72 Pac. 975.

The limitations which "may be prescribed by law," mentioned in this section, refer to statutes in existence at the time of the adoption of the constitution, and adopted by the schedule which is a part thereof, or statutes thereafter to be passed, specifying under what limitations appeals may be taken. The regu-

lations which "may be prescribed by law," mentioned in this section and sections 2 and 15 of this article," also refer to statutes adopted or to be enacted, providing the methods by which appeals and proceedings upon writs of error may be perfected. Featherman v. Granite County, 28 Mont. 462, 463, 72 Pac. 972.

In pursuance of the grant of appellate jurisdiction to the supreme court, and as furnishing methods for the exercise of the jurisdiction granted, the legislature has enacted statutes providing how appeals may be taken, determining of what the record on such appeal shall consist, and how such records shall be certified to that court. Substantial compliance with these provisions is necessary to give the supreme court the right to exercise the jurisdiction granted. Emerson v. McNair, 28 Mont. 578, 579, 73 Pac. 121.

An application for a writ of habeas corpus will be dismissed if it appears that the petitioner is not "held in actual custody." In re O'Brien, 29 Mont. 530, 548, 75 Pac. 196, 1 Ann. Cas. 373.

Even if a stay, in a case where a writ of mandate is issued by the district court to compel the transfer of a cause from a police to a justice of the peace court, is not provided for in the Code of Civil Procedure, still the supreme court has power, under this section, to issue a supersedeas, or any other appropriate writ, to effectuate its apellate jurisdiction, and thus to insure the aggrieved party an appeal which might otherwise be of no value. State ex rel. Brass v. Horn, 36 Mont. 418, 421, 93 Pac. 351.

The different justices are clothed with power to issue, hear, and determine writs of habeas corpus, and also writs of certiorari to review proceedings for contempt in the district courts; but these powers are conferred upon the justices individually. State ex rel. City of Helena v. Helena W. W. Co., 43 Mont. 169, 172, 115 Pac. 200.

The framers of the constitution recognized, without limiting, the power of the courts to punish for contempt; but they understood the law of contempt to be a law of necessity, and its exercise in any given instance to be measured and restricted by the necessity which calls it into existence. State ex rel. Metcalf v. District Court, 52 Mont. 46, 53, 155 Pac. 278, Ann. Cas. 1918A, 985, L. R. A. 1916F, 132.

The only method by which a convicted contemnor may submit a record of conviction to the appellate court for review is by invoking the writ of certiorari, or, in proper cases, under the general supervisory power vested in the supreme court. State ex rel. Rankin v. District Court, 58 Mont. 276, 289, 191 Pac. 772.

Cited or applied in State ex rel. Thompson v. Kenney, 9 Mont. 223, 231, 23 Pac. 733; Lloyd v. Sullivan, 9 Mont. 577, 587, 24 Pac. 218; State ex rel. Leech v. Board of Canvassers, 13 Mont. 23, 51, 31 Pac. 879; State ex rel. Anaconda C. M. Co. v. District Court, 25 Mont. 504, 521, 65 Pac. 1020; Jordan v. Andrus, 26 Mont. 37, 39, 66 Pac. 502; 91 Am. St. Rep. 396; Bordeaux v. Bordeaux, 26 Mont. 533, 535, 69 Pac. 103; State ex rel. Sutton v. District Court, 27 Mont. 128, 130, 69 Pac. 988; In re Weston, 28 Mont. 207, 212, 72 Pac. 512; Pirrie v. Moule, 33 Mont. 1, 5, 81 Pac. 390; State v. District Court, 35 Mont. 51, 54, 88 Pac. 564; Poe v. Sheridan County, 52 Mont. 279, 290, 157 Pac. 185; State ex rel. Wooten v. District Court, 57 Mont. 517, 520, 189 Pac. 233; Willis v. Pilot Butte Min. Co., 58 Mont. 26, 34, 190 Pac. 124.

Original jurisdiction of state court of last resort to issue writ of habeas corpus, see Ann. Cas. 1913A, 156.

Original jurisdiction of state court of last resort to issue mandamus, see 20 Ann. Cas. 184.

Sec. 4. At least three terms of the supreme court shall be held each year at the seat of government.

Sec. 5. The supreme court shall consist of three justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain and the legislative assembly shall have the power to increase the number of said justices to not less nor more than five. In case any justice of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the

hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any cause heard before the court as if regularly participated in by a justice of the supreme court.

Note.—Section 5 as amended by act of March 7, 1899 (L. 1899, p. 152), effective by proclamation of the governor December 18, 1900.

An amendment to this section (Sess. Laws, 5th Sess., p. 57), by providing for calling in a district judge when a supreme court judge is disqualified, is void for failure to enter on the journals of both branches of the legislature a full copy of the proposed amendment, before its submission to the people, as required by section 9 of article XIX, post. Durfee v. Harper, 22 Mont. 354, 361, 56 Pac. 582.

Number of judges necessary to transact business of court, see Ann. Cas. 1912A, 1251.

Sec. 6. The justices of the supreme court shall be elected by the electors of the state at large, as hereinafter provided.

Sec. 7. The term of office of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years.

Cited or applied in State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

Sec. 8. There shall be elected at the first general election, provided for by this constitution, one chief justice and two associate justices of the supreme court. At said first election the chief justice shall be elected to hold his office until the general election in the year one thousand eight hundred ninety-two (1892), and one of the associate justices to hold office until the general election in the year one thousand eight hundred ninety-four (1894), and the other associate justice to hold his office until the general election in the year one thousand eight hundred ninety-six (1896), and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and all subsequent elections be designated by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred ninety-two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead.

Sec. 9. There shall be a clerk of the supreme court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year one thousand eight hundred ninety-two (1892), and until his successor is elected and qualified. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the supreme court.

The clerk of the supreme court is given a term of six years, and until his successor is elected and qualified. State ex rel. Jones v. Foster, 39 Mont. 583, 589, 104 Pac. 860.

Cited or applied in Lloyd v. Silver Bow

County, 11 Mont. 408, 415, 28 Pac. 453; State ex rel. Chenoweth v. Acton, 31 Mont. 37, 42, 77 Pac. 299; State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

Sec. 10. No person shall be eligible to the office of justice of the supreme court, unless he shall have been admitted to practice law in the supreme court of the territory or state of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election.

DISTRICT COURTS.

Sec. 11. The district courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective dictricts as may be prescribed by law and consistent with this constitution. Their process shall extend to all parts of the state, provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts. Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days.

The district court, by virtue of its equity powers, and independent of statute, can authorize the inspection and survey of a lode mining claim and the levels, shafts, winzes, and cross-cuts therein, and the prosecution of work to procure evidence, upon the motion of any party to the action. Blue Bird Min. Co. v. Murray, 9 Mont. 468, 476, 23 Pac. 1022.

"All matters of probate," and necessarily the administration of all laws relating thereto, are now under the original jurisdiction of the district courts. In re McFarland's Estate, 10 Mont. 445, 450, 26 Pac. 185.

The first paragraph of section 6, of the Criminal Practice Act of 1887, conferring upon the district and justice's courts concurrent jurisdiction in all misdemeanor, is in conflict with this section, and did not become a law of the state upon the adoption of the constitution by force of section 1 of article XX thereof. State v. Myers, 11 Mont. 365, 368, 28 Pac. 650.

Under this section, providing that the district court shall have original jurisdiction in all cases of misdemeanor not otherwise provided for, the district court does not have original but only appellate jurisdiction to try the misdemeanor of assault and battery, as jurisdiction to try such misdemeanor is conferred by law upon the justice's court. State v. Myers, 11 Mont. 365, 369, 28 Pac. 650.

While the jurisdiction bestowed upon the district court by the constitution cannot be abridged by the legislature, it

may invest such court with additional jurisdiction in harmony with its character, and not a usurpation of the constitutional powers of any other court, and therefore the provision of the act to regulate the practice of medicine, approved February 28, 1899, allowing an appeal to the district court by the aggrieved party in case of the revocation or refusal by the board of medical examiners of a license to practice medicine, cannot be held to contravene this section, providing that the district court shall have appellate jurisdiction in all cases arising in justices' and other inferior courts, the latter provision not being prohibitory in form. State ex rel. Kellogg v. District Court, 13 Mont. 370, 372, 34 Pac. 298.

This section does not require that an action as to real property must be tried in the county where the action was commenced when the property in question has been added to another county since the commencement of the action. Bookwalter v. Conrad, 15 Mont. 464, 39 Pac. 573, 851.

When the county attorney (presumably by leave of court) files an information against a person, charging him with the crime of murder, the district court has the capacity to entertain an information for that offense. State ex rel. Nolan v. Brantly, 20 Mont. 173, 177, 50 Pac. 410.

The district court, sitting as a court of equity, has jurisdiction to try and determine an action brought against an estate of a decedent to enforce an agreement made by deceased to devise a certain share in his property; and jurisdiction in such cases is not confined to the district court sitting as a court of probate. Burns v. Smith, 21 Mont. 251, 265, 53 Pac. 742, 69 Am. St. Rep. 653.

Upon the organization of the state government, probate jurisdiction was given to the district courts by the constitution, and thereafter appeals to the supreme court from judgments and orders therein were possible only by classifying them under the head of special proceedings. Estate of Tuohy, 23 Mont. 305, 308, 58 Pac. 722.

The district courts have jurisdiction, under this section, of the writ of prohibition as defined in the Code of Civil Procedure; and the supreme court has jurisdiction, on appeal from judgments and from orders made by district courts, in proceedings of this nature instituted under said code. State ex rel. Scharnikow v. Hogan, 24 Mont. 379, 383, 62 Pac. 493, 51 L. R. A. 958.

The proclamation of the governor, convening the eighth legislative assembly in a second extraordinary session, was to accomplish general legislation, whereby bias and prejudice of district judges shall constitute a disqualification of such judges, and making suitable provision for the trial of cases in such event. No recommendations were made by the governor differing in any degree from the matters embraced in the proclamation, and the legislation was in accordance therewith. State ex rel. Boston & M. Co. v. Clancy, 30 Mont. 193, 201, 76 Pac. 10.

The district court, sitting as an appellate court, is one of limited jurisdiction, and may only proceed in the manner and to the extent provided by law. Clark v. Great Northern Ry. Co., 30 Mont. 458, 464, 76 Pac. 1003.

The act of December 10, 1903, amending section 180 of the Code of Civil Procedure of 1895 (8868), providing for the disqualification of district judges on the filing of an affidavit of prejudice, is not in violation of the provision of this section conferring on district courts original jurisdiction in "all" cases in law and in equity, by reason of the fact that the filing of the affidavit, without a determination of the question of prejudice, deprives the judge of jurisdiction, since it is the imputation of prejudice, and not prejudice in fact, that constitutes the disqualification, which imputation is not subject to judicial investigation. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 539, 77 Pac. 312.

The jurisdiction granted to district courts and their judges to issue the writ of habeas corpus is exclusive; and the power of a district judge to inquire into the legality of the detention of persons in custody is confined to cases where the complainant, who seeks his release, is so detained within the boundaries of the district over which the judge presides. If such judge is absent and no judge temporarily presides over such court, the application should be made to the supreme court, or a justice thereof, and not to a district judge in another district. State v. District Court, 35 Mont. 51, 53, 88 Pac. 564. See In re Lewis, 51 Mont. 539, 542, 154 Pac. 713.

The district courts have exclusive jurisdiction in probate matters. State ex rel. King v. District Court, 42 Mont. 182, 184, 111 Pac. 717.

Every power conferred upon the judges is judicial in character, and in so far as the corrupt practice act seeks to make a judge a mere agent to gather evidence for the legislature to consider in passing upon the qualifications of a member, that act is invalid. State ex rel. Smith v. District Court, 50 Mont. 134, 140, 145 Pac. 721.

In order that a judgment for contempt may be proof against an attack made by

habeas corpus proceedings, the court rendering it must have had jurisdiction of the person and of the subject-matter, and must have possessed the power of authority to render the particular judgment it pronounced. In re Mettler, 50 Mont. 299, 301, 146 Pac. 747.

Primarily, though the judge of the district court is classed as a state officer, he is such only for the purpose of administering justice in his own district; and, though the process of his court extends to all parts of the state, ordinarily the exercise of his power is limited to the territorial boundaries of his district. State ex rel. Mannix v. District Court, 51 Mont. 310, 317, 152 Pac. 753.

In the absence of statutory provision authorizing a "contest" of a county seat selection alleged to have been the result of fraud and corrupt practices, and quo warranto being available, the district court has jurisdiction under its equity powers to hear and determine such a matter, until such time as the law shall provide the procedure. Poe v. Sheridan County, 52 Mont. 279, 290, 157 Pac. 185.

By this section the district courts are clothed with general equity jurisdiction. At the time of the adoption of the constitution, and for many years before, courts of equity in England and America exercised jurisdiction for the suppression of nuisances—public as well as private. The right of the state to maintain these suits independently of statute cannot be questioned, but the state cannot act sua sponte. Someone authorized to do so must act on its behalf. State ex rel. Ford v. Young, 54 Mont. 401, 403, 170 Pac. 947.

The district court is a court of general jurisdiction; it therefore has power to hear and determine all classes of cases, except petty cases, of which justices of the peace and police courts are by the constitution given exclusive cognizance. Crawford v. Pierse, 56 Mont. 371, 376, 185 Pac. 315.

Cited or applied in Wallace v. Helena Electric Ry. Co., 10 Mont. 24, 28, 24 Pac. 626, 25 Pac. 278; In re Dewar's Estate, 10 Mont. 426, 427, 25 Pac. 1026; Edgerton v. Edgerton, 12 Mont. 122, 145, 29 Pac. 966, 33 Am. St. Rep. 557, 16 L. R. A. 94; In re Kane's Estate, 12 Mont. 197, 203, 29 Pac. 424; State ex rel. Leech v. Board of Canvassers, 13 Mont. 23, 43, 21 Pac. 879; State ex rel. Clarke v. Moran, 24 Mont. 433, 438, 63 Pac. 390; State ex rel. Whiteside v. District Court, 24 Mont. 539, 553, 63 Pac. 395; Bordeaux v. Bordeaux, 26 Mont. 533, 534, 69 Pac. 103; McGlauflin v. Wormser, 28 Mont. 177, 182, 72 Pac. 428; Davidson v. Wampler, 29 Mont. 61, 66, 74 Pac. 82; State ex rel. Grissom v. Justice Court, 31 Mont. 258, 262, 78 Pac. 498; May v. Northern Pacific Ry. Co., 32 Mont. 522, 533, 81 Pac. 328, 4 Ann. Cas. 605, 70 L. R. A. 111; State ex rel. Little v. District Court, 49 Mont. 158, 161, 141 Pac. 151.

Sec. 12. The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof one judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

The provision of this section, that "any judge of the district court may hold court for any other district judge," does not, in the absence of constitutional or statutory provision giving district judges concurrent jurisdiction, empower a judge, acting for another, to exercise out of court the judicial power of the judge whose court he is holding; and an order of injunction issued by such judge in chambers, when the judge of the district court was present in his district and discharging his duties, is void. Wallace v. Helena Electric Ry. Co., 10 Mont. 24, 29, 24 Pac. 626, 25 Pac. 278.

Under the provision of this section, that "any judge of the district court may hold court for any other district judge," it is clear that any district judge may go into another district and hold court for another judge. It is equally clear, also, that without a provision of law authorizing it, a district judge would not have authority to go into another district and exercise his judicial functions. The jurisdiction must be conferred by law. Wallace v. Helena Electric Ry. Co., 10 Mont. 24, 29, 24 Pac. 626, 25 Pac. 278; State ex rel. Mannix v. District Court, 51 Mont. 310, 317, 152 Pac. 753.

Section 8821, giving the judge of one district, when holding court for the judge of another district, the same power, in court or chambers, as a judge thereof, does not enlarge the authority given by this section. Farleigh v. Kelly, 24 Mont. 369, 373, 62 Pac. 495, 685.

Under this section, the right to nominate and elect district judges belongs to the electors of the district, and no action of a state convention can validate a nomination for the office of district judge, where the convention making it does not properly represent the electors of the district. State ex rel. Scharnikow v. Hogan, 24 Mont. 383, 395, 62 Pac. 583.

The statute providing for the designation and appointment of a district judge to temporarily hold court in another district than his own, and to perform the official duties of the district judge of such district, where such judge is biased or prejudiced, or from any cause disqualified from performing the same, is in violation of and directly contravenes the provisions of this section. In re Weston, 28 Mont. 207, 217, 72 Pac. 512.

This section of the constitution makes provision for the substitution of one judge for another, and must be held to be exclusive, at least until the authority vested in it has been exhausted. In re Weston, 28 Mont. 207, 218, 72 Pac. 512.

There is nothing in the last sentence of this section which would indicate an intention on the part of the framers of the constitution to limit the method of securing the trial of a cause, in which the resident judge is disqualified, to calling in another judge. This provision is simply a means placed in the hands of the judges themselves to facilitate the dispatch of business in which they may be interested, or otherwise disqualified from acting. There is no obligation resting upon a particular judge to call in another, and likewise no obligation resting upon an invited judge to accept the invitation. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 538, 77 Pac. 312.

While this section lodges in a disqualified judge the sole power to invite in another judge to try the case in which he is disqualified, it was never intended thereby to enable such disqualified judge, by refusing to call in another judge, or by delaying unreasonably his invitation, to deny altogether to a litigant a trial of his cause. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 538, 77 Pac. 312.

The act of December 10, 1903, amending section 180 of the Code of Civil Procedure of 1895 (8868), so as to provide for the disqualification of district judges on the filing of an affidavit of prejudice, thereupon disqualifying him to further act in the case except to arrange his calendar, notify another judge to try the case, or, if he fails to do so within thirty days, to change the place of trial, etc., and amending section 615 of the same code, so that, if another judge is called in within such time, the change of venue shall not be granted, is in harmony with this section. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 539, 77 Pac. 312.

Under this section and section 18 of this article, the terms of district court judges and clerks of the district court are strictly limited to four years, and the words, "and until their successors are elected and qualified," as used in this section, refer to those officers only who were first elected after the adoption of the constitution, and have no application to those thereafter chosen. State ex rel. Jones v. Foster, 39 Mont. 583, 587, 104 Pac. 860.

In adopting this section the convention had three purposes in view: (1) To provide for the division of the state into districts; (2) to provide for district judges and to fix their term of office; and (3) by way of exception, to fix the term of office of those first elected, so that they would hold until the general election in 1892, and until their successors should be elected and qualified. But for the exception, those first elected would also have held for the term of four years. The purpose of it was to so adjust the term of those first elected that thereafter the election would fall regularly upon presidential years, and be uniform throughout the state. State ex rel. Jones v. Foster, 39 Mont. 583, 588, 104 Pac. 860; State ex rel. Patterson v. Lentz, 50 Mont. 322, 339, 146 Pac. 932.

In a case where the office of county attorney has been awarded to a person as the successful candidate at an election, and a qualified elector of the county has duly filed a contest on the ground of malconduct on the part of the election officers, the district judge, before whom the hearing would be otherwise, may, deeming himself disqualified, call in a judge from outside the district to hear and determine the cause. Curry v. McCaffery, 47 Mont. 191, 195, 131 Pac. 673.

To "hold court," within the meaning of this section, is to hold court in the district just as does the local judge, and not to sit in chambers in another district. Eustance v. Francis, 52 Mont. 295, 299, 157 Pac. 573.

Cited or applied in Granite Mountain Min. Co. v. Durfee, 11 Mont. 222, 225, 27 Pac. 919; Parrott v. McDevitt, 14 Mont. 203, 205, 36 Pac. 193; State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403; State ex rel. Carleton v. District Court, 33 Mont. 138, 155, 82 Pac. 789, 8 Ann. Cas. 752; State ex rel. Livesay v. Smith, 35 Mont. 523, 525, 90 Pac. 750, 10 Ann. Cas. 1138; State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

Sec. 13. Until otherwise provided by law judicial districts of the state shall be constituted as follows: First district, Lewis and Clark county; Second district, Silver Bow county; Third district, Deer Lodge county; Fourth district, Missoula county; Fifth district, Beaverhead, Jefferson and Madison counties; Sixth district, Gallatin, Park and Meagher counties; Seventh district, Yellowstone, Custer and Dawson counties; Eighth district, Choteau, Cascade and Fergus counties.

Cited or applied in Wallace v. Helena Electric Ry. Co., 10 Mont. 24, 29, 24 Pac. 626, 25 Pac. 278; State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403.

Sec. 14. The legislative assembly may increase or decrease the number of judges in any judicial district; provided, that there shall be at least one judge in any district established by law; and may divide the state, or any part thereof, into new districts; provided, that each be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

Cited or applied in Wallace v. Helena Electric Ry. Co., 10 Mont. 24, 38, 24 Pac. 626, 25 Pac. 278; State ex rel. Buck v. Hickman, 10 Mont. 497, 498, 26 Pac. 386; State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403.

Power of legislature to create or abolish court of record, see Ann. Cas. 1913C, 1160.

Sec. 15. Writs of error and appeals shall be allowed from the decisions of said district courts to the supreme court under such regulations as may be prescribed by law.

The expression "the decisions," as used in this section, includes every decision of whatever character. Finlen v. Heinze, 27 Mont. 107, 124, 69 Pac. 829, 70 Pac. 517.

Parties litigant have the right of appeal from all the decisions made in the progress of the case, and the supreme court has jurisdiction to hear and determine them, subject only to such reasonable limitations and regulations as the legislature may enact affecting the time within which and the mode by which the appeal may be taken. The only exception to this broad statement of the rule are judgments in contempt, and perhaps orders made in a few summary proceedings. Finlen v. Heinze, 27 Mont. 107, 126, 69 Pac. 829, 70 Pac. 517.

Under this section and sections 2 and 3 of this article, the supreme court has jurisdiction to entertain appeals or writs of error only when the statutory requirements have been complied with. Featherman v. Granite County, 28 Mont. 462, 463, 72 Pac. 972.

The regulations which "may be prescribed by law," mentioned in this section, refer to statutes adopted or to be enacted, providing the methods by which appeals and proceedings upon writs of error may be perfected. Featherman v. Granite County, 28 Mont. 462, 463, 72 Pac. 972.

The right of appeal in any case is not an absolute one; but appeals are only allowed under such regulations as may be prescribed by law. Therefore, since the legislature has not made provision for the appointment of some one, upon whom service of notice of appeal from an order granting a new trial may be made in place of a party who has died after the order is made, the supreme court, on application for a writ of supervisory control, cannot grant relief. State ex rel. Cohn v. District Court, 38 Mont. 119, 127, 99 Pac. 139.

While the constitution secures to a litigant the right of appeal, it does so only on condition that he comply with "such regulations as may be prescribed by law." Jackway v. Hymer, 42 Mont. 168, 169, 111 Pac. 720.

The constitution provides for appeals to the supreme court from the district courts under such regulations as may be prescribed by law, following out which provision section 9731 enumerates the judgments and orders from which appeals are allowed. Taintor v. St. John, 50 Mont. 358, 362, 146 Pac. 939.

Cited or applied in In re McFarland's Estate, 10 Mont. 445, 455, 26 Pac. 185; Jordan v. Andrus, 26 Mont. 37, 39, 66 Pac. 502, 91 Am. St. Rep. 396; Emerson v. McNair, 28 Mont. 578, 579, 73 Pac. 121; State ex rel. Brass v. Horn, 36 Mont. 418, 421, 93 Pac. 351; Pierson v. Daly, 49 Mont. 478, 480, 143 Pac. 957; State v. Libby Yards, 58 Mont. 444, 193 Pac. 394.

Sec. 16. No person shall be eligible to the office of judge of the district court unless he be at least twenty-five years of age and a citizen of the United States, and shall have been admitted to practice law in the supreme court of the territory or state of Montana, nor unless he shall have resided in this state or territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office.

The act of December 10, 1903, amending section 180 of the Code of Civil Procedure of 1895 (8868) so as to provide for the disqualification of a district judge by the filing of an affidavit of prejudice, is not in violation of this section; the qualifications therein enumerated being limited to qualities necessary to render the person eligible to the office, without application to his qualifications to try particular cases. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 537, 77 Pac. 312.

The legislature cannot impose any additional conditions to those enumerated in this section as a prerequisite to any man's holding the office of district judge who might be elected or appointed to that office. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 537, 77 Pac. 312.

The qualifications enumerated in this section have to do with the eligibility of a man to hold the office, but it does not follow that, because a district judge possesses these qualifications, he shall have the right, by virtue of his office, to try every cause which may be commenced in or transferred to his district. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 537, 77 Pac. 312.

Sec. 17. The district court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the term of court, provided that there shall be at least four terms a year held in each county.

The rule declared in State ex rel. Root v. McHatton, 10 Mont. 370, 25 Pac. 1046, has been changed by section 8826, which provides that there is no term of court in any judicial district of the state where a county is a district. Whitbeck v. Montana Central Ry. Co., 21 Mont. 102, 104, 52 Pac. 1098.

Where a judge has fixed the terms of court for a judicial district, the order therefor cannot be revoked by his successor in office. State v. Bristol, 21 Mont. 578, 55 Pac. 107.

Cited or applied in Wallace v. Helena Electric Ry. Co., 10 Mont. 24, 40, 24 Pac. 626, 25 Pac. 278; State ex rel. Root v. McHatton, 10 Mont. 370, 25 Pac. 1046.

Validity of proceedings in court held at unauthorized time, see Ann. Cas. 1912B, 179.

Power of court to sit and try causes on legal holiday other than Sunday, see 5 Ann. Cas. 919, 11 Ann. Cas. 559.

Sec. 18. There shall be a clerk of the district court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be as provided by law.

The words "next general election," as used in the act creating Sanders county, with reference to the office of clerk of the district court, mean the next general election for filling that particular office in the judicial district, not the next general election held for any purpose. State ex rel. Livesay v. Smith, 35 Mont. 523,

529, 90 Pac. 750, 10 Ann. Cas. 1138. See State ex rel. Patterson v. Lentz, 50 Mont. 322, 337, 341, 146 Pac. 932.

The term of office of the clerk of the district court and the time of his election depend upon the term of the judge and the time of the election of the judge. State ex rel. Jones v. Foster, 39 Mont. 583, 587, 104 Pac. 860.

Under this section and section 12 of this article, the terms of clerks of the district court are strictly limited to four years. State ex rel. Jones v. Foster, 39 Mont. 583, 587, 104 Pac. 860.

Cited or applied in Lloyd v. Silver Bow County, 11 Mont. 408, 415, 28 Pac. 453; In re Kane's Estate, 12 Mont. 197, 203, 29 Pac. 424; State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403; State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

COUNTY ATTORNEYS.

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be two years, except that the county attorneys first elected shall hold their offices until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

The county attorney is elected for two years, but is to hold until the election and qualification of his successor. State ex rel. Jones v. Foster, 39 Mont. 583, 590, 104 Pac. 860.

Section 4819 was enacted in pursuance of the above constitutional provision, and indicates the officer whose duty it is to sign informations in prosecutions for offenses against the state. State v. Barry, 45 Mont. 582, 585, 124 Pac. 774.

Cited or applied in Lloyd v. Silver Bow County, 11 Mont. 408, 415, 28 Pac. 453; Missouri River Power Co. v. Steele, 32 Mont. 433, 438, 80 Pac. 1093; State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940; State ex rel. McGrade v. District Court, 52 Mont. 371, 375, 157 Pac. 1157.

For text treatment of this subject, see article on District and Prosecuting Attorneys in Cal. Jur.

JUSTICES OF THE PEACE.

Sec. 20. There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices, except as otherwise provided in this constitution, for the term of two years. Justices' courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this constitution otherwise provided; provided, that they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.

Justices' courts are of limited jurisdiction, having only such powers as are conferred upon them by statute. Layton v. Trapp, 20 Mont. 453, 455, 52 Pac. 208; State ex rel. Kenyon v. Laurandeau, 21 Mont. 216, 218, 53 Pac. 536; Oppenheimer v. Regan, 32 Mont. 110, 116, 79 Pac. 695; State ex rel. Matthews v. Taylor, 33 Mont. 212, 215, 83 Pac. 484; State ex rel. Collier v. Houston, 36 Mont. 178, 180, 92 Pac. 476, 12 Ann. Cas. 1027; Jenkins v. Carroll, 42 Mont. 302, 312, 112 Pac. 1064; Hosoda v. Neville, 45 Mont. 310, 311, 123 Pac. 20; Miller v. Miller, 47 Mont. 150, 153, 131 Pac. 23.

The term of office of a justice of the peace is two years and no more. State ex rel. Jones v. Foster, 39 Mont. 583, 590, 104 Pac. 860.

While a justice's court is one of limited jurisdiction, having only such powers as are conferred by law, nevertheless,

when jurisdiction has been once obtained by the justice over persons brought before him for misdemeanors, errors intervening in course of the proceedings must be availed of by immediate objection, otherwise they are waived. Hosoda v. Neville, 45 Mont. 310, 311, 123 Pac. 20.

Cited or applied in State ex rel. Jackson v. Kennie, 24 Mont. 45, 56, 60 Pac. 589; State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

For text treatment of this subject, see 16 R. C. L. 327; also, article on Justices of the Peace in Cal. Jur.

Amount claimed or amount due as determining jurisdiction of justice of the peace, see Ann. Cas. 1912A, 1284.

Sec. 21. Justices' courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, nor for annulment of marriage, nor of cases in equity; nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction, or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts; nor shall criminal cases in said courts be prosecuted by indictment; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law; and shall also have concurrent jurisdiction with the district courts in cases of forcible entry and unlawful detainer.

Jurisdiction of the misdemeanor of assault and battery resides in the justice's court as having been "provided by law." State v. Myers, 11 Mont. 365, 367, 28 Pac. 650.

A justice of the peace has jurisdiction of an action by a landlord against a tenant holding after default in payment of rent, both under the forcible entry and unlawful detainer act and by virtue of this section, whereby justice courts are clothed with concurrent jurisdiction with the district courts in cases of forcible entry and unlawful detainer. State v. Votaw, 13 Mont. 403, 404, 34 Pac. 315.

Justices' courts have no equity jurisdiction and cannot entertain actions involving matters of equitable cognizance. An action by a claimant to establish his claim for services, in so far as it seeks to establish and foreclose a lien on the attached property of the debtor, is a proceeding equitable in its nature, and hence not within the jurisdiction of a justice of the peace as limited by this section. Where a justice of the peace had no jurisdiction of a suit to enforce a lien for services as a preferred claim over the claim of attaching creditors, the district court acquired no jurisdiction to enforce such lien by an appeal from the justice's judgment. Shea v. Regan, 29 Mont. 308, 316, 74 Pac. 737.

This section provides that a justice's court shall have jurisdiction as an examining court in cases of felony, and the statute provides the method of procedure; but that jurisdiction must, of course, be properly invoked. State v. Lagoni, 30 Mont. 472, 475, 76 Pac. 1044.

Section 8840 enacted in pursuance of section 20 and 21 of this article, does not clothe a justice of the peace with jurisdiction to entertain an action against a sheriff for damages for non-performance of an official duty and a penalty imposed by law for such non-performance. Oppenheimer v. Regan, 32 Mont. 110, 115, 79 Pac. 695.

Within the limitations prescribed by the constitution the legislature has power to confer jurisdiction upon justices' courts in any class of cases; but these courts, being thus constituted courts of special and limited jurisdiction, are without power to hear and determine any case when such power is not, specifically or by clear implication, conferred by the statute defining their powers. Oppenheimer v. Regan, 32 Mont. 110, 116, 79 Pac. 695; State ex rel. Matthews v. Taylor, 33 Mont. 212, 215, 83 Pac. 484.

The fact that a plaintiff formulates his pleadings on the theory that he is entitled to equitable relief does not deprive a justice's court of jurisdiction, if upon any theory of his pleadings he is entitled to other relief. Anderson v. Red Metal Min. Co., 36 Mont. 312, 319, 93 Pac. 44.

A justice's court has no equity jurisdiction; but defendants properly substituted in an action by the assignee of a labor claim cannot deprive the justice of jurisdiction by the interposition of the defense of fraud in the assignment, since such defense does not convert the cause into an equitable one. Mettler v. Adamson, 38 Mont. 198, 203, 99 Pac. 441.

The prohibition contained in this section, that justices' courts shall not have jurisdiction in cases of equity, extends to those matters only of which a court of equity has exclusive cognizance. Mettler v. Adamson, 38 Mont. 198, 203, 99 Pac. 441.

Cited or applied in State ex rel. Jackson v. Kennie, 24 Mont. 45, 56, 60 Pac.

589; State v. O'Brien, 35 Mont. 482, 496, 90 Pac. 514, 10 Ann. Cas. 1006.

Right of public prosecutor to have preliminary examination before magistrate dismissed, see L. R. A. 1918C, 209.

Anthority of justice of peace to admit to bail in capital case, see 39, L. R. A. (N. S.) 758.

Cited or applied in State ex rel. Matthews v. Taylor, 33 Mont. 212, 215, 83 Pac. 484.

Sec. 22. Justices' courts shall always be open for the transaction of business, except on legal holidays and non-judicial days.

Right of justices of the peace to hold court on Sunday, see Ann. Cas. 1916B, 15.

Sec. 23. Appeal shall be allowed from justices' courts, in all cases, to the district courts, in such manner and under such regulations as may be prescribed by law.

An appeal lies from a judgment entered in a justice's court upon failure of defendant to answer after overruling of his demurrer to the complaint—the demurrer to the complaint raises a question of law, which is apparent upon the face of the papers. Denial of an appeal on questions of law in such a case would violate the provisions of this section. Maxey v. Cooper, 21 Mont. 456, 457, 54 Pac. 562.

A right of appeal is granted from the justice's court to the district court in all cases; and an appeal lies where a justice refuses to set aside a judgment by default, and the district court should entertain the appeal for a trial de novo as it was tried, or should have been tried, in the justice's court. State ex rel. Shanahan v. Linday, 22 Mont. 398, 400, 56 Pac. 827. See State ex rel. Reynolds v. Laurendeau, 27 Mont. 522, 524, 71 Pac. 754.

The right of appeal, though guaranteed by this section of the constitution, may be exercised only in obedience to the statutory regulations applicable. The only appeal from a justice's court provided for is an appeal from a judgment, and no appeal lies to the district court from an order made in a justice's court either before or after judgment. State ex rel. Cobban v. District Court, 30 Mont. 93, 95, 75 Pac. 862.

Only such questions as were raised and presented in the justice's court can be tried on appeal in the district court, and where there was no showing that a motion was made in the justice's court to set aside the judgment and dismiss the cause, but the record showed that the case was tried on issues of fact raised by the answer, it was proper for the district court, on appeal from a judgment for plaintiff, to overrule a motion to dismiss the cause, and to try the issues of fact which had been raised before the justice. Clark v. Great Northern Ry. Co., 30 Mont. 458, 464, 76 Pac. 1003.

Appeals from justices' courts to the district courts are allowed in all cases in such manner and under such regulations as may be prescribed by law. State ex rel. Rosenstein v. District Court, 41 Mont. 100, 102, 108 Pac. 580; 21 Ann. Cas. 1307.

Appeals provided for by this section are subject to statutory regulation, and the mode prescribed for taking them is exclusive. Jenkins v. Carroll, 42 Mont. 302, 312, 112 Pac. 1064.

When the validity of a judgment of a district court, rendered on appeal from a justice's court, is brought in question, the proceedings must show that jurisdiction was acquired in the manner prescribed by statute. Jenkins v. Carroll, 42 Mont. 302, 312, 112 Pac. 1064.

The regulations, prescribed by the legislature under authority of the constitution, for appealing cases from justices' courts to the district court, are found in sections 9754 and sections 9756 and 9757. State ex rel. Hackshaw v. District Court, 48 Mont. 477, 479, 138 Pac. 1100.

Remedy for correction of error in justice's court, see Ann. Cas. 1913E, 74.

POLICE AND MUNICIPAL COURTS.

Sec. 24. The legislative assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and

towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties.

Cited or applied in State ex rel. City of Butte v. District Court, 37 Mont. 202, 204, 95 Pac. 841.

Jurisdiction of municipal court to try offenses against state laws, see 18 Ann. Cas. 53.

MISCELLANEOUS PROVISIONS.

Sec. 25. The supreme and district courts shall be courts of record.

Sec. 26. All laws relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform.

If the specific provisions of the code relating to the drawing of a jury panel may be treated as directory only, and be disregarded by the presiding judge, then juries might be summoned by one judge by open venire, and by another by any particular method which he might prefer, and the result would be an absence of that uniform operation of law relating to the courts of the state contemplated by this section. State v. Landry, 29 Mont. 218, 224, 74 Pac. 418.

Since the act of December 10, 1903, amending section 180 of the Code of Civil Procedure of 1895 (8868), so as to provide for the disqualification of district judges on the filing of an affidavit of prejudice, is general in its terms and operation throughout the state, and therefore sufficiently complies with this section, it is immaterial that it was passed at an extra session of the legislature. State ex rel. Anaconda C. M. Co. v. Clancy, 30 Mont. 529, 542, 77 Pac. 312.

Cited or applied in State ex rel. Root v. McHatton, 10 Mont. 370, 25 Pac. 1046; State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403.

Sec. 27. The style of all process shall be "The State of Montana," and all prosecutions shall be conducted in the name and by the authority of the same.

Infractions of local police regulations are not, in their essence, crimes or misdemeanors, as those terms are employed in criminal jurisprudence, and are therefore not criminal prosecutions. Such actions need not be prosecuted in the name of the state, but should be prosecuted in the name of the city. City of Helena v. Kent, 32 Mont. 279, 290, 80 Pac. 258, 4 Ann. Cas. 235; State ex rel. Streit v. Justice Court, 45 Mont. 375, 381, 123 Pac. 405, 48 L. R. A. (N. S.) 156. See, also, State ex rel. City of Butte v. District Court, 37 Mont. 202, 206, 95 Pac. 841.

Since an officer's authority to sell land on foreclosure emanates from the decree, and not from a so-called order of sale thereon, the fact that such order ran in the name of "The People of the State of Montana," instead of "the State of Montana," the style required for process by this section, was immaterial. Thomas v. Thomas, 44 Mont. 102, 109, 119 Pac. 283, Ann. Cas. 1913B, 616.

The word "process," employed in the constitutional provision "the style of all process shall be 'The State of Montana,'" does not include the order of sale found in the decree of a court of equity in foreclosure proceedings. Thomas v. Thomas, 44 Mont. 102, 110, 119 Pac. 283, Ann. Cas. 1913B, 616.

Prosecutions for violations of local ordinances must be conducted in the name of the municipality, by its prosecuting officer, but criminal cases arising under the state laws must be prosecuted in the name of the state and by the county attorney. State ex rel. Streit v. Justice Court, 45 Mont. 375, 380, 123 Pac. 405, 48 L. R. A. (N. S.), 156.

While the above section is mandatory, it does not follow that an indictment or information is defective if it does not contain a formal specific allegation that it is presented in the name and by the authority of the state. The provision embodies both a command to the courts that they shall not entertain a prosecution of a citizen by any authority other than that of the state, acting through the officers provided for that purpose, and also a guaranty to the citizen that he shall not be held to answer by any other authority. The requirement is complied with if it appears from the record that the prosecution is conducted in the name of the state and by its authority. State v. Barry, 45 Mont. 582, 584, 124 Pac. 774.

Cited or applied in State v. Kingsly,

10 Mont. 537, 544, 26 Pac. 1066; Independent Publishing Co. v. County of Lewis and Clark, 30 Mont. 83, 85, 75 Pac. 860; State ex rel. City of Butte v. District Court, 37 Mont. 202, 205, 207, 95 Pac. 841; State v. Driscoll, 49 Mont. 558, 560, 144 Pac. 153; State ex rel. Payne v. District Court, 53 Mont. 350, 355, 165 Pac. 294.

Sec. 28. There shall be but one form of civil action, and law and equity may be administered in the same action.

The old distinctions between actions at law and in equity have been abolished, and the court, having jurisdiction of the parties, can afford such relief as the facts of the case may justify. Merchants' Nat. Bank v. Great Falls Opera House Co., 23 Mont. 33, 40, 57 Pac. 445, 75 Am. St. Rep. 499, 45 L. R. A. 285.

Under this section, a mistake as to the form in which the action should be brought, or as to the relief which may be demanded upon the statement of facts made, is of no moment. If equitable relief is demanded, but the facts do not warrant this character of relief, a complaint will be sustained for legal relief, if the facts warrant it. Anderson v. Red Metal Min. Co., 36 Mont. 312, 319, 93 Pac. 44.

Cited or applied in Lloyd v. Sullivan, 9 Mont. 577, 587, 24 Pac. 218; Edgerton v. Edgerton, 12 Mont. 122, 145, 29 Pac. 966, 33 Am. St. Rep. 557, 16 L. R. A. 94.

Sec. 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be increased or diminished during the terms for which they shall have been respectively elected. Until otherwise provided by law, the salary of the justices of the supreme court shall be four thousand dollars per annum each, and the salary of the judges of the district courts shall be three thousand five hundred dollars per annum each.

This section embodies an express restriction upon the powers of the legislative assembly. Lloyd v. Silver Bow County, 11 Mont. 408, 413, 28 Pac. 453.

While a district judge elected prior to, and serving at the time of the passage of an act increasing the salary of the office, would not have been entitled to the increase, his successor appointed to fill the vacancy created by the former's resignation some seven months after its passage, could rightfully demand the enlarged compensation. State ex rel. Jackson v. Porter, 57 Mont. 343, 188 Pac. 375.

Cited or applied in State ex rel. Buck v. Hickman, 10 Mont. 497, 499, 26 Pac. 386.

Sec. 30. No justice of the supreme court nor judge of the district court shall accept or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office, in any form whatever, except the salary provided by law.

This section embodies an express restriction upon the powers of the legislative assembly. Lloyd v. Silver Bow County, 11 Mont. 408, 413, 28 Pac. 453.

Sec. 31. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office.

This section is a prohibition directed against the district judge. State v. Jackson, 9 Mont. 508, 519, 24 Pac. 213.

Right of judge of court of record to practice as attorney, see Ann. Cas. 1914B, 446.

Sec. 32. The legislative assembly may provide for the publication of decisions and opinions of the supreme court.

Sec. 33. All offices provided for in this article, excepting justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town for which they may be elected or appointed.

Sec. 34. Vacancies in the office of justice of the supreme court, or judge of the district court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorney, clerk of the district court, and justices of the peace, shall be filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

All judges of the district courts, who have been elected or appointed, are governed by the same provisions of the constitution. In the absence of any statute, they are entitled to receive from the state the salary which has been defined in the constitution. State ex rel. Buck v. Hickman, 10 Mont. 497, 499, 26 Pac. 386.

In the event of a tie vote for clerk of the district court, the board of county commissioners is authorized to appoint to fill the vacancy. State ex rel. Jones v. Foster, 39 Mont. 583, 592, 104 Pac. 860.

In every instance of appointment to fill a vacancy in an elective office, unless an exception be made in the office of county commissioner, the constitution specifically limits the tenure of the appointee to the next general election, or "until his successor is elected and qualified"; and this phrase is literally construed by the concluding sentence of the above section, for if an appointee holds for the residue of the term, then there could never be "a person elected to fill a vacancy" if an appointment had been made. That sentence is intelligible only upon the theory that the appointee holds only until the next general election, or until the person elected for the residue of the term qualifies. State ex rel. McGowan v. Sedgwick, 46 Mont. 187, 190, 127 Pac. 94.

The general policy of the state government is that election to office, when it may be conveniently done, is the rule, and that appointment to fill vacancies shall be effective only until the people can elect. That this was the intention of the constitutional convention is clearly indicated by the last two sentences of this section. State ex rel. Patterson v. Lentz, 50 Mont. 322, 340, 146 Pac. 932.

Cited or applied in State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403; State ex. rel. Rowe v. Kehoe, 49 Mont. 582, 585, 144 Pac. 162.

Sec. 35. No justice of the supreme court or district judge shall hold any other public office while he remains in the office to which he has been elected or appointed.

This section is a prohibition against a district judge holding any other office. State v. Jackson, 9 Mont. 508, 519, 24 Pac. 213.

Right of persons to hold two judicial positions at the same time, see 8 L. R. A. (N. S.) 1107.

Sec. 36. A civil action in the district court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment or decree, made or rendered therein by such judge pro tempore, shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

The authority given by this section to a special judge to try a case carries with it authority to do any act incidental or necessary to the exercise thereof. Littrell v. Wilcox, 11 Mont. 77, 79, 27 Pac. 394.

Sec. 37. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

Cited or applied in Wallace v. Helena Electric Ry. Co., 10 Mont. 24, 45, 24 Pac. 626, 25 Pac. 278.

Meaning of "absent" or "absence" as applied to judge, see Ann. Cas. 1912C, 353.

ARTICLE IX.

RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE.

Section 1. All elections by the people shall be by ballot.

The use of voting machines is not in contravention of this section. State ex rel. Fenner v. Keating, 53 Mont. 371, 163 Pac. 1156.

Cited or applied in State ex rel. Chenoweth v. Acton, 31 Mont. 37, 41, 77 Pac. 299.

Constitutionality of Australian ballot acts, see 4 Ann. Cas. 144.

Validity of nonpartisan ballot law, see Ann. Cas. 1915C, 504.

Sec. 2. Every person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people and upon all questions which may be submitted to the vote of the people: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law; provided, first that no person convicted of felony shall have the right to vote unless he has been pardoned; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided, that after the expiration of five years from the time of the adoption of this constitution, no person except citizens of the United States shall have the right to vote.

Note.—Section 2 is given as amended by act approved January 25, 1913 (L. 1913, Ch. 1), and adopted at the general election of November, 1914. Effective under governor's proclamation December 9, 1914.

The fact that by section 3 of chapter 29 Laws of 1907, pp. 50, 920 et seq., establishing county free high schools, the electors who favor the establishment of such schools are designated as the persons who shall determine the location of it, is not a valid objection to its constitutionality as depriving those opposed to such school of the right to vote on the question of its location, contrary to this section. Evers v. Hudson, 36 Mont. 135, 151, 92 Pac. 462.

Save where otherwise indicated, the term "qualified elector" means a person who possesses the qualifications prescribed by the constitution as necessary to entitle him to vote; it does not mean simply a registered voter. State ex rel. Lang v. Furnish, 48 Mont. 28, 32, 134 Pac. 297.

In the absence of any property test for voters, a person who possesses the qualifications enumerated in this section, and who is duly registered, is entitled to vote without reference to his property holdings. State ex rel. Eagye v. Bawden, 51 Mont. 357, 359, 152 Pac. 761.

Cited or applied before amendment in State ex rel. Chenoweth v. Acton, 31 Mont. 37, 43, 77 Pac. 299; as amended in State ex rel. Fadness v. Eie, 53 Mont. 138, 144, 162 Pac. 164; Rose v. Sullivan, 56 Mont. 480, 482, 185 Pac. 562.

Residence as synonymous with "domicile" in statute regulating qualification of voters, see Ann. Cas. 915C, 792.

Power of legislature to define qualifications of voters, see 7 Ann. Cas. 665.

What constitutes conviction of crime within constitutional provision denying right to vote to convicted person, see 15 Ann. Cas. 103.

Acquiring residence as voter while attending school or public institution, see 23 L. R. A. 215; 40 L. R. A. (N. S.) 168.

Sec. 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States, nor while engaged in the navigation of the waters of the state, or of the United States, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public prison.

Sec. 4. Electors shall in all cases, except treason, felony or breach of peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.

Sec. 5. No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.

Sec. 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.

Sec. 7. No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment.

Sec. 8. No idiot or insane person shall be entitled to vote at any election in this state.

Cited or applied in State v. Martin, 24 Mont. 403, 408, 62 Pac. 590.

Sec. 9. The legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise.

Registration is no part of the qualifications of an elector, and adds nothing to them; it is merely a method of ascertaining who the qualified electors are, in order that abuses of the elective franchise may be guarded against. State ex rel. Lang v. Furnish, 48 Mont. 28, 33, 134 Pac. 297; State ex rel. Fadness v. Eie, 53 Mont. 138, 145, 162 Pac. 164.

Cited or applied in State ex rel. Metcalf v. Wileman, 49 Mont. 436, 440, 143 Pac. 565; Harrington v. Crichton, 53 Mont. 388, 164 Pac. 537.

Sec. 10. Women shall be eligible to hold the office of county superintendent of schools or any school district office, and shall have the right to vote at any school district election.

The constitution prescribes no other qualifications for a county superintendent of schools than those provided for in this and the following sections; that is, the person must be either a woman, or a person qualified to vote at general elections and for state officers in this state. State ex rel. Chenoweth v. Acton, 31 Mont. 37, 43, 77 Pac. 299.

Cited or applied in Rose v. Sullivan, 56 Mont. 480, 185 Pac. 562.

Right of women to vote, see 21 L. R. A. 662, 27 L. R. A. (N. S.) 522, L. R. A. 1915B, 247.

Sec. 11. Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution, and subject to such additional qualifications as may be prescribed by the legislative assembly for city offices and offices hereafter created.

By the adoption of the suffrage amendment to the constitution, the sex attribute as a qualification to hold office was eliminated, and the use of the word "male" in a statute prescribing a qualification for office is of no effect. Rose v. Sullivan, 56 Mont. 480, 185 Pac. 562.

Cited or applied in State ex rel. Kennedy v. Martin, 24 Mont. 403, 408, 62 Pac. 588; State ex rel. Chenoweth v. Acton, 31 Mont. 37, 43, 77 Pac. 299.

Power of legislature to define qualifications of public officer, see Ann. Cas. 1915A, 343.

Sec. 12. Upon all questions submitted to the vote of the taxpayers of the state, or any political division thereof, women who are taxpayers and

possessed of the qualifications for the right of suffrage required of men by this constitution, shall equally with men have the right to vote.

Cited or applied in Potter v. Furnish, 46 Mont. 391, 394, 128 Pac. 542.

Sec. 13. In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected.

If section 10814 permits a candidate who did not receive the highest number of legal votes to be declared elected upon a judgment of ouster in a contest proceeding, it is void as in contravention of this section. Cadle v. Town of Baker, 51 Mont. 176, 185, 149 Pac. 960.

Cited or applied in Stackpole v. Hallahan, 16 Mont. 40, 40 Pac. 80, 28 L. R. A. 502; State ex rel. Brooks v. Fransham, 19 Mont. 273, 289, 48 Pac. 1; State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403.

Tie vote in election, see 17 Ann. Cas. 574.

Effect of tie vote at primary election, see Ann. Cas. 1913E, 745.

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

Section 1. Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, soldiers' home, and such other institutions as the public good may require, shall be established and supported by the state in such a manner as may be prescribed by law.

There being no constitutional prohibition, the state may, under its police power, lawfully engage in the business of operating a grain elevator or in other similar business for the benefit of the public. State ex rel. Lyman v. Stewart, 58 Mont. 1, 6, 190 Pac. 129.

Sec. 2. At the general election in the year one thousand eight hundred and ninety-two, the question of permanent location of the seat of government is hereby provided to be submitted to the qualified electors of the state, and the majority of all the votes upon said question shall determine the location thereof. In case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be, and is hereby, submitted in like manner to the qualified electors at the next general election thereafter; provided, that until the seat of government shall have been permanently located the temporary seat of government shall be and remain at the city of Helena.

Cited or applied in State ex rel. Lloyd v. Rotwitt, 15 Mont. 29, 30, 37 Pac. 845.

Sec. 3. When the seat of government shall have been located as herein provided the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the state voting on that question at a general election at which the question of the location of the seat of government shall have been submitted by the legislative assembly.

Sec. 4. The legislative assembly shall make no appropriations or expenditures for capitol buildings or grounds until the seat of government shall have been permanently located, as herein provided.

Sec. 5. The several counties of the state shall provide as may be prescribed by law for those inhabitants, who, by reason of age, infirmity or misfortune, may have claims upon the sympathy and aid of society.

The statute imposing a poll-tax is a police regulation designed to carry into effect the provisions of this section; such an imposition is not a "tax" within the meaning of the constitution and revenue measures generally, and is therefore not subject to the uniformity rule or other restrictions incident to such measures. Pohl v. Chicago, Milwaukee & St. Paul Ry. Co., 52 Mont. 572, 577, 160 Pac. 515. See, also, Hilger v. Moore, 56 Mont. 146, 169, 182 Pac. 477.

Cited and construed with section 1, article XIII, in State ex rel Cryderman v. Wienrich, 54 Mont. 390, 395, 170 Pac. 942.

ARTICLE XI.

EDUCATION.

Section 1. It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.

While the legislative assembly has the power to establish a series of text-books for use in the public schools of the state, this section does not require the adoption of a uniform series of text-books throughout the state by that body. Campana v. Calderhead, 17 Mont. 548, 550, 44 Pac. 83, 36 L. R. A. 277.

This section does not prohibit the enactment of a law classifying school districts for the purposes of the election of trustees according to population, so long as the law provides for a reasonable classification and is reasonable and uniform in its operation and effect upon all districts within the same classification—although, at the time of the passage of the act, only a few districts would be included within the law. State ex rel. Bray v. Long, 21 Mont. 26, 30, 52 Pac. 645.

This section and section 11 of this article are not exclusive so as to limit the legislative power to the establishment and maintenance of common schools and state institutions only. The purpose of this section is to insure a system of common schools, but there is nothing in it which limits the power of the legislature to provide for other schools. The section is not a limitation upon the legislative power, but is a solemn mandate to the legislature. Evers v. Hudson, 36 Mont. 135, 150, 92 Pac. 462.

Cited in State ex rel. Shapley v. Board of Commrs. of Yellowstone Co., 12 Mont. 503, 506, 31 Pac. 78.

For text treatment of this subject, see 24 R. C. L. 553; also, article on Schools in Cal. Jur.

Sec. 2. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government known as school lands; and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes.

Neither this provision nor that contained in section 1 of article XVII deals with the subject of the capacity of the state to acquire property. Both are limitations upon the power of disposal by the legislature. They also embody an express injunction upon the legislature that the property with which they deal must be devoted exclusively to the purposes for which it has been or may be acquired. In re Beck's Estate, 44 Mont. 561, 576, 121 Pac. 784.

Cited or applied in State ex rel. Knight v. Cave, 20 Mont. 468, 471, 52 Pac. 200; State ex rel. Evans v. Stewart, 53 Mont. 18, 23, 161 Pac. 309.

Sec. 3. Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law.

An act providing for the investment of school funds is not invalid because it discriminates against certain securities. State ex rel. Evans v. Stewart, 53 Mont. 18, 24, 161 Pac. 309.

Cited or applied in State ex rel. Knight v. Cave, 20 Mont. 468, 471, 52 Pac. 200; Butte v. School District, 29 Mont. 336, 74 Pac. 869.

Sec. 4. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, control, leasing and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law.

Cited or applied in State ex rel. Koch v. Barret, 26 Mont. 62, 65, 66 Pac. 504; State ex rel. Gravely v. Stewart, 48 Mont. 347, 350, 137 Pac. 854.

Sec. 5. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be apportioned annually to the several school districts of the state in proportion to the number of children and youths between the ages of six (6) and twenty-one (21) residing therein respectively, but no district shall be entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made. The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the public school funds of the state and become and forever remain an inseparable and inviolable part thereof.

Note.—This section is given as amended by chapter 149, Laws of 1919, approved at election of November 2, 1920, effective under governor's proclamation December 6, 1920.

Cited or applied in State ex rel. Knight v. Cave, 20 Mont. 468, 471, 52 Pac. 200.

Sec. 6. It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year.

Cited in State ex rel. Shapley v. Board of Commrs. of Yellowstone Co., 12 Mont. 503, 506, 31 Pac. 78; State ex rel. Knight v. Cave, 20 Mont. 468, 471, 52 Pac. 200.

Sec. 7. The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years.

Sec. 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church,

or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

Sec. 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

Sectarianism in schools, see 5 A. L. R. 866.

Permitting use of school house for religious meetings, see 5 A. L. R. 886.

Validity of rule forbidding religious garb in school, see 7 L. R. A. (N. S.) 403.

Teaching religious doctrines in public schools, see 2 Ann. Cas. 522, 19 Ann. Cas. 234, Ann. Cas. 1916A, 312.

Sec. 10. The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for.

Sec. 11. The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the governor, state superintendent of public instruction, and attorney general, being members ex-officio; the other eight members thereof shall be appointed by the governor; subject to the confirmation of the senate, under the regulations and restrictions to be provided by law.

The state board of education was created by the legislature under the authority of this section. State ex rel. Koch v. Barret, 26 Mont. 62, 66, 66 Pac. 504.

This section does not limit the legislative authority to establishing and maintaining common schools and state institutions, and is not offended by Laws of 1907, chapter 29, p. 50, authorizing the establishment of county free high schools. Evers v. Hudson, 36 Mont. 135, 149, 92 Pac. 462.

Cited or applied in In re Beck's Estate, 44 Mont. 561, 581, 121 Pac. 784, 1057.

Sec. 12. The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

Pursuant to the constitution, the legislature has enacted regulations under which, in default of sale, all agricultural and grazing lands may be leased under the direction of the state land commission for terms not exceeding five years, and requiring the revenues derived therefrom to be paid into the hands of the state treasurer. The lands selected for the use of the state agricultural college under the grant by congress are subject to these regulations. State ex rel. Koch v. Barret, 26 Mont. 62, 65, 66 Pac. 504.

The state normal school is one of the institutions of learning to which reference is made in this section. The funds referred to mean all funds, which shall be invested to draw interest, and used for no other purpose. State ex rel. Haire v. Rice, 33 Mont. 365, 385, 83 Pac. 874.

Chapter 3 of the session laws of 1905,

authorizing the state board of land commissioners to issue and sell bonds, the proceeds to be applied to the erection, furnishing, and equipment of an addition to the state normal school building, and pledging as security, for the payment of the principal and interest on such bonds the lands granted by section 17 of the Enabling Act, is void as being in violation of this section. State ex rel. Haire v. Rice, 33 Mont. 365, 385, 83 Pac. 874; affirmed in State of Montana ex rel. Haire v. Rice, 204 U. S. 291, 27 Sup. Ct. 281, 51 L. Ed. 490.

This section is not in conflict with section 17 of the Enabling Act, which grants certain lands to the state of Montana for the state normal school, and provides for the manner in which such lands shall be held and disposed of and the funds derived therefrom applied. State ex rel. Haire v. Rice, 33 Mont. 365, 387, 83 Pac. 874.

The purpose of the grant in aid of the state normal school is observed, and carried into effect by this section. Provision is made for the support of the state normal school for all time. The principal sums derived from the sales of lands or of timber are made to serve this institution, by earning interest which may be applied to its maintenance and perpetuation, while the principal sums themselves are kept inviolate. State ex rel. Haire v. Rice, 33 Mont. 365, 388, 83 Pac. 874.

Cited or applied in State ex rel. Evans v. Stewart, 53 Mont. 18, 23, 161 Pac. 309.

ARTICLE XII.

REVENUE AND TAXATION.

Section 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

The constitution does not require that licenses shall be uniform, and the first sentence of this section and section 11 of this article should be read together and a statute providing for a graduated license tax on steam laundries and laundrymen is valid. State ex rel. Sam Toi v. French, 17 Mont. 54, 41 Pac. 1078, 30 L. R. A. 415.

The word "also" in the last sentence of this section was not used to carry into the sentence where it occurs the idea expressed in the sentence preceding it, to the effect that the legislature may also impose license taxes for the support of the state, but was used simply to connect the idea of the two systems of revenue, and for that reason the imposing of license taxes is not restricted to the purpose of state revenue alone. State v. Camp Sing, 18 Mont. 128, 44 Pac. 516, 56 Am. St. Rep. 551, 32 L. R. A. 635.

The act, approved March 4, 1897, providing that all property of a decedent shall be subject to a tax at a fixed rate on every one hundred dollars, but that an estate valued at less than seven thousand five hundred dollars shall not be subject to any such "tax or duty," is not in conflict with this section, although the act does not impose a uniform rate of taxation upon all heirs, devisees, legatees, and distributees. Gelsthorpe v. Furnell, 20 Mont. 299, 307, 51 Pac. 267, 39 L. R. A. 170.

It was the intention of the legislature acting under the power vested in it by the constitution to make the action of the assessor and county commissioners final, when sitting as a board of equalization, and to deny to the courts the power to review their judgment or to assume supervisory control over their proceedings, and it is only where they act fraudulently or maliciously, or the mistake is so gross as to be inconsistent with any exercise of honest judgment that the courts will interfere. Danforth v. Livingston, 23 Mont. 558, 59 Pac. 916.

Two schemes or systems of taxation are recognized by this section—a property tax and a license tax. Authority is also given by this section for the coexistence of both of these systems of taxation with reference to the same person or corporation. The two systems are not mutually dependent. Each is independent of the other, and the existence of one is not a bar to the imposition of the other. Northwestern Mut. Life Ins. Co. v. Lewis and Clark County, 28 Mont. 484, 490, 72 Pac. 982, 98 Am. St. Rep. 572.

The franchise right of a foreign company to do business in this state is property, and if it proves valuable, it is a proper subject for taxation within the

meaning of this article. Northwestern Mut. Life Ins. Co. v. Lewis and Clark County, 28 Mont. 484, 493, 72 Pac. 982; 98 Am. St. Rep. 572.

The provision that the legislature "shall prescribe such regulations as shall secure a just valuation for taxation of all property," applies to artificial as well as to natural persons. Northwestern Mut. Life Ins. Co. v. Lewis and Clark County, 28 Mont. 484, 495, 72 Pac. 982, 98 Am. St. Rep. 572.

While section 681 of the Civil Code of 1895, declaring that "each and every insurance corporation or company transacting business in this state must be taxed upon the excess of premiums received over losses and ordinary expenses incurred within the state during the year" is constitutional, the portion of said section which provides that such companies are subject to no other taxation under the laws of this state, except taxes on real estate and fees imposed by law, is unconstitutional, as being in conflict with section 1 and section 7 of this article. Northwestern Mut. Life Ins. Co. v. Lewis and Clark County, 28 Mont. 484, 495, 72 Pac. 982, 98 Am. St. Rep. 572.

This article of the constitution deals exclusively with the subject of taxation for state, county, and other purposes, including city revenue. State ex rel. City of Butte v. Weston, 29 Mont. 125, 128, 74 Pac. 415.

This section provides that the legislative assembly shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that particularly exempted. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 105, 81 Pac. 950.

The purpose of section 2003, which provides for the taxation of solvent credits, less such debts as may be owing by the taxpayer, being merely to ascertain the just amount and value of property subject to taxation, in conformity with the above section of the constitution, does not have the effect of exempting from taxation property other than that enumerated in the next succeeding section of this article, and said section is therefore not unconstitutional. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 107, 81 Pac. 950.

The provisions of this section are prohibitory, and the legislature cannot delegate the authority conferred thereby to cities and towns. But, while the legislature may not confer upon cities and towns the right to impose a license tax upon professions and occupations for the purpose of raising revenue, it may, in the absence of constitutional limitation, authorize them to impose such a tax in aid of police regulations. Johnson v. City of Great Falls, 38 Mont. 369, 373, 99 Pac. 1059, 16 Ann. Cas. 974. See, also, Reilly v. Hatheway, 46 Mont. 1, 9, 125 Pac. 417; City of Butte v. Montana Independent Tel. Co., 50 Mont. 574, 579, 148 Pac. 384.

The constitution gives the power to impose a license tax upon persons doing business in the state, and in exercising the power given the legislature is not required to tax all occupations equally or uniformly; it may single out one for the purpose, provided in imposing the tax it treats all persons alike who are engaged in it. Quong Wing v. Kirkendall, 39 Mont. 64, 69, 101 Pac. 250.

All property in the state, except such as is specifically mentioned in the constitution, is subject to taxation. Hale v. County of Jefferson, 39 Mont. 137, 141, 101 Pac. 973.

The legislature is vested with the power, and is required, to provide the necessary revenue for the support and maintenance of government, and for this purpose to levy a uniform rate of taxation upon all property in the state, except such as is exempted by express provision of the constitution itself. Its power in this behalf is to be exercised in regular session and not at other times, because provision for its support and maintenance is one of the ordinary functions of government. State ex rel. Bennett v. State Board of Examiners, 40 Mont. 59, 62, 104 Pac. 1055.

Property and occupation are alike legitimate objects of taxation. An occupation tax may be imposed either for regulation or revenue, or both, as provided for in Laws of 1909, chapter 67, p. 81, an act to create a state accident insurance and total permanent disability fund for coal miners, etc. Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 213, 119 Pac. 554.

All occupations are now required to be taxed equally, provided the burden falls upon all of the same class alike. State v. Hammond Packing Co., 45 Mont. 343, 123 Pac. 407.

The provisions of chapters 48 and 49, Laws of 1919 (2123), relating to the powers and duties of the state board of equalization, and authorizing said board to make an orignal assessment of the rights of way, pole, and transmission lines, distributing systems, etc., of electric power companies, and of section 2001, providing that all taxable property must be assessed at its full cash value, are to be read in the light of the constitutional requirement that there shall be a uniform rate of assessment and taxation, and a just valuation for taxation of all property. State v. State Board of

Equalization, 56 Mont. 413, 444, 185 Pac. 708.

This section does not prohibit the legislature from classifying property for the purpose of taxation. Hilger v. Moore, 56 Mont. 146, 182 Pac. 477.

Idem. The rule of uniformity of taxation, based upon the mandatory injunction to the legislature contained in the first sentence of this section and a consideration of section 11, article XII, of the constitution, held to be: That it shall prescribe such uniform mode of assessment as shall secure a just valuation of all taxable property; that all taxes shall be levied and collected by general laws and for public purposes only, and that they shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

Idem. "Assessment," within the meaning of this section, is the process by which persons subject to taxation are listed, their property described, and its value ascertained and stated; "taxation" is the determination of the rate of levy and imposing it.

Sections 3220 et seq. requiring a levy of a tax upon lands "agricultural in character" for the purpose of bond issues for the construction of state terminal elevators, does not violate the uniformity clause of the constitution. State ex rel. Lyman v. Stewart, 58 Mont. 1, 6, 190 Pac. 129. Reversed on the ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

Cited or applied in State v. Bernheim, 19 Mont. 512, 517, 49 Pac. 441; In re Tuohy's Estate, 35 Mont. 431, 437, 90 Pac. 170; Cobban v. Meagher, 42 Mont. 399, 406, 113 Pac. 290; State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 32, 140 Pac. 82; State ex rel. Carter v. Kall, 53 Mont. 162, 162 Pac. 385; Wells Fargo & Co. v. Harrington, 54 Mont. 235, 238, 169 Pac. 463; Dennis v. First National Bank of Great Falls, 55 Mont. 448, 455, 178 Pac. 580; Hayes v. Smith, 58 Mont. 306, 311, 192 Pac. 615.

For text treatment of this subject, see 26 R. C. L. 1; also, article on Taxation in Cal. Jur.

Sec. 2. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for the agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity and evidences of debt secured by mortgages of record upon real or personal property in the state of Montana, may be exempt from taxation.

Note.—Section 2 is given as amended by chapter 142, Laws of 1917, adopted at the general election of 1918, effective under governor's proclamation December 28, 1918.

Only property that is devoted exclusively to a charitable use can be exempt from taxation. Montana Catholic Missions v. Lewis and Clark County, 13 Mont. 559, 35 Pac. 2, 22 L. R. A. 684.

As the provisions of the constitution are declared to be mandatory and prohibitory, the enumerations in this section are exclusive of any other. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 107, 81 Pac. 950.

It was not the intention of the framers of the constitution to write into the fundamental law any useless or meaningless phrases; and the very fact that they declared an exemption from taxation in favor of public property is a recognition of the principle that, without such express exemption, that property would be subject to taxation, along with the property of the private individuals, corporations, and others. City of Kalispell v. School District, 45 Mont. 221, 228, 122 Pac. 742, Ann. Cas. 1913D, 1101.

Special assessments are within the meaning of the constitution where it prohibits imposition by the legislature of taxes upon any property or instrumentality of the federal government. Ford v. City of Great Falls, 46 Mont. 292, 307, 127 Pac. 1004.

Under this section, and section 2088, before the land embraced in a mining claim becomes subject to taxation at a valuation greater than the price paid the government therefor, the taxing officers must ascertain, and they have the burden of showing when their authority is questioned, that the surface ground, or some portion thereof, is used for other than mining purposes and has an independent value for such purpose. Barnard Realty Co. v. City of Butte et al., 50 Mont. 159, 145 Pac. 946.

The provision of this section, declaring what property shall be exempt from taxaction, is mandatory in character and self-executing, and denies the legislature authority to tax any property of the class

therein specified. Cruse v. Fischl, 55 Mont. 258, 263, 175 Pac. 878.

The legislature may extend the exemption to the property enumerated in this section, but it cannot go further or include any other. Cruse v. Fischl, 55 Mont. 258, 263, 175 Pac. 878.

State and county bonds held in private ownership within the state are "property," within the meaning of that term as employed in the constitution and revenue laws of the state, and, not being declared exempt, are taxable as such. Cruse v. Fischl, 55 Mont. 258, 265, 175 Pac. 878.

Cited or applied in Cobban v. Meagher, 42 Mont. 399, 406, 113 Pac. 290.

Prospective use for religious or charitable purpose as rendering property exempt from taxation, see 2 A. L. R. 545.

Exemption of educational institutions from taxation, see 1 Ann. Cas. 839.

Sec. 3. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law.

The annual net proceeds of coal mines and mining claims, acquired under the laws of the United States, relative to the acquisition of coal lands, are subject to taxation in the manner provided for by the constitution and laws of the state. Montana Coal & Coke Co. v. Livingston, 21 Mont. 59, 52 Pac. 780.

Where a mining claim was within the limits of a city, and, while it had never been made an addition to the city, the owners had made a plat, and sold lots and blocks from the claim for town site purposes, describing the portions sold by metes and bounds, and it appeared that a shaft had once been sunk on such reserve, but that it had been abandoned, and that the lot on which the shaft was sunk had been sold, the so-called reserve was taxable for purposes other than mining. Murray v. Hinds, 30 Mont. 466, 469, 76 Pac. 1039.

This section, limiting the measure of value of mines for taxation purposes, does not apply to a tax imposed on the privilege of taking by will, succession, or testamentary grant. In re Tuohy's Estate, 35 Mont. 431, 437, 90 Pac. 170.

Mines and mining claims of all sorts are exempt from taxation, the exemption having no reference, however, to the surface ground used for some other purpose and having a separate value. Hale v. County of Jefferson, 39 Mont. 137, 141, 101 Pac. 973.

The object of this section was to encourage the acquisition and profitable development of mines, by requiring the owners to pay taxes upon the annual net proceeds or profits only, in addition to the cost of acquisition, the water rights and ditches used in connection with them being not otherwise taxable, unless they can be shown to have an independent value by reason of profitable use for some other purpose. Hale v. County of Jefferson, 39 Mont. 137, 143, 102 Pac. 973.

This section was designed to favor the mining industry of the state in the matter of the taxation of mining property. Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 519, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

The surface ground of an unpatented mining claim, when used for other than mining purposes, and when it has a separate value for such other purposes, is subject to taxation. Cobban v. Meagher, 42 Mont. 399, 409, 113 Pac. 290.

The expression "all mines" in the last clause of this section, providing that among other things the net proceeds thereof shall be taxed, was intended to apply to all mineral deposits—both those found in lands purchased from the United States under the mining laws, and those obtained by grant or purchase under other laws. Northern Pacific Ry. Co. v. County of Musselshell et al., 54 Mont. 96, 169 Pac. 53.

Cited or applied in Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 304, 137 Pac. 386.

Sec. 4. The legislative assembly shall not levy taxes upon the inhabitants or property in any county, city, town, or municipal corporation for county, town, or municipal purposes, but it may by law invest in the corporate authorities thereof powers to assess and collect taxes for such purposes.

The provisions of this section contemplate that the power to levy and collect taxes authorized by law for municipal purposes may be vested in the city government. Lockey v. Walker, 12 Mont. 577, 583, 31 Pac. 639.

A license tax is not within the inhibition of this section, and the boundary license tax law, allowing seventy per cent of the licenses to be retained by the county does not levy a tax upon the inhabitants or property in a county for county purposes. State v. Camp Sing, 18 Mont. 129, 44 Pac. 516, 56 Am. St. Rep. 551, 32 L. R. A. 635.

There is no particular significance in the use of the words "inhabitants" and "property" as used in this section, for the taxation referred to means a tax upon a person levied upon the basis of the property owned. State v. Camp Sing, 18 Mont. 128, 44 Pac. 516, 56 Am. St. Rep. 551, 32 L. R. A. 635.

Subdivision 64 of section 4800 of the Political Code of 1895 (5039), providing that no municipality having a water supply furnished by private persons shall erect any water plant to be operated by itself, but if it desires to acquire such a plant, shall purchase or condemn such supply, is in conflict with this section. Helena C. W. Co. v. Steele, 20 Mont. 1, 8, 49 Pac. 382, 37 L. R. A. 412. Followed in State ex rel. Gerry v. Edwards, 42 Mont. 135, 148, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

The provisions of this section and of section 11 and section 18 of this article do not, either by implication or by express words, give the legislature power to make anybody but the county treasurer a collector of taxes. Mutual Life Ins. Co. v. Martien, 27 Mont. 437, 440, 71 Pac. 470.

Section 4867 et seq. of the Political Code of 1895, authorizing the collection of city taxes by the city treasurer, is not in violation of section 5 of article XVI of the constitution, when construed together with this section. State ex rel. City of Butte v. Weston, 29 Mont. 125, 127, 74 Pac. 415.

Section 4919, in so far as it makes it incumbent upon the clerk of the district court to collect from petitioners filing letters of administration or guardianship sums ranging from five to ninety-five dollars, regulated by the appraised value of the estate, the fees thus collected to become part of the public moneys of the county, is in contravention of this section. Hauser v. Miller, 37 Mont. 22, 24, 94 Pac. 197.

This section, in empowering cities and towns to assess and collect taxes, deals with revenue and taxation exclusively, and does not impliedly deny the power to such municipalities to impose license taxes in furtherance of police regulations. Johnson v. City of Great Falls, 38 Mont. 369, 375, 99 Pac. 1059, 16 Ann. Cas. 974.

Since this section deals exclusively with revenue and taxation, and does not attempt to deal with police regulations, Laws of 1897, p. 203, empowering cities and towns to impose occupation taxes, is not in contravention thereof. Johnson v. City of Great Falls, 38 Mont. 369, 375, 99 Pac. 1059, 16 Ann. Cas. 974.

Though special assessments for local improvements in the shape of drains in order to relieve marshy lands of surplus moisture are laid under the taxing power, their imposition does not fall within the restraints prescribed by this section and section 11 of this article, relative to how, upon whom, and on what property "taxes" may be levied. These sections refer solely to revenues which go to defray general governmental expenditures, as distinguished from special outlays to provide for purely local improvements. Billings Sugar Co. v. Fish, 40 Mont. 256, 276, 106 Pac. 565, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973.

The words "corporate authorities," as used in this section, mean those municipal officers who are either directly elected by the inhabitants of the municipalities, or appointed in some mode to which they have given their assent. State ex rel. Gerry v. Edwards, 42 Mont. 135, 142, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

In the absence of any definite information as to the meaning which the framers of the constitution attached to the words "corporate authorities," as employed in this section, it is a fair presumption that they used them with reference to the meaning which they had acquired in other states having the same constitutional provision. State ex rel. Gerry v. Edwards, 42 Mont. 135, 143, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

Since the exercise of the taxing power is a legislative function, the term "corporate authorities," as used in this section, must be interpreted as meaning the legislative branch of a city government, namely, the mayor and council. State

ex rel. Gerry v. Edwards, 42 Mont. 135, 143, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

The purpose of the framers of the constitution in drafting this section was to secure to the people of cities that measure of local self-government which they enjoyed at the time that instrument was framed and adopted. State ex rel. Gerry v. Edwards, 42 Mont. 135, 150, 111 Pac. 734, Ann. Cas. 1912A, 1063, 135 L. R. A. (N. S.) 1078.

The act of 1901, creating, in cities of the first class, boards of park commissioners, the members thereof to be appointed by the governor, and empowering them to raise by taxation such sums each year as they may deem necessary to carry on their work, is not only violate of the theory of local self-government established in this state, but also of the provisions of this section, in that such boards are not "corporate authorities" which may lawfully assess and collect taxes for municipal purposes. State ex rel. Gerry v. Edwards, 42 Mont. 135, 152, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

In the absence of a showing that in its operation section 2897, Revised Codes of 1907, requiring county printing to be done within the state, imposes upon the taxpayers a burden greater than they would have to bear if outside competition were permitted, and thus indirectly operates as a tax upon the inhabitants of counties contrary to this section, its constitutionality in that regard will not be determined. Hersey v. Neilson, 47 Mont. 132, 146, 131 Pac. 30, Ann. Cas. 1914C, 963.

Sections 3879 et seq., creating a public service commission and defining its powers, does not run counter to this section, no tax being levied by the commission, and the regulation of water rentals not constituting a levy of taxes. Public Service Commission v. City of Helena, 52 Mont. 527, 540, 159 Pac. 24.

Sec. 5. Taxes for city, town and school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes.

The municipal authorities of an incorporated city could make a legal assessment in electing to take the assessment made by the county and state assessing authorities as the basis for the levy of municipal taxes on property within such city; and the levy of lawful taxes thereon by such city for municipal purposes, according to the provisions of its charter and ordinances, constituted a legal levy. Lockey v. Walker, 12 Mont. 577, 583, 31 Pac. 639.

Cited in State ex rel. Shapley v. Board of Commrs. of Yellowstone Co., 12 Mont. 503, 506, 31 Pac. 78.

Sec. 6. No county, city, town or other municipal corporation, the inhabitants thereof nor the property therein, shall be released or discharged from their or its proportionate share of state taxes.

This section refers only to state taxes, and not to those imposed for county or local purposes, such as poll-taxes. Pohl v. Chicago, Milwaukee & St. Paul Ry. Co., 52 Mont. 572, 576, 160 Pac. 515.

Cited or applied in Montana Catholic Missions v. County of Lewis and Clark, 13 Mont. 559, 35 Pac. 2, 22 L. R. A. 684; Anaconda C. Min. Co. v. Ravalli County, 52 Mont. 422, 425, 158 Pac. 682.

Sec. 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

The evident meaning of this constitutional provision is that the property of corporations shall bear its equal share of the burden of taxation. Northwestern Mut. Life Ins. Co. v. Lewis and Clark County, 28 Mont. 484, 495, 72 Pac. 982, 98 Am. St. Rep. 572.

Section 611 of the Civil Code of 1895, providing that the property of trust deposit and security corporations shall be assessed for purposes of taxation in the same manner as national banks, is repugnant to sections 1 and 7 of this article, in that it exempts the personal

property of such companies from taxation. Daly Bank etc Co. v. Board of Commrs., 33 Mont. 101, 105, 81 Pac. 950.

The authorized capital stock of a corporation is not taxable as such against the corporation. Butte Land & Inv. Co. v. Sheehan, 44 Mont. 371, 120 Pac. 241.

Cited or applied in Monidah Trust v. Sheehan, 45 Mont. 424, 430, 123 Pac. 692; State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 33, 140 Pac. 82; Wells Fargo & Co. v. Harrington, 54 Mont. 235, 238, 169 Pac. 463.

Sec. 8. Private property shall not be taken or sold for the corporate debts of public corporations, but the legislative assembly may provide by law for the funding thereof, and shall provide by law for the payment thereof, including all funded debts and obligations, by assessment and taxation of all private property not exempt from taxation within the limits of the territory over which such corporations respectively have authority.

This section means nothing more than that the legislature is prohibited from enacting any statute under which private property may be taken to pay the debts of a public corporation, such as a county or city. Aside from this limitation the legislature was left free to enact such measures as it deemed best touching the subject-matter under consideration. If it failed to act at all, there is no power other than public opinion which can coerce it into activity. The provision of the constitution is addresed to the legislature, not to the board of county commissioners, and justification for the board's action must be fonud in the statutes, if such action can be justified at all. Edwards v. County of Lewis and Clark, 53 Mont. 359, 364, 165 Pac. 297.

Cited or applied in Hotchkiss v. Marion, 12 Mont. 218, 222, 29 Pac. 821; State ex rel. Shapley v. Board of Commrs., 12 Mont. 503, 505, 31 Pac. 78; Hamilton v. Board of County Commissioners, 54 Mont. 301, 307, 169 Pac. 729.

Sec. 9. The rate of taxation on real and personal property for state purposes, except as hereinafter provided, shall never exceed two and one-half mills on each dollar of valuation; and whenever the taxable property of the state shall amount to six hundred million dollars ($600,000,000.00) the rate shall never exceed two (2) mills on each dollar of valuation, unless the proposition to increase such rate, specifying the rate proposed and the time during which the rate shall be levied shall have been submitted to the people at the general election and shall have received a majority of all votes cast for and against it at such election; provided, that in addition to the levy for state purposes above provided for, a special levy in addition may be made on live stock for the purpose of paying bounties on wild animals and for stock inspection, protection and indemnity purposes, as may be prescribed by law, and such special levy shall be made and levied annually in amount not exceeding four mills on the dollar by the state board of equalization, as may be provided by law.

Note.—Section 9 is given as amended by act approved February 9, 1909 (L. 1909, Ch. 4), adopted at the general election of November, 1910, effective under governor's proclamation December 6, 1910.

The provision of this section, as it stood prior to its amendment, that when the taxable property in the state shall amount to three hundred million dollars, the rate of taxation for state purposes shall never thereafter exceed one and one-half mills on each dollar of valuation, was held not to be self-executing, in the sense that when the taxable property reached the above amount, after the levy had been fixed by the legislature at two and one-half mills, the then lawful rate, the rate was ipso facto reduced to one and one-half mills, but such reduction became operative only upon legislative action had at regular session. State ex rel. Bennett v. State Board of Examiners, 40 Mont. 59, 63, 104 Pac. 1055.

Cited or applied in State ex rel. Journal Pub. Co. v. Kenney, 10 Mont. 488, 492, 26 Pac. 383; State ex rel. State Board etc. v. Fortune, 24 Mont. 154, 60 Pac. 1086; In re Tuohy's Estate, 35 Mont. 431, 437, 90 Pac. 170; as amended, in State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 33, 140 Pac. 82.

Sec. 10. All taxes levied for state purposes shall be paid into the state treasury, and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law.

The only reasonable construction of this section, in connection with a provision that the county treasurer shall be the collector, is that the collector shall collect, and then pay into the state treasury, all taxes levied for state purposes. Mutual Life Ins. Co. v. Martien, 27 Mont. 437, 440, 71 Pac. 470.

Where a judgment ordered the state auditor to draw his warrant on the treasurer for the payment of money held as escheated property, as provided in chapter 132, Laws of 1913 (9962), although the legislature had not made an appropriation for that purpose, it was invalid as in direct conflict with this section. In re Pomeroy, 51 Mont. 119, 125, 151 Pac. 333.

Cited or applied in State ex rel. Journal Pub. Co. v. Kenney, 9 Mont. 389, 394, 24 Pac. 96; State v. Hickman, 11 Mont. 541, 29 Pac. 92.

Sec. 11. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

Section 681 of the Civil Code of 1895 applies to domestic, as well as foreign, insurance companies, and therefore complies with the above provision requiring taxes to be "uniform upon the same class of subjects." Northwestern Mut. Life Ins. Co. v. Lewis and Clark County, 28 Mont. 484, 491, 72 Pac. 982; 98 Am. St. Rep. 572.

The part of subdivision 8 of section 3695 of the Political Code of 1895, granting to private bankers the right to deduct their deposits (debts) from moneys on hand, for purposes of assessment, violates sections 11 and 16 of this article. Clark v. Maher, 34 Mont. 391, 400, 87 Pac. 272.

Section 4919, in so far as it makes it incumbent upon the clerk of the district court to collect from petitioners filing letters of administration or guardianship sums ranging from five to ninety-five dollars, regulated by the appraised value of the estate, is obnoxious to this section, in that the burdens imposed upon the estates falling within the enumerated classes are fixed arbitrarily and at unequal rates. Hauser v. Miller, 37 Mont. 22, 24, 94 Pac. 197.

Though special assessments for local improvements in the shape of drains in order to relieve marshy lands of surplus moisture are laid under the taxing power, their imposition does not fall within the restraints prescribed by this section and section 4 of this article, relative to how, upon whom, and on what property "taxes" may be levied. These sections refer solely to revenues which go to defray general governmental expenditures, as distinguished from special outlays to provide for purely local improvements. Billings Sugar Co. v. Fish, 40 Mont. 256, 276, 106 Pac. 565, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973.

The question whether a particular purpose for which taxes may be levied and collected is a public one, under this section, is for the legislature in the first instance, and courts will indulge every reasonable presumption in favor of the legislative decision in this respect. Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 12, 155 Pac. 268, L. R. A. 1916D, 628.

Taxes levied to provide a fund to be devoted to the relief of injured employees of a county which is subject to the provisions of the Workmen's Compensation Act of 1915 are for a public purpose, and therefore not obnoxious as offending against the provision of this section. Lewis and Clark County v. Industial Accident Board, 52 Mont. 6, 13, 155 Pac. 268, L. R. A. 1916D, 628.

A statute which seeks to make the counties of the state the guarantor of loans made by the state to individuals is invalid. State ex rel. Evans v. Stewart, 53 Mont. 18, 161 Pac. 309.

The seed-grain law of 1915, designed to furnish aid to persons engaged in agriculture who, because so reduced in circumstances by natural or other conditions beyond their control, that they have no means wherewith to purchase seed, is not in contravention of this section. State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 394, 170 Pac. 942.

Sections 1113 et seq., providing for teachers' pensions, is not invalid as in contravention of this section. Trumper v. School District No. 55, 55 Mont. 90, 93, 173 Pac. 946.

The term "subject of taxation" found in this section, held to have been used by the constitutional convention in its then popular sense, to-wit, to denote the different kinds of property liable to taxation. Hilger v. Moore, 56 Mont. 146, 182 Pac. 477.

Failure to make provision for reim-

bursement of the county from which the greater area for a proposed new county is taken for the expense incident to the creation of the new county, held not to render chapter 226, Laws of 1919, violative of this section, as casting an unequal burden of taxation upon the old county. State ex rel. Woodward v. Moulton et al., 57 Mont. 414, 189 Pac. 59.

A statute requiring the taxation of all livestock brought into the state after a certain date for the purpose of grazing, and not applying to all other personal property, constitutes an unjust discrimination and violates the uniformity rule of taxation. Hayes v. Smith, 58 Mont. 306, 311, 192 Pac. 615.

Cited or applied in Lockey v. Walker, 12 Mont. 577, 582, 31 Pac. 639; State ex rel. Sam Toi v. French, 17 Mont. 54, 41 Pac. 1078, 30 L. R. A. 415; Gelsthorpe v. Furnell, 20 Mont. 299, 307, 51 Pac. 267, 39 L. R. A. 170; Mutual Life Ins. Co. v. Martien, 27 Mont. 437, 440, 71 Pac. 470; In re Tuohy's Estate, 35 Mont. 431, 437, 90 Pac. 170; Monidah Trust v. Sheehan, 45 Mont. 424, 430, 123 Pac. 692; State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 33, 140 Pac. 82; Hamilton v. Board of County Commrs., 54 Mont. 301, 169 Pac. 729.

Constitutionality of statutes providing for bounty or pension for soldiers, see 7 A. L. R. 1636.

Appropriations of public moneys for private purposes, see 1 Ann. Cas. 935.

Sec. 12. No appropriation shall be made nor any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years.

This section, providing that no appropriation of public moneys shall be made for a longer term than two years, is prospective only, and does not affect an appropriation made by the act of the legislature relating to the publication of the supreme court reports, approved March 8, 1889, before the adoption of the constitution. State ex rel. Maddox v. Kenney, 11 Mont. 553, 555, 29 Pac. 89.

This section operates as an automatic limit, so that an unlimited appropriation as to time will expire at the end of two years, and is not void ab initio. Hill v. Rae, 52 Mont. 378, 388, 158 Pac. 826, Ann. Cas. 1917E, 210, L. R. A. 1917A, 495.

To assist the United States in war is expressly recognized by this section as a proper and probable occasion for the use of state funds. State ex rel. Campbell v. Stewart, 54 Mont. 504, 510, 171 Pac. 755, Ann. Cas. 1918D, 1101.

The purpose of sections 5624 et seq., known as the war defense act, being to assist in the defense of the United States, the appropriation made therein falls within the exception found in this section, under which the legislature may properly make an appropriation without a fund behind it, and without provision having been first made for levying a tax to furnish such fund, it having, in these circumstances, the power to authorize any proper public agency to procure the necessary funds by borrowing; that is, the sale of bonds. State ex rel. Campbell v. Stewart, 54 Mont. 504, 511, 171 Pac. 755, Ann. Cas. 1918D, 1101.

The right and duty of the state to assist in defending the United States in time of war is recognized by express declaration of this section of our constitution. State v. Kahn, 56 Mont. 108, 116, 182 Pac. 107.

Cited or applied in State ex rel. Harrington v. Kenney, 10 Mont. 410, 413, 25 Pac. 1022; State ex rel. Journal Pub. Co. v. Kenney, 10 Mont. 488, 26 Pac. 383; State ex rel. Bickford v. Cook, 17 Mont. 529, 43 Pac. 928; State ex rel. Morotz v. Rickards, 17 Mont. 440, 43 Pac. 504; State ex rel. Helena W. W. Co. v. City of Helena, 24 Mont. 521, 532, 63 Pac. 99; 81 Am. St. Rep. 453, 55 L. R. A. 336; State ex rel. Bennett v. State Board of Examiners, 40 Mont. 59, 62, 104 Pac. 1055.

Sec. 13. The state treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal year report

to the governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund, and the place or places where the the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The governor, or other person or persons authorized by law, shall verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the legislative assembly may require. The legislative assembly may provide by law further regulations for the safe keeping and management of the public funds in the hands of the treasurer; but notwithstanding any such regulations, the treasurer and his sureties shall in all cases be held responsible therefor.

Sec. 14. The governor, state auditor and state treasurer are hereby constituted a state depository board with full power and authority to designate depositories with which all funds in the hands of the state treasurer shall be deposited, and at such rate of interest as may be prescribed by law. When money shall have been deposited under direction of said depository board and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud or dishonorable conduct. The making of profit out of public moneys, or using the same for any purpose not authorized by law, by the state treasurer or by any other public officer, shall be deemed a felony, and shall be punished as provided for by law and part of such punishment shall be disqualification to hold any public office.

Note.—Section 14 is given as amended by act approved March 6, 1907 (Ch. 123, L. 1907), and adopted at the general election November, 1908, effective under governor's proclamation December 9, 1908.

Cited or applied in State ex rel. Evans v. Stewart, 53 Mont. 18, 24, 161 Pac. 309.

Sec. 15. The board of county commissioners of each county shall constitute a county board of equalization and the governor, secretary of state, state treasurer, state auditor and attorney general shall constitute a state board of equalization. The duty of the county board of equalization shall be to adjust and equalize the valuation of taxable property within their respective counties and all such adjustments and equalization may be supervised, reviewed, changed, increased or decreased by the state board of equalization. The state board of equalization may adjust and equalize the valuation of taxable property among the several counties and the different classes of taxable property in the same and in the several counties and between individual taxpayers; supervise and review the acts of county assessors and county boards of equalization; change, increase or decrease valuations made by county assessors or equalized by county boards of equalization and has such authority and may do all things necessary to secure a fair, just and equitable valuation of taxable property among the counties and between the different classes of property and individuals.

Note.—Section 15 is given as amended by act approved March 1, 1915 (Ch. 47, L. 1915), adopted at the general election of November, 1916, effective under governor's proclamation December 4, 1916.

The state board of equalization has no power to increase the total valuation of the property of the state as disclosed and fixed by the abstracts and statements transmitted to it by the assessors and county boards of equalization. State ex rel. Wallace v. Equalization Board, 18 Mont. 473, 46 Pac. 266.

Since this section was adopted from the constitution of Colorado after an interpretation thereof by the court of last resort of that state, the presumption is that the convention which framed the Montana constitution was conversant with and designed to adopt also the interpretation previously given to the section in Colorado. State ex rel. State Board etc. v. Fortune, 24 Mont. 154, 60 Pac. 1086.

The omission from this section, as amended, of the words, that the boards "shall perform such other duties as may be prescribed by law," does not imply any restriction upon the power of the state board of equalization in the matter of original assessment, nor confine it to the assessment of the property of railroads. State v. State Board of Equalization, 56 Mont. 413, 442, 185 Pac. 708.

Cited or applied, before amendment, in Missouri River Power Co. v. Steele, 32 Mont. 433, 438, 80 Pac. 1093.

Sec. 16. All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts.

The franchise which is made taxable by the constitution is not the bare right conferred upon corporations to do business in the state, but that special privilege, not enjoyed by citizens generally, which represents something out of which the tax may be realized by forced sale, if necessary, as, for instance, the franchise of street railway, telephone and telegraph, gas and water companies; hence the franchise of an express company, under which it enjoys no such special privilege, is not subject to taxation. Wells Fargo & Co. v. Harrington, 54 Mont. 235, 238, 169 Pac. 463.

Electric transmission lines are not part of a roadbed and are assessable by the county assessor. Chicago, Mil. & St. P. Ry. v. Murray, 55 Mont. 162, 174 Pac. 704.

By this section the legislature is vested with plenary power in matters of the assessment of property for purposes of taxation, including the power to designate the agency through which the assessment shall be made; hence section 2123, which authorizes the state board of equalization to make an original assessment of the rights of way, pole, and transmission lines, distributing systems, etc., of electric power companies, is not constitutionally objectionable as conferring the power upon an unauthorized agency. State v. State Board of Equalization, 56 Mont. 413, 440, 185 Pac. 708.

By conferring the power of assessing the property of railroads upon the state board of equalization, the constitution did not impliedly exclude all other powers of original assessment. State v. State Board of Equalization, 56 Mont. 413, 442, 185 Pac. 708.

The authority contained in the first sentence of this section is not in anywise abridged by the remainder of the section, which empowers the state board of equalization to assess railroad property. The provisions of the section are mandatory and prohibitory, in the sense that the legislature cannot take from the board the power to assess railroad property, nor vest such power elsewhere. State v. State Board of Equalization, 56 Mont. 413, 442, 185 Pac. 708.

Cited or applied in Danforth v. Livingston, 23 Mont. 558, 59 Pac. 916; Missouri River Power Co. v. Steele, 32 Mont. 433, 440, 80 Pac. 1093; Clark v. Maher, 34 Mont. 391, 400, 87 Pac. 272; Anaconda Copper Min. Co. v. Ravalli County, 52 Mont. 422, 425, 158 Pac. 682.

Sec. 17. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

A collateral inheritance or succession tax is not a tax upon property; it is a tax or duty imposed by the state upon the right to receive property by inherit-

ance, succession, or any deed or instrument to take effect after the death of the grantor. Gelsthorpe v. Furnell, 20 Mont. 299, 303, 51 Pac. 267, 39 L. R. A. 170; In re Tuohy's Estate, 35 Mont. 431, 436, 90 Pac. 170; State ex rel. Gilmore v. District Court, 45 Mont. 335, 338, 122 Pac. 922, Ann. Cas. 1914A, 469.

This section, in its definition of that which may be made subject to taxation, is sufficiently comprehensive to include all matters and things, visible and invisible, tangible and intangible, corporeal and incorporeal, capable of private ownership. Northwestern Mut. Life Ins. Co. v. Lewis and Clark County, 28 Mont. 484, 491, 72 Pac. 982, 98 Am. St. Rep. 572; Cobban v. Meagher, 42 Mont. 399, 407, 113 Pac. 290.

Since stocks of a state bank or trust company fall within the definition of property as given in this section, they must be assessed to the owners at their full cash value, except to the extent that that value is represented in property which is assessed to the bank or trust company. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 106, 81 Pac. 950.

As this section is in the nature of a prohibition, it is so far self-executing as to prohibit the assessment upon the stocks of a bank or trust company of any greater valuation than the full cash value of such stocks, less the amount of the property representing the stock, which is assessed to the bank or trust company. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 106, 81 Pac. 950; Dennis v. First Nat. Bank of Great Falls, 55 Mont. 448, 456, 178 Pac. 580.

For purposes of taxation a water right is personal property. Helena Water Works Co. v. Settles, 37 Mont. 237, 239, 95 Pac. 838.

State and county bonds held in private ownership within the state are "property," within the meaning of that term as employed in the constitution and revenue laws of the state, and, not being declared exempt, are taxable as such. Cruse v. Fischl, 55 Mont. 258, 265, 175 Pac. 878.

The definition of "property" in this section was intended as a limitation upon the power of the legislature to extend, by indirection, the exemptions from taxation authorized or commanded by section 2 of the article. Hilger v. Moore, 56 Mont. 146, 182 Pac. 477.

A statute in providing a method for the assessment of shares of bank stock which prescribes that the assessed valuation of real estate owned by such bank shall be deducted from the total value of the shares in determining their value is invalid, because not providing that the actual value thereof shall be so deducted. Dennis v. First Nat. Bank of Great Falls, 55 Mont. 448, 178 Pac. 580.

Cited or applied in Northern Pac. Ry. Co. Mjelde, 48 Mont. 287, 295, 137 Pac. 386; Anaconda Copper Min. Co. v. Ravalli County, 52 Mont. 422, 425, 158 Pac. 682; Northern Pac. Ry. Co. v. County of Musselshell et al., 54 Mont. 96, 169 Pac. 53; Wells Fargo & Co. v. Harrington, 54 Mont. 235, 238, 169 Pac. 463.

Sec. 18. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

The legislature has endeavored to carry the mandate of this section into execution by the enactment of our revenue laws, in which the term "franchise" is construed to mean a special privilege conferred by the state directly or indirectly to do or perform certain acts or things which, in the absence of the special privilege, could not be done, and which special privilege the citizens generally do not enjoy by common right. The construction was placed upon the language of the constitution, substantially contemporaneous with its adoption, has been continued throughout the twenty-six years since the enactment of the statute, has been acquiesced in by the people and applied by the revenue officers, constituting a part of the executive branch of the government, and is indicative of the public policy of the state. Wells Fargo & Co. v. Harrington, 54 Mont. 235, 242, 169 Pac. 463.

The constitution imposes upon the legislature the duty to provide the means for carrying into effect the provisions relating to taxation, and it is a general rule that contemporaneous construction by the department of government specially delegated to carry out a provision of the constitution raises a strong presumption that such construction, if uniform and long acquiesced in, rightly interprets the provision. While such construction is not conclusive upon the courts, it is entitled to the most respectful consideration, and it furnishes the only key to the intention of the framers of the instrument in employing the term "franchise" in the above article. Wells Fargo & Co. v. Harrington, 54 Mont. 235, 243, 169 Pac. 463.

Cited or applied in Mutual Life Ins. Co. v. Martien, 27 Mont. 437, 440, 71 Pac. 470; State v. State Board of Equalization, 57 Mont. 413, 456, 185 Pac. 708.

ARTICLE XIII.

PUBLIC INDEBTEDNESS.

Section 1. Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.

Chapter 96, Laws of 1915 (2816 et seq.), known as the Workmen's Compensation Act, is neither obnoxious as class legislation, nor in violation of the constitutional prohibition against donations to individuals. Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 12, 155 Pac. 268, L. R. A. 1916D, 628.

The provision of chapter 28, Laws of 1915, appropriating twenty thousand dollars to serve as a guaranty fund to assure prompt payment of interest on farm loan bonds, is void under this section, because by it the credit of the state is given as an assurance for the benefit of those who may become lenders under the act. Hill v. Rae, 52 Mont. 378, 388, 158 Pac. 826, Ann. Cas. 1917E, 210, L. R. A. 1917A, 495.

The seed-grain law of 1915, designed to furnish aid to persons engaged in agriculture who, because so reduced in circumstances by natural or other conditions beyond their control that they have no means wherewith to purchase seed, does not offend against this section when construed with section 5, article X, of the constitution, making it the duty of counties to provide for those inhabitants who, by reason of misfortune, may have claims upon the aid of society. State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 394, 170 Pac. 942.

The origin and purposes of the restriction contained in this section are well known. They arose in a time when the evils of public aid to railroads were notorious; they were intended to prevent the extension of such aid to either individuals or corporations for the purpose of fostering business enterprises, whether of a semi-public or private nature; they had and were designed to have no reference whatever to suitable measures, elsewhere commanded, for the relief of the poor. State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 397, 398, 170 Pac. 942.

Sections 5624 et seq., known as the war defense act, is not repugnant to the provisions of this section forbidding the state from making loans, giving credit, or making gifts or donations to persons, corporations, or associations. State ex rel. Campbell v. Stewart, 54 Mont. 504, 509, 171 Pac. 755, Ann. Cas. 1918D, 1101.

Cited or applied in State ex rel. Evans v. Stewart, 53 Mont. 18, 29, 161 Pac. 309.

Sec. 2. The legislative assembly shall not in any manner create any debt except by law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars ($100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election.

Sections 5624 et seq., known as the war defense act, is not in conflict with this section as creating a debt without providing by irrepealable law "for the levy of a tax sufficient to pay the interest and to extinguish the principal of such debt, without the time limited by such law for the payment thereof." State ex rel. Campbell v. Stewart, 54 Mont. 504, 512, 171 Pac. 755, Ann. Cas. 1918D, 1101.

The terms of this section imply and contemplate a specific obligation created by the legislature itself, of such a character that computation will disclose in advance what tax lavy is requisite to

pay the interest on and to extinguish the debt at its maturity. State ex rel. Campbell v. Stewart, 54 Mont. 504, 513, 171 Pac. 755, Ann. Cas. 1918D, 1101.

Where the legislature seeks to provide a method, other than the levy of a tax, for raising funds to meet the demands of the interest and principal on bonds issued to erect a state terminal elevator, it should first provide for the levy of the tax and then if sufficient funds for any particular year are raised to meet such demand, that the tax shall not be levied for such year. State ex rel. Lyman v. Stewart, 58 Mont. 1, 9, 190 Pac. 129. Reversed as to the validity of tax levy on the ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

A statute which in substance provides for the levy of a tax on agricultural lands for the purpose of paying interest and principal on state terminal elevator bonds, only in the event that the receipts from the operation of the elevator are insufficient to provide the proper amount, is not invalid for failure to provide for the extinguishment of the debt within a specified time, when it can be ascertained therefrom by rules of statutory construction that the legislature intended to impose a tax for the payment of the bonds and that the surplus accumulated from the operation of the elevator might be used to discharge the debt at such time as the legislature may make provision therefor. State ex rel. Lyman v. Stewart, 58 Mont. 1, 9, 190 Pac. 129. Reversed as to the validity of the tax levy on the ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

Cited or applied in State ex rel. Palmer v. Hickman, 11 Mont. 541, 552, 29 Pac. 92.

Sec. 3. All moneys borrowed by or on behalf of the state or any county, city, town, municipality or other subdivision of the state, shall be used only for the purpose specified in the law authorizing the loan.

A statute which authorizes payment of advances to a board of school trustees for the purpose of building a school in reliance upon the proceeds of bonds, which were declared to be invalid, from the proceeds of the sale of bonds subsequently issued, is not invalid under this section. State ex rel. Northwestern, etc., v. Dickerman, 16 Mont. 278, 292, 40 Pac. 698.

Funds provided by the sale of bonds by the board of county commissioners for the particular purpose of constructing bridges, after securing the consent of the electors, may not be expended for any purpose other than that for which they have been provided. State ex rel. Furnish v. Mullendore, 53 Mont. 109, 115, 161 Pac. 953.

Sec. 4. The state shall not assume the debt, or any part thereof, of any county, city, town or municipal corporation.

That the framers of the constitution did not intend municipal corporations to include counties is clear, for the two terms are used, as in this section, to distinguish different organizations. Hersey v. Neilson, 47 Mont. 132, 141, 131 Pac. 30, Ann. Cas. 1914C, 963.

Cited or applied in State ex rel. Palmer v. Hickman, 11 Mont. 541, 550, 29 Pac. 92.

Sec. 5. No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars ($10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law.

The legislative assembly has the power to provide by law for the funding of all funded debts and obligations. Hotchkiss v. Marion, 12 Mont. 218, 222, 29 Pac. 821.

The issuance of refunding bonds merely changes the form of the evidence of pre-existing indebtedness, and does not involve the creation of any new indebtedness within the meaning of this section. The inhibition therein contained is directed to the legislature. Hotchkiss v.

Marion, 12 Mont. 218, 223, 29 Pac. 821; Palmer v. City of Helena, 19 Mont. 61, 64, 47 Pac. 209; Edwards v. County of Lewis and Clark, 53 Mont. 359, 369, 165 Pac. 297.

The issuance by a county of coupon bonds to the extent of one hundred and fifty thousand dollars for the purpose of redeeming outstanding county warrants to that amount, is merely a change in the form of a subsisting liability, and not the creation of a new indebtedness or liability, and is therefore not within the inhibition of the constitution and laws of the state, which provide, in effect, that counties shall not incur an indebtedness or liability for any single purpose in an amount exceeding ten thousand dollars without the approval of a majority of the electors of the county. Hotchkiss v. Marion, 12 Mont. 218. 222, 29 Pac. 821. See, also, Hoffman v. Board of Commrs., 18 Mont. 224, 244, 44 Pac. 973; Palmer v. City of Helena, 19 Mont. 61, 64, 47 Pac. 209; E. H. Rollins & Sons v. Board of Commrs., 80 Fed. 692, 698, 26 C. C. A. 91; City of Huron v. Second Ward Sav. Bank, 86 Fed. 272, 278, 30 C. C. A. 38.

The evident meaning of this section is that the approval must be the result of an expression of a majority of those voting. The expression "majority of the electors thereof voting at an election," etc., clearly means a majority of those who vote, and not a majority of all the electors of the county, or of those who vote upon any other issue at the same or some other time. This conclusion is reached because the language employed indicates that the convention had adopted the theory that the control of public affairs must be regarded as belonging to those electors who take sufficient interest in them to give expression to their views at the ballot-box. Tinkel v. Griffin, 26 Mont. 426, 431, 68 Pac. 859; Morse v. Granite County, 44 Mont. 78, 95, 119 Pac. 286.

A favorable majority of all the votes cast on the question of incurring indebtedness to build and furnish a county courthouse, at a general election at which the question is submitted, is sufficient to authorize the indebtedness, though such majority is not a majority of all the electors voting at such election. Tinkel v. Griffin, 26 Mont. 426, 429, 68 Pac. 859; Morse v. Granite County, 44 Mont. 78, 95, 119 Pac. 286.

The mileage and per diem of county commissioners, charged to their county on account of trips made to the site of a bridge, and expenses incurred for services of the county surveyor in surveying and locating the site, are not proper items to be taken into consideration in arriving at the amount of indebtedness which could be lawfully incurred by the county on account of the construction of the bridge, without first obtaining the approval of a majority of the electors of the county. Jenkins v. Newman, 39 Mont. 77, 80, 101 Pac. 625.

Where the commissioners of two counties entered into a contract for the construction of a bridge over a river separating them, the contract price of which was $19,998, and each county became obligated in the sum of $9,999, but without proper approaches, the cost of which would approximate $300, the bridge would be useless, although the contract did not make any provision for them, it was held that, in view of a section of the code then in force declaring that the word "bridge" included the approaches thereto, the single purpose sought to be accomplished by the commissioners was the building of a bridge, with approaches thereto, and that, since that purpose could not be consummated without exceeding the constitutional limitation, the contract was void. Jenkins v. Newman, 39 Mont. 77, 80, 101 Pac. 625.

This section is a restriction upon the authority of the board of county commissioners, and has no reference to the power of the people. The power of the board is limited, but that of the people themselves is unlimited, save as affected by other constitutional declarations. Reid v. Lincoln County, 46 Mont. 31, 57, 125 Pac. 429.

A statute authorizing the erection of a county high school immediately after a favorable vote thereon, at a cost in excess of the constitutional limitation without requiring the question of the indebtedness to be submitted to the electors, is invalid on the ground that the legislature cannot authorize an expenditure in excess of such limitation. Panchot v. Leet, 50 Mont. 315, 146 Pac. 927.

This section has to do with the creation of new indebtedness or liability. Edward v. County of Lewis and Clark, 53 Mont. 359, 369, 165 Pac. 297.

The term, "incur indebtedness or liability," as used in this section, is not synonymous with the term "borrow money" used in section 2933 of the codes. Edwards v. County of Lewis and Clark, 53 Mont. 359, 369, 165 Pac. 297.

The seed-grain law of 1915, designed to furnish aid to persons engaged in agriculture who, because so reduced in circumstances by natural or other conditions beyond their control that they have no means wherewith to purchase seed, in so far as it seeks to create an indebtedness by a county bond issue in excess of

ten thousand dollars, upon a mere petition, and no provision for an election having been made, is in conflict with this section. State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 398, 170 Pac. 942.

Held, under this section, that the limit of county indebtedness is five per cent of the value of its taxable property as that value is disclosed by the last assessment roll, i. e., the value fixed by the county assessor as equalized by the county and state boards of equalization—the full cash value. State ex rel. Galles v. Board of County Commissioners et al., 56 Mont. 387, 185 Pac. 456.

Idem. The limit of county indebtedness is to be computed upon the assessed valuation of its taxable property as disclosed by the last assessment roll, and not upon the percentages of values upon which taxes are computed under chapter 51, Laws of 1919.

Idem. The last assessment roll, within the meaning of this section, from which the limit of indebtedness of a county shall be computed, is the last complete roll before the debt is contracted, and not the last assessment roll in existence at the time the indebtedness was authorized at the polls.

Cited or applied in State ex rel. Evans v. Stewart, 53 Mont. 18, 29, 161 Pac. 309; Hamilton v. Board of County Commrs., 54 Mont. 301, 169 Pac. 729.

Sec. 6. No city, town, township or school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding three (3) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township or school district shall be void; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

The act of March 5, 1891, authorizing certain incorporated cities to incur indebtness for specific purposes by the issuance of bonds to an extent not exceeding four per cent. of their assessed valuation, instead of three per cent. as limited by this section, is not void as being wholly in conflict with said section, but is void only to the extent of such repugnancy; and therefore bonds issued by a city under such act are valid where the amount of indebtedness so incurred is less than three per cent. of the assessed valuation of such city. Dunn v. City of Great Falls, 13 Mont. 58, 59, 31 Pac. 1017.

The argument of ab inconveniente cannot avail in the interpretation of constitutional provisions relative to the limitations placed upon the power of a city to contract indebtedness; the rule of strict construction must be applied, and any doubt as to such power must be resolved against it. Palmer v. City of Helena, 19 Mont. 61, 68, 47 Pac. 209; State ex rel. Helena W. W. Co. v. City of Helena, 24 Mont. 521, 537, 63 Pac. 99, 81 Am. St. Rep. 453, 55 L. R. A. 336; Butler v. Andrus, 35 Mont. 575, 583, 90 Pac. 785.

The funding by a city of an existing indebtedness by the issuance of bonds does not create a new or additional indebtedness, but merely changes the form of the liability. This section, forbidding the creation by a city of an indebtedness greater than three per cent. of the assessed value of property within its limits, unless the creation thereof is necessary and authorized by a vote of the taxpayers, for the purpose of constructing a sewer or water system, prohibits the creation of an indebtedness beyond the three per cent. limit for such purposes by a city which had its sewerage system at the time of the adoption of the constitution. Palmer v. City of Helena, 19 Mont. 61, 65, 47 Pac. 209. See Butler v. Andrus, 35 Mont. 575, 582, 90 Pac. 785, and Edwards v. County of Lewis and Clark, 53 Mont. 359, 369, 165 Pac. 297.

A city having already exceeded the constitutional limit of its indebtedness, and a water company having furnished it water for municipal purposes under an ordinance providing for the obtaining of water for such purposes for a certain period and at a certain price, appropriating out of the city's yearly revenues sufficient money to pay for it, and order-

ing the city council for such term to levy annual taxes to meet the appropriation, the company could not recover for water so furnished, inasmuch as the liability of the city would be general, and not special, and the contract entered into created, and the amount due for water furnished thereunder constituted, an indebtedness within the prohibition of this section. State ex rel. Helena W. W. Co. v. City of Helena, 24 Mont. 521, 525, 63 Pac. 99, 81 Am. St. Rep. 453, 55 L. R. A. 336.

The constitutional limitation contained in the above section is clear and unambiguous, and means just what it says, namely, that no indebtedness may be contracted in any manner or amount, for any purpose, in excess of the prescribed limit. State ex rel. Helena W. W. Co. v. City of Helena, 24 Mont. 521, 530, 63 Pac. 99, 81 Am. St. Rep. 453, 55 L. R. A. 336; Butler v. Andrus, 35 Mont. 575, 581, 90 Pac. 785; Lepley v. City of Fort Benton, 51 Mont. 551, 555, 154 Pac. 710.

A complaint by a city for the condemnation for a water supply for certain water rights in a stream is not defective for failing to allege that the water supply can be procured without incurring an indebetedness which, with the existing indebtedness, will exceed three per cent. of the assessed valuation, or that the limit was extended by having the question submitted to the voters, and that a majority of the votes was in favor of the proposition. City of Helena v. Rogan, 26 Mont. 452, 472, 68 Pac. 798.

The word "indebtedness," as used in this section, means what a city owes, irrespective of the demands which it may hold against others. The amount of cash on hand may be deducted from the "indebtedness," but claims against a county for road taxes collected for the city, and the amount due from landowners for sidewalks, cannot be so deducted. Jordan v. Andrus, 27 Mont. 22, 26, 69 Pac. 118.

A city which has exceeded its debt limit prescribed by this section cannot incur an indebtedness not payable from a specially authorized tax, but payable from funds previously appropriated, under an agreement that the claimants should accept warrants in payment of their claims, and that if the warrant should not be paid, the city should not be liable therefor. The payment of such claims on the theory that the appropriation by ordinance was an assignment of the funds so appropriated for the payment of the claims was unauthorized. Helena W. W. Co. v. City of Helena, 27 Mont. 205, 206, 70 Pac. 513. See Palmer v. City of Helena, 40 Mont. 498, 504, 107 Pac. 512.

Under this constitutional provision, a city may not resort to the ten per cent. extended limit of indebtedness, until its financial condition and the needs of the people have created the necessity for such action, and a city had no authority to arbitrarily declare a second bond issue of ten thousand dollars for water supply purposes, within the extended limit, so long as there was ample margin within the constitutional limit to cover such issue. Butler v. Andrus, 35 Mont. 575, 579, 90 Pac. 785.

The authority conferred upon a city council by a special election called for that purpose, to incur additional indebtedness for water and sewer purposes, does not lapse upon the completion of the assessment roll for the year in which the election is held. The requirement of this section, that the question whether the debt shall be incurred must be submitted to the taxpayers "to be affected thereby," is satisfied if the council, after authority to act has been voted, proceeds with reasonable diligence to issue and sell the bonds. Carlson v. City of Helena, 39 Mont. 82, 103, 102 Pac. 39, 17 Ann. Cas. 1233.

The provision of this section, that the revenues derived from a water system purchased or installed by a city shall be devoted to the payment of the debt incurred in its acquisition, does not impliedly prohibit the municipality from resorting to taxation to pay the principal and interest on the bonds evidencing the indebtedness. Carlson v. City of Helena, 39 Mont. 82, 107, 102 Pac. 39, 17 Ann. Cas. 1233.

A city which is indebted beyond the constitutional limitation may not use its surplus revenues, no matter from what source derived, to acquire an electric light plant to supply itself and its inhabitants with light, where a company, operating both gas and electric light systems, under a franchise from the city, has ample facilities to meet all requirements. Palmer v. City of Helena, 40 Mont. 498, 504, 107 Pac. 512.

Where a city's existing indebtedness incurred under the constitutional three per cent. limit has, by reason of payments thereon, fallen below that limit, or because of the increase of the assessed valuation of its taxable property a sufficient margin within such limit is left for the purpose, it may, irrespective of any legally incurred indebtedness under the ten per cent. limit authorized by the statute relating to the powers of municipal councils, contract an additional debt for general purposes. Arnold v. City of Miles City, 46 Mont. 478, 479, 128 Pac. 915.

Cities and towns may not go beyond the prescribed limit of indebtedness in any manner or for any purpose, except as prescribed in the constitution, and they cannot transcend this limit except when necessary. Lepley v. City of Fort Benton, 51 Mont. 551, 557, 154 Pac. 710.

Where a city acquires a water supply without resort to indebtedness beyond the constitutional three per cent. of the city's taxable property, it stands on an equal footing with an individual or private corporation engaged in furnishing water to it and its inhabitants, and is subject to all reasonable regulation and control by the state under the police power. Public Service Commission v. City of Helena, 52 Mont. 527, 534, 159 Pac. 24.

Under the rule that, since the constitution limits, rather than grants, power, any of its provisions open to construction should be held to come within the general rule, unless a contrary conclusion is forced by the circumstances of the particular case, the concluding sentence of this section must be understood as expressing constitutional restrictions imposed as a condition to the exercise of the privilege implied in the provision for extended indebtedness, and not as a grant of power not enjoyed by a city acquiring a water system without incurring additional indebtedness. Public Service Commission v. City of Helena, 52 Mont. 527, 536, 159 Pac. 24.

It cannot be said that the injunction contained in this section, that the revenues derived from a water system shall be devoted to the payment of the extended indebtedness, secures to a city any special privilege. On the contrary, that language is not susceptible of any meaning other than that the city is prohibited from dissipating the funds derived from the operation of its water system, or using them for general municipal purposes, and is commanded to devote them to the single purpose indicated. It is strictly a limitation imposed in the interest of the city and the holders of its securities. Public Service Commission v. City of Helena, 52 Mont. 527, 538, 159 Pac. 24.

The "revenues" referred to in this section, which must be devoted to a discharge of the indebtedness incurred in procuring a water system, are the net revenues, or the gross receipts less necessary operating expenses, against which the expense of regulation by the public service commission, if reasonable, is chargeable. Public Service Commission v. City of Helena, 52 Mont. 527, 541, 159 Pac. 24.

Where a city had a water supply sufficient in quantity but unsuitable as to quality, issued bonds with the approval of the electors, and sold the same to procure funds to install a filtration plant, the constitutional three per cent. limit of indebtedness having already been reached, the contemplated expenditure was properly justifiable as one "to procure a water supply," within the meaning of this section. McClintock v. City of Great Falls, 53 Mont. 221, 224, 163 Pac. 99.

The only limitation placed by this section upon the amount of indebtedness which a city may incur, in addition to the three per cent. limit, for the purpose of procuring a water supply, is that it must have the approval of the taxpayers affected thereby. McClintock v. City of Great Falls, 53 Mont. 221, 226, 163 Pac. 99.

Where, after making ample provision for retiring bonds issued to procure a water system, a city had accumulated a surplus over and above the amount necessary to discharge the interest on the indebtedness as it became due, it could properly expend such surplus in part payment of a necessary filtration plant, without the sanction of the taxpayers' vote, transfer it to its general fund, place it in a special fund, or devote it to any legitimate municipal purpose, without violating the provisions of the above section. McClintock v. City of Great Falls, 53 Mont. 221, 228, 229, 163 Pac. 99.

Though a city cannot authorize a water system bond issue beyond the three per centum limit, so long as there was sufficient margin unexhausted within the limit to secure the funds, because the city council declared it was necessary to increase the indebtedness beyond the limit, bonds authorized by the vote of the electors are not void, unless the vote was procured or influenced by deception or fraud. Edwards v. City of Helena, 58 Mont. 292, 295, 191 Pac. 387.

Where a city water system bond issue is beyond the three per centum limit, the revenues from the city owned water plant are irrevocably set aside and dedicated to the discharge of the interest and principal, and a taxpayer who is not a water user may not be called upon to contribute, unless the water plant revenues are insufficient, when a property tax may be levied to supply such deficiency. Edwards v. City of Helena, 58 Mont. 292, 295, 191 Pac. 387.

Cited or applied in Atkinson v. City of Great Falls, 16 Mont. 372, 40 Pac. 877; Helena C. W. Co. v. Steele, 20 Mont. 1, 2, 49 Pac. 382, 37 L. R. A. 412.

ARTICLE XIV.

MILITARY AFFAIRS.

Section 1. The militia of the state of Montana shall consist of all able-bodied male citizens of the state between the ages of eighteen (18) and forty-five (45) years inclusive, except such persons as may be exempted by the laws of the state or of the United States.

Cited or applied in In re McDonald, 49 Mont. 454, 477, 143 Pac. 947, Ann. Cas. 1916A, 1166, L. R. A. 1915B, 988.

Validity of enlistment of minor in state military service without consent of parents, see 1913C, 1273.

Sec. 2. The legislative assembly shall provide by law for the organization, equipment, and discipline of the militia, and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

Power of state under federal constitution to legislate with respect to militia, see L. R. A. 1918C, 307.

Are state militias subject to the articles of war of the United States? see 40 L. R. A. (N. S.) 354.

Sec. 3. The legislative assembly shall provide by law for maintaining the militia, by appropriations from the treasury of the state.

Under this section the weight of authority is to the effect that it is not necessary that there be any physical invasion of an individual's property for public use to entitle him to compensation. Root v. Butte A. & P. Ry. Co., 20 Mont. 354, 51 Pac. 155.

Power of legislature to make appropriation to compensate injured militiaman, see 44 L. R. A. (N. S.) 83.

Sec. 4. The legislative assembly shall provide by law for the safe keeping of the public arms, military records, relics and banners of the state.

Sec. 5. When the governor shall, with the consent of the legislative assembly, be out of the state in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military forces of the state.

ARTICLE XV.

CORPORATIONS OTHER THAN MUNICIPAL.

Section 1. All existing charters, or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this constitution, shall thereafter have no validity.

This section only annulled private charters or special grants, under which corporations had not organized and does not affect a mining company incorporated under the general laws, though it had omitted to commence business prior to the adoption of the constitution. Morrison v. Clark, 24 Mont. 515, 63 Pac. 98.

For text treatment of this subject see 7 R. C. L. 1; also, article on Corporations in Cal. Jur.

Provision in constitution or statute for forfeiture of corporate charter as self-executory, see Ann. Cas. 1914A, 936.

Meaning of term "carrying on business" as used in statute relating to corporation, see 18 Ann. Cas. 32.

Sec. 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the con-

trol of the state; but the legislative assembly shall provide by general law for the organization of corporations hereafter to be created; provided, that any such laws shall be subject to future repeal or alteration by the legislative assembly.

When a mining company was organized between 1889 and 1898, there existed and was read into and made a part of its charter the then existing statute, which gave notice to all concerned that the legislature of Montana, acting under the above constitutional provision, might at any time alter, amend, or repeal the law under which it existed. Allen v. Ajax Mining Co., 30 Mont. 490, 504, 77 Pac. 47. See Somerville v. St. Louis M. & M. Co., 46 Mont. 268, 275, 127 Pac. 464, L. R. A. 1915B, 811.

The power reserved in the state to amend the laws under which a corporation is organized may be exercised not only as relates to the contract (created by the granting of the charter and its acceptance), existing between the state and the corporation, but also as it affects the contract between the corporation and its stockholders, and also the contract as between the stockholders themselves; and legislation looking to that end is not objectionable on the constitutional ground that it impairs the obligation of contracts. Allen v. Ajax Mining Co., 30 Mont. 490, 504, 77 Pac. 47; Somerville v. St. Louis M. & M. Co., 46 Mont. 268, 275, 127 Pac. 464, L. R. A. 1915B, 811.

Chapter 83, Laws of 1903, p. 156, relative to the liability of railway corporations for damages sustained by an employee by reason of the negligence of certain of his co-employees, is a valid exercise of legislative power under this and the following section. Lewis v. Northern Pacific Ry. Co., 36 Mont. 207, 219, 92 Pac. 469.

Under the right reserved to the state by this and the following section, it seems that the legislature may not only alter corporate charters, but, if deemed expedient, destroy the corporate body. Lewis v. Northern Pacific Ry. Co., 36 Mont. 207, 219, 92 Pac. 469.

Corporations being creatures of the statute, the legislature may, under this and the following section, enact any legislation by way of amendment of the law creating them, which does not violate the rule that property acquired under the operation of their charters cannot be taken away, and that contracts made in like manner may not be impaired. Lewis v. Northern Pacific Ry. Co., 36 Mont. 207, 221, 92 Pac. 469.

Where a corporation was organized under chapter 25, division 5, Compiled Statutes of 1887, at which time there was not any law under which non-assessable stock could be made assessable, its certificate of incorporation and every stock certificate issued reciting that the stock was non-assessable, and in 1901 the requisite number of shares of stock were voted in favor of making the stock assessable by taking advantage of the provisions of 3888 of the Revised Codes of 1907, authorizing such procedure, the statute in question was not unconstitutional as impairing the obligation of contracts, under the reserved power of the state to amend the laws under which a corporation is created. Somerville v. St. Louis M. & M. Co., 46 Mont. 268, 276, 127 Pac. 464, L. R. A. 1915B, 811.

The legislature may alter the charter of an existing corporation by imposing greater burdens thereafter to be assumed by the stockholders than were imposed at the time it was granted; provided only that the alteration does not involve a confiscation of the rights of individuals, deprive them of their property without due process of law, or violate the elementary principles of natural justice. Barth v. Pock, 51 Mont. 418, 429, 155 Pac. 282.

Cited or applied in Morrison v. Clark, 24 Mont. 515, 63 Pac. 98; Lewis v. Northern Pacific Ry. Co., 36 Mont. 207, 219, 92 Pac. 469; In re Beck's Estate, 44 Mont. 561, 573, 121 Pac. 784.

Sec. 3. The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state.

Cited or applied in Lewis v. Northern Pacific Ry. Co., 36 Mont. 207, 219, 92 Pac. 469; Barth v. Pock, 51 Mont. 418, 429, 155 Pac. 282.

Sec. 4. The legislative assembly shall provide by law that in all elections for directors or trustees of incorporated companies, every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there are directors or trustees to be

elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors or trustees shall not be elected in any other manner.

Inasmuch as corporations are the creatures of statute, it is within the power of the legislature to adopt either the share of stock or the individual owning stock as the unit of voting power, unless restrained by the constitution. The only constitutional provision upon the subject is found in this section, which establishes the share of stock as the unit of voting power in the election of trustees or directors of such corporations. Since this restriction is limited to a single purpose, the legislature is left free to establish either the share or the individual as the unit for any purpose other than the election of trustees or directors. Smith v. Iron Mountain Tunnel Co., 46 Mont. 13, 15, 125 Pac. 649, Ann. Cas. 1914B, 551.

Sec. 5. All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers and subject to legislative control, and the legislative assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the state. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state and to connect at the state line with railroads of other states and territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

Under this section and section 7 of this article, a railroad, though built by a private corporation, and with its main line and spurs running convenient to private mines and ore houses, is none the less a public use, and may exercise the right of eminent domain. Butte, Anaconda & Pacific Ry. Co. v. Montana Union Ry. Co., 16 Mont. 504, 525, 41 Pac. 232, 50 Am. St. Rep. 508, 31 L. R. A. 298.

As one of the means of fostering and encouraging the development of the state's mineral resources in every reasonable way, the constitution has declared that all railroads shall be public highways, and all railroad companies shall be public carriers. Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 519, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

Cited or applied in State ex rel. Nolan v. Railway Companies, 21 Mont. 221, 250, 53 Pac. 623, 45 L. R. A. 271; John v. Northern Pacific Ry. Co., 42 Mont. 18, 36, 111 Pac. 632, 32 L. R. A. (N. S.) 85.

Sec. 6. No railroad corporation, express or other transportation company, or the lessees or managers thereof, shall consolidate its stock, property or franchises, with any other railroad corporation, express or other transportation company, owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings with the business or earnings of any other railroad corporation; nor shall any officer of such railroad, express or other transportation company act as an officer of any other railroad, express, or other transportation company owning or having control of a parallel or competing line.

One railroad company can lease its road to a parallel and competing road for a term of ten years, and such a lease is not a consolidation of the two roads. State ex rel. Nolan v. Railway Companies, 21 Mont. 221, 234, 53 Pac. 623, 45 L. R. A. 271.

When two railroad companies have but one common terminus, and are brought into competition between common terminal points by traffic arrangements with

other roads, they are competing roads within the meaning of this section. State ex rel. Nolan v. Railway Companies, 21 Mont. 221, 236, 53 Pac. 623, 45 L. R. A. 271.

Cited or applied in MacGinnis v. Boston & M. C. C. & S. M. Co., 29 Mont. 428, 453, 75 Pac. 89.

Restrictions on consolidation of parallel or competing lines, see 45 L. R. A. 271.

Sec. 7. All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad, or transportation, or express company, between persons or places within this state; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employee thereof, shall give any preference to any individual, association or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

A railroad company may not grant to one person the exclusive right to the use of a portion of its depot platform to deliver passengers departing, and to receive and solicit the patronage of incoming passengers, to the exclusion of all other persons from the exercise of such rights, as such grant is against public policy and contrary to the provisions of this section. Montana Union Ry. Co. v. Langlois, 9 Mont. 419, 432, 24 Pac. 209, 18 Am. St. Rep. 745, 8 L. R. A. 753.

This provision, when considered in connection with section 5 of this article, demonstrates that the constitution, in its letter, its spirit, and its policy as well, classes all railroads, with their feeders, as public highways, subject to use by the public of right, amenable to the laws governing common carriers forever forbidding all obnoxious favoritisms between any who desire to use such highways. This stable written policy is doubtless the outgrowth of pernicious systems of discrimination and preferences which railroad corporations may have indulged in throughout the land where their powers are unrestrained by constitution or other restriction. Butte, Anaconda & Pacific Ry. Co. v. Montana Union Ry. Co., 16 Mont. 504, 526, 41 Pac. 232, 50 Am. St. Rep. 508, 31 L. R. A. 298; John v. Northern Pacific Ry. Co., 42 Mont. 18, 36, 111 Pac. 632, 32 L. R. A. (N. S.) 85.

This section and the cases of Rose v. Northern Pacific Ry. Co., 35 Mont. 70, 88 Pac. 767, 119 Am. St. Rep. 836, and Brian v. Oregon Short Line R. R. Co., 40 Mont. 109, 105 Pac. 489, 20 Ann. Cas. 311, 25 L. R. A. (N. S.) 459, recognize the distinction between a ticket sold at the regular fare and one sold at a reduced fare or special price. Miley v. Northern Pacific Ry. Co., 41 Mont. 51, 55, 108 Pac. 5.

As one of the means of fostering and encouraging the development of the state's mineral resources in every reasonable way, the constitution has declared that all persons shall have equal right to have persons or property transported on and over any railroad. Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 519, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

In view of this section, providing that all individuals shall have equal rights to be transported over any railroad in the state, provided that excursion or commutation tickets may be issued and sold at special rates, section 6571, making it unlawful for any common carrier to charge any person for any ticket a greater sum than is charged for a similar ticket of the same class, and section 11256, making every railroad corporation which fails to observe any of the duties prescribed by law in reference to railroads subject to a fine, etc., the giving of all free passes, with certain exceptions recognized by law, is prohibited, so that the carriage of a passenger by a railroad company on a pass issued with-

out compensation to the employee of another railroad company which issued similar free passes for use by the former company's employees is illegal, and hence a provision therein exempting the carrier from liability for injuries caused by its negligence was a nullity. John v. Northern Pacific Ry. Co., 42 Mont. 18, 36, 111 Pac. 632, 32 L. R. A. (N. S.) 85.

It is not permitted to a railroad company arbitrarily to classify the patrons of its road. Even the legislative assembly, in making classifications for taxation and license purposes, must exercise a reasonable discretion in so doing. John v. Northern Pacific Ry. Co., 42 Mont. 18, 38, 111 Pac. 632; 32 L. R. A. (N. S.) 85.

Sec. 8. No railroad, express, or other transportation company, in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form.

Sec. 9. The right of eminent domain shall never be abridged, nor so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the police powers of the state shall never be abridged, or so construed, as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

Cited or applied in Butte, Anaconda & Pacific Ry. Co. v. Montana Union Ry. Co., 16 Mont. 504, 536, 41 Pac. 232; 50 Am. St. Rep. 508, 31 L. R. A. 298.

Sec. 10. No corporation shall issue stocks or bonds, except for labor done, services performed, or money and property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days notice given in pursuance of law.

The purchase of a mine which the stockholders knew was not worth over $125,000 and payment therefor in stock whose par value is $7,500,000 and which is purchased by the stockholders with full knowledge of the transaction at 2½ per cent. of its par value, is fraudulent as to a creditor, and the stock will be treated as unpaid to the extent of the difference between the actual value of the mine and the nominal value of the stock. Kelly v. Clark, 21 Mont. 291, 53 Pac. 959, 69 Am. St. Rep. 668, 42 L. R. A. 621.

Sec. 11. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.

Section 697, fifth division, Compiled Statutes of 1887, declaring the liability of the corporation to an employee injured through the negligence of his superior to be the same as if the employee were a passenger, being originally part of an act for the incorporation of railroad companies in the territory, and having application only to corporations created under such act, imposes upon domestic railroad companies a burden not imposed upon foreign railroad companies operating within the state, and was therefore annulled by the adoption of the state constitution. Criswell v. Montana Central Ry. Co., 18 Mont. 167, 168, 44 Pac. 525, 33 L. R. A. 554.

The plain purpose of this section is to

restrain the legislature from granting to foreign corporations rights and privileges which cannot be enjoyed by domestic corporations of like character under similar circumstances. Criswell v. Montana Central Ry. Co. v. 18 Mont. 167, 171, 44 Pac. 525, 33 L. R. A. 554; State v. Thomas Cruse Savings Bank, 21 Mont. 50, 55, 52 Pac. 733, 45 L. R. A. 760; Daily v. Marshall, 47 Mont. 377, 397, 133 Pac. 681.

The prohibition contained in this section lays down a principle of protection to domestic corporations that at once, upon the adoption of the constitution and the admission of the state, became a sufficient rule by means of which the rights and privileges possessed by domestic companies were and are protected against legislative or other discriminations extending the possession or enjoyment of rights or privileges to foreign corporations greater than those already possessed, or those that may be attempted to be granted by any future action. To this extent the provision was completely self-executing, and no legislation was required to give the prohibition full force and operation. Criswell v. Montana Central Ry. Co., 18 Mont. 167, 171, 44 Pac. 525; 33 L. R. A. 554. See, also, Goodwell v. Montana Central Ry. Co., 18 Mont. 293, 297, 45 Pac. 210.

This section is self-executing as a prohibition, but not as an affirmative imposition upon, or securement to, foreign companies of the rights or privileges only accorded by state laws to domestic companies. Criswell v. Montana Central Ry. Co., 18 Mont. 167, 173, 44 Pac. 525, 33 L. R. A. 554.

Section 697 of the Compiled Statutes of 1887, giving to one employee injured by the negligence of a superior a right of action against the master, was repealed by this section. Wastl v. Montana Union Ry. Co., 24 Mont. 159, 170, 61 Pac. 9.

It is not against the public policy of the state for one corporation to hold and vote stock in another of like character. MacGinnins v. Boston & M. C. C. & S. M. Co., 29 Mont. 428, 461, 75 Pac. 89.

A foreign corporation, authorized by the laws of the state in which it is organized, and by its charter, to build a dam across the Missouri river in Montana, and maintain and operate an electric power plant in connection therewith, is neither by the constitution nor laws of this state clothed with the right of eminent domain. Helena Power Transmission Co. v. Spratt, 35 Mont. 108, 132, 88 Pac. 773, 10 Ann. Cas. 1055, 8 L. R. A. (N. S.) 567.

Foreign corporations doing business in the state are not entitled to any greater rights than are enjoyed by domestic corporations engaged in the same kind of business. Lewis v. Northern Pacific Ry. Co., 36 Mont. 207, 222, 92 Pac. 469.

When a foreign corporation enters the state of Montana for the purpose of conducting business here, it does so only upon submitting itself to our laws, and it must recognize and obey the prohibitory force of this section. While no greater burden may be put upon foreign corporations than is placed upon domestic corporations of a similar character, yet it cannot occupy any higher ground than they do. Lewis v. Northern Pacific Ry. Co., 36 Mont. 207, 222, 92 Pac. 469; Spratt v. Helena Power Transmission Co., 37 Mont. 60, 89, 94 Pac. 631.

The act of 1907, granting foreign corporations the power to condemn lands for certain purposes, is not open to the constitutional objection that under it such corporations are granted greater rights or privileges than are accorded to domestic corporations, in that, after permission to do business in this state, they may, under their charters granted in other states, thereafter divert the property taken for a public use to an exclusively private one; the state having full power to prevent such a contingency. Spratt v. Helena Power Transmission Co., 37 Mont. 60, 88, 94 Pac. 631.

This provision was intended to prohibit the passage of laws giving to foreign corporations the right to exercise or enjoy any greater privileges than those possessed or enjoyed by domestic corporations, and it is only in cases where a foreign corporation attempts to exercise or enjoy a right or privilege expressly given to it by the legislative assembly that its right to exercise the same may be questioned. The mere fact that a burden is placed upon domestic corporations from which foreign corporations are exempt does not operate to bring foreign corporations within the provisions of a law intended to apply solely to domestic corporations. Uihlein v. Caplice Commercial Co., 39 Mont. 327, 337, 102 Pac. 564. See First National Bank of Butte v. Weidenbeck, 97 Fed. 896, 38 C. C. A. 131.

Laws intended to apply to foreign corporations must be framed on the theory that they are created under conditions and limitations over which the state legislature has no control; acts of the legislature are in harmony with the constitution unless they discriminate against domestic corporations. Daily v. Marshall, 47 Mont. 377, 398, 133 Pac. 681.

See also First Nat. Bank v. Weidenbeck, 87 Fed. 271, 272, as to the effect of the adoption of this section upon territorial statute relative to liability of

trustees for corporate debts on failure to file required reports.

Cited or applied in Mutual Benefit Life Ins. Co. v. Winne, 20 Mont. 20, 35, 49 Pac. 446; State v. Aetna Banking & Trust Co., 34 Mont. 379, 388, 87 Pac. 268; Western Loan & Savings Co. v. Smith, 42 Mont. 442, 448, 113 Pac. 475.

What constitutes doing business in state by foreign corporation, see 2 Ann. Cas. 307; 8 Ann. Cas. 942; 11 Ann. Cas. 320; Ann. Cas. 1912A, 553; 1913E, 1154.

Sec. 12. No street or other railroad shall be constructed within any city or town without the consent of the local authorities having control of the street or highway proposed to be occupied by such street or other railroad.

The granting of a right of way, under statutory authority, to street railways or other such corporations, and the regulating the running and management of them in the use of the streets, etc., carries out, on the part of the municipality, the plain intent of this constitutional provision. Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 516, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

"Town," when used in the constitution as intended to convey the sense only of incorporated town, has always the qualifying word with it. State ex rel. Powers v. Dale, 47 Mont. 227, 230, 131 Pac. 670, Ann. Cas. 1914D, 227.

Cited or applied in State ex rel. Palmer v. Hickman, 11 Mont. 541, 550, 29 Pac. 92; State ex rel. Rocky etc. Tel. Co. v. Mayor of Red Lodge, 30 Mont. 338, 343, 76 Pac. 758.

Cited or applied in Massachusetts Loan & Trust Co. v. Hamilton, 88 Fed. 588, 590, 32 C. C. A. 46.

Sec. 13. The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed.

A statute which provides for the payment of advances to a school district for the erection of school buildings in reliance upon a bond issue declared invalid by the subsequent issue of bonds, is not restrospective in operation under this section. State ex rel. Northwestern etc. v. Dickerman, 16 Mont. 278, 40 Pac. 698.

As applied to municipalities having contracts with private persons for water supply at the time of the enactment of the statute, subdivision 64 of section 4800 of the Political Code of 1895 (5639), providing that no municipality having a water supply furnished by private persons shall erect any water plant to be operated by itself, but if it desires to acquire such a plant, shall purchase or condemn such supply, is in violation of this section. Helena C. W. Co. v. Steele, 20 Mont. 1, 11, 49 Pac. 382, 37 L. R. A. 412.

The purpose of section 1034 of the Civil Code of 1895, providing that "any foreign corporation that has heretofore engaged in business, performed acts, or made contracts in this state, may, within ninety days from the date this act goes into effect, comply with the provisions hereof, and thereupon all its acts and contracts done and made before this act goes into effect shall be valid and enforceable, any statute of this state heretofore enacted to the contrary notwithstanding," being merely to make valid and enforceable contracts made by foreign corporations which were voidable because of a failure to file certain statements and certificates by law required, and not referring to or making valid contracts of such corporations which are void for other reasons, the same is not in conflict with the above constitutional provision. The section of the code in question is a curative statute and not retrospective in its operation, as it does not interfere with any vested right or impair the obligation of any contract. Mutual Benefit Life Ins Co. v. Winne, 20 Mont. 20, 37, 49 Pac. 446.

Chapter 132, Laws of 1913 (9962), providing for the recovery of escheated property, is not retrospective within the meaning of that term as used in this section. In re Pomeroy, 51 Mont. 119, 122, 151 Pac. 333.

While the state is forbidden by this section to impose upon its municipal subdivisions a liability in respect to a transaction or consideration already passed, it may impose such a liability upon itself. In re Pomeroy, 51 Mont. 119, 125, 151 Pac. 333.

Cited or applied in Helena C. W. Co. v. Steele, 20 Mont. 1, 11, 49 Pac. 382, 37 L. R. A. 412.

Sec. 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct or maintain lines of telegraph or telephone within this state, and connect the same with other lines; and the legislative assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise, any other competing line of telegraph or telephone.

The above section was incorporated in the constitution because the telephone and the telegraph were considered of so much importance to the people as a means of communication. Hershfield v. Rocky Mt. Bell Tel. Co., 12 Mont. 102, 116, 29 Pac. 883.

Where a city council refuses to designate the location of poles for a telephone line, and requires the wires to be laid in conduits four feet under the streets, the proper remedy is by mandamus to compel the council to designate the location of the poles. A general law relating to telephone corporations is not modified by the statutes concerning the government of cities. State ex rel. Rocky etc. Tel. Co. v. Mayor of Red Lodge, 30 Mont. 338, 340, 76 Pac. 758. See, also, State ex rel. Rocky etc. Tel. Co. v. Mayor etc. of City of Red Lodge, 33 Mont. 345, 347, 83 Pac. 642.

This section is not self-executing. Legislation must be had to make the right granted effective. If the legislature failed or refused to enact any measure on the subject at all, then the right granted would simply lie dormant, for it must be conceded that there is not any power which can coerce the legislature into enacting a particular law. In the absence of legislation making the grant effective, it is of no use whatever. In the absence of legislation, it would be an unlawful obstruction of any public highway to place poles, posts, or other fixtures for use of a telephone or telegraph line in it. The constitution commands the legislature to enact a law upon the subject; but, if the legislature refuses to do so, there is not any way to enforce the command. If, however, the legislature does act, the law which it enacts must be a general one of uniform operation, providing reasonable regulations which will give full effect to the grant contained in the section. State ex rel. Crumb v. City of Helena, 34 Mont. 67, 71, 85 Pac. 744.

Chapter IV of the Sessions Laws of 1905, p. 122, authorizing any person or corporation desirous of engaging in the telegraph, telephone, electric light or power business, to construct the necessary poles and appliances along and upon any of the public highways, but adding that "the provisions of this act shall not apply to public roads and highways within the limits of incorporated cities or towns," is, as to this proviso, invalid, in that by its insertion the carrying on of such business would practically be confined to country districts, contrary to the purpose of the constitutional grant with respect to this subject. State ex rel. Crumb v. City of Helena, 34 Mont. 67, 71, 85 Pac. 744.

While the authority to regulate the telegraph and telephone business is vested in the legislature by this section, this cannot be so construed as to prevent any part of the same from being delegated to, or conferred upon, cities and towns, which may likewise, acting through their respective councils, prescribe reasonable regulations upon the subject. A city ordinance requiring wires used for the transmission of electricity for telegraph and telephone purposes, among others, to be placed underground in the congested business district, and providing punishment for disobedience, was therefore a valid exercise of the police power of the city, and did not encroach upon the legislative right of regulation. City of Butte v. Montana Independent Tel. Co., 50 Mont. 574, 577, 148 Pac. 384.

Cited or applied in MacGinnis v. Boston & M. C. C. & S. M. Co., 29 Mont. 428, 453, 75 Pac. 89; State ex rel. Rocky etc. Tel. Co. v. Mayor of Red Lodge, 30 Mont. 338, 340, 76 Pac. 758.

Sec. 15. If any railroad, telegraph, telephone, express or other corporation or company organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, telephone, express, or other corporation, organized under any of the laws of any other state or territory of the United States, the same shall not thereby become a

foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state, in all matters that may arise as if said consolidation had not taken place.

This section does not prohibit consolidations. Its prohibition extends only to any device by which an attempt is made to deprive the state courts of jurisdiction. MacGinnis v. Boston & M. C. C. & S. M. Co., 29 Mont. 428, 461, 75 Pac. 89.

Sec. 16. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement whereby such persons, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, by reason of negligence of such person, company or corporation, or the agents or employees thereof; and such contracts shall be absolutely null and void.

The defense of assumption of risk, which has for its basis the common-law principle expressed by the maxim, "Volenti non fit injuria," and does not rest in contract between the master and servant, is not abrogated by this section of the constitution and code provisions providing that a contract releasing an employer from liability for his negligence is void. Osterholm v. Boston etc. Min. Co., 40 Mont. 508, 523, 107 Pac. 499.

Cited or applied in Schmidt v. Montana Cent. Ry. Co., 15 Mont. 106, 38 Pac. 226; Criswell v. Montana Central Ry. Co., 18 Mont. 167, 171, 44 Pac. 525, 33 L. R. A. 554.

Sec. 17. The legislative assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

The execution of a mortgage by a street-railway corporation in due course of business, while the company was solvent, did not constitute a violation of this section, though such mortgage on the subsequent insolvency of the corporation might operate to prevent the payment of a judgment for injuries subsequently recovered. Central Trust Co. v. Warren, 121 Fed. 323, 326, 58 C. C. A. 289.

Sec. 18. The term "corporation," as used in this article, shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

Sec. 19. Dues from private corporations shall be secured by such means as may be prescribed by law.

Sec. 20. No incorporation, stock company, person or association of persons in the state of Montana, shall directly, or indirectly, combine or form what is known as a trust, or make any contract with any person, or persons, corporation, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent,

if necessary for that purpose, of the forfeiture of their property and franchises, or in case of foreign corporations, prohibiting them from carrying on business in the state.

In order to subject offenders to the severe penalties which the legislature might impose in enacting laws in pursuance of this section, there must be shown a specific intent to do the prohibited act, or that the association or combination necessarily tends to accomplish the same result. MacGinnis v. Boston & M. C. C. & S. M. Co., 29 Mont. 428, 454, 75 Pac. 89.

In cases involving the above provision, the nature of the arrangement or combination is a question of fact, to be determined by the court from the evidence before it, or from the vice inherent in the contract of combination itself. MacGinnis v. Boston & M. C. C. & S. M. Co., 29 Mont. 428, 455, 75 Pac. 89.

Section 321 of the Penal Code of 1895, prohibiting the formation of combinations or trusts for the purpose of fixing the price or regulating the production of articles of commerce, and section 325 of the same code, to the effect that such prohibition shall not apply to persons engaged in agriculture and horticulture, are dependent upon each other and void. These provisions are the result of an effort to carry out the above mandate of the constitution. State v. Cudahy Packing Co., 33 Mont. 179, 183, 82 Pac. 833, 114 Am. St. Rep. 804, 8 Ann. Cas. 717.

ARTICLE XVI.

MUNICIPAL CORPORATIONS AND OFFICERS.

Section 1. The several counties of the territory of Montana, as they shall exist at the time of the admission of the state into the union, are hereby declared to be the counties of the state until otherwise established or changed by law.

This article of the constitution deals with municipal corporations, but has special reference to counties. It does not refer to cities or towns, nor does it contain any provisions applicable to them, except that by implication, under section 6 thereof, the legislature is empowered, within the restriction therein stated as to the length of the term, to provide for the election or appointment of such officers to administer the government of cities and towns as circumstances may require. State ex rel. City of Butte v. Weston, 29 Mont. 125, 128, 74 Pac. 415.

Cited or applied in State ex rel. Sackett v. Thomas, 25 Mont. 226, 240, 64 Pac. 503.

For text treatment of this subject, see 7 R. C. L. 921; also, article on Counties in Cal. Jur.

Sec. 2. The legislative assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed unless a majority of the qualified electors of the county, at a general election on a proposition to remove the county seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years.

The provision of this section, denying power to the legislature to remove a county seat, in so far as it relates to the vote required, is a prohibition and is self-executing. State ex rel. Stringfellow v. Board of Commrs., 42 Mont. 62, 75, 111 Pac. 144.

Conceding that the selection or removal of a county seat is a political function, the constitution, as well as the legislation upon the subject, confides that function, not to judges of election or the canvassers of the returns, but to a certain proportion of the qualified electors of the county affected. Poe v. Sheridan County, 52 Mont. 279, 288, 157 Pac. 185.

On what basis majority essential to adoption of proposition for change of county seat is to be computed, see 22 L. R. A. (N. S.) 478.

Sec. 3. In all cases of the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion

of the value of the county buildings and property of the county or counties from which it is formed; provided, that nothing in this section shall prevent the re-adjustment of county lines between existing counties.

A new county is liable to the counties from which its territory was taken for interest upon its rateable proportion of the debt of each county until warrants were issued in payment therefor. Holliday v. Sweet Grass County, 19 Mont. 364, 48 Pac. 553.

The constitution recognizes the power of the legislature to create new counties, to change those already established, and to alter their boundaries. State ex rel. Sackett v. Thomas, 25 Mont. 226, 240, 64 Pac. 503; State ex rel. Geiger v. Long, 43 Mont. 401, 409, 117 Pac. 104.

Time of apportionment of assets or liabilities of counties, towns, or municipalities in case of division of territory by legislature, see 18 Ann. Cas. 324.

Sec. 4. In each county there shall be elected three county commissioners, whose term of office shall be six years; provided, that the term of office of those elected on November 6, 1900, shall expire on the first Monday in January, 1907; provided further, that at the general election to be held in November, 1902 (in counties where commissioners are to be elected that year), three commissioners shall be elected whose terms shall expire on the first Monday in January, 1907; provided further, that at the general election to be held in November, 1906, one commissioner shall be elected for a term of two years, one commissioner shall be elected for a term of four years, and one commissioner shall be elected for a term of six years, whose term of office shall commence on the said first Monday in January, 1907; and, provided further, that at each general election thereafter commencing with the general election to be held in November, 1908, one commissioner shall be elected for a term of six years. A vacancy in the board of county commissioners shall be filled by appointment by the judge of the judicial district in which the vacancy occurs.

Note.—Section 4 is given as amended by act approved February 26, 1901 (7th Sess., p. 208), declared to be in force by proclamation by the governor December 5, 1902.

The amendment to this section proposed by the legislative assembly by the act approved February 23, 1891, providing for the election of county commissioners at the general election of 1894, not having been advertised as required by the constitution, was not adopted for failure to comply with this formality. State ex rel. Woods v. Tooker, 15 Mont. 8, 9, 37 Pac. 839, 25 L. R. A. 560.

In an act creating a new county, the legislative assembly may provisionally appoint the officers thereof, including the county commissioners, who are entitled to serve for the full constitutional term, which begins at the first general election succeeding the creation of the county, and is not computed quadrennially from the adoption of the constitution in 1889. State v. Mayhew, 21 Mont. 93, 52 Pac. 981.

This amendment does not violate section 31, article V, or section 9, article XIX, of the constitution. State ex rel. Teague v. Board of Commrs., 34 Mont. 426, 430, 87 Pac. 450.

The power to fill a vacancy in the office of county commissioner is conferred by this section upon the district judge of the district in which the vacancy occurs and the provisions of the statute enacted in pursuance thereof. Although it is vested in a judicial officer, it is not a prerequisite to its exercise that it be invoked by an application in the form of a complaint or petition, nor is the validity of its exercise in a given case made dependent in any measure upon facts judicially ascertained to exist. The appointing officer pronounces no decree, nor does he adjudicate any right. His action is the result of an opinion based upon personal knowledge of the existence of the vacancy, or information derived from any source which he deems reliable. State ex rel. Dowen v. District Court, 50 Mont. 249, 251, 146 Pac. 467.

Cited or applied in State ex rel. Chenoweth v. Acton, 31 Mont. 37, 42, 77 Pac. 299; Missouri River Power Co. v. Steele, 32 Mont. 433, 438, 80 Pac. 1093; State ex rel. Quintin v. Edwards, 38 Mont. 250,

264, 99 Pac. 940; State ex rel. McGowan, v. Sedgwick, 46 Mont. 187, 189, 191, 127 Pac. 94; State ex rel. Rowe v. Kehoe, 49 Mont. 582, 587, 144 Pac. 162.

Sec. 5. There shall be elected in each county the following officers: One county clerk, who shall be clerk of the board of the county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of taxes; provided, that no person shall hold the office of county treasurer for more than two consecutive terms; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of two years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election.

The office of county auditor is not expressly provided for in the constitution. State ex rel. McGinnis v. Dickinson, 26 Mont. 391, 392, 68 Pac. 468.

Section 3940 of the Political Code of 1895, providing that the county assessor must collect the taxes on all personal property, when, in his opinion, such taxes are not a lien on real property sufficient to secure payment thereof, is unconstitutional and void; the legislature having no power to vest any person other than the treasurer with power to collect taxes. Mutual Life Ins. Co. v. Martien, 27 Mont. 437, 439, 71 Pac. 470. See, also, Missouri River Power Co. v. Steele, 32 Mont. 433, 437, 80 Pac. 1093; City of Butte v. Bennetts, 51 Mont. 27, 30, 149 Pac. 92, Ann. Cas. 1918C, 1019; Pohl v. Chicago, Milwaukee & St. Paul Ry. Co., 52 Mont. 572, 577, 160 Pac. 515.

The provisions of section 4867 et seq. of the Political Code of 1895, authorizing the collection of city taxes by the city treasurer, are not in violation of this section, when construed in connection with article XII, section 4, of the constitution. State ex rel. City of Butte v. Weston, 29 Mont. 125, 127, 74 Pac. 415.

Section 1171 of the Political Code of 1895, providing that in case of a tie vote for a county officer, except county commissioner, the county commissioners shall appoint some eligible person to fill the office, as in case of other vacancies in such office, is invalid as to county superintendent of schools and other officers named in this section. State ex rel. Chenoweth v. Acton, 31 Mont. 37, 40, 77 Pac. 299.

This section regulates the terms of all county officers. State ex rel. Jones v. Foster, 39 Mont. 583, 590, 104 Pac. 860.

The language contained in the last sentence of this section should be read in connection with the sentence occurring in section 4 of this article, that "a vacancy in the board of county commissioners shall be filled by appointment by the judge of the judicial district in which the vacancy occurs." The meaning expressed is as follows: Vacancies in all county, township, and precinct offices shall be filled by appointment, and the appointee shall hold his office until the next general election; vacancies in the office of county commissioner shall be filled by appointment by the district judge of the district in which the vacancy occurs; and vacancies in all other offices shall be filled by appointment by the board of county commissioners. State ex rel. McGowan v. Sedgwick, 46 Mont. 187, 191, 127 Pac. 94; State ex rel. Rowe v. Kehoe, 49 Mont. 582, 587, 144 Pac. 162.

The offices of clerk of the district court, county attorney, and justice of the peace, being enumerated in the constitution as judicial offices, are to be excluded from the enumeration of the offices referred to in this section. It refers only to the offices of sheriff, treasurer, county clerk, assessor, auditor, superintendent of common schools, county surveyor, coroner, and public administrator. State ex rel. Rowe v. Kehoe, 49 Mont. 582, 586, 144 Pac. 162.

Under this section, declaring that the appointees to vacancies in county offices shall hold until the next general election, section 4454, which extends the tenure of such appointees "until the first Monday in January next after a general election," is invalid. State ex rel. Rowe v. Kehoe, 49 Mont. 582, 589, 144 Pac. 162.

For the county officers mentioned in this section who have been elected to their positions, it plainly contemplates a fixed term of two years, with a contingent occupancy until their successors are elected and qualified. State ex rel. Dunne v. Smith, 53 Mont. 341, 344, 163 Pac. 784.

The vacancies in county offices referred

to in the last clause of this section, the appointees to fill which shall hold until the next succeeding general election, are those occurring after the fixed term has commenced, but before a general election; and no appointment holds good beyond the next succeeding general election, whether the interval between it and the fixed term be great or small. State ex rel. Dunne v. Smith, 53 Mont. 341, 344, 345, 163 Pac. 784.

Cited or applied in Lloyd v. Silver Bow County, 11 Mont. 408, 413, 28 Pac. 453; Meagher County Commissioners v. Gardner, 18 Mont. 110, 44 Pac. 407; State v. Mayhew, 21 Mont. 93, 52 Pac. 981; State ex rel. Donyes v. Board of Commrs. of Granite County, 23 Mont. 250, 252, 58 Pac. 439; State ex rel. Quintin v. Edwards, 38 Mont. 250, 264, 99 Pac. 940.

Power of board to appoint officer or to make contract for term extending beyond its own term, see 29 L. R. A. (N. S.) 652, L. R. A. 1915E, 581.

Sec. 6. The legislative assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this constitution otherwise provided.

If authority be requisite for the creation of the office of county auditor, it may be found in this section. State ex rel. McGinnis v. Dickinson, 26 Mont. 391, 392, 68 Pac. 468.

Strictly speaking, a policeman is not a "municipal" officer—that is, a "city" officer—as that term is used in this section; nor is such officer a mere servant or employee of the municipality. State ex rel. Quintin v. Edwards, 38 Mont. 250, 267, 268, 99 Pac. 940.

The word "municipal," found in this section, is used in its restricted sense, meaning "city." State ex rel. Quintin v. Edwards, 38 Mont. 250, 269, 99 Pac. 940.

In view of the provisions of this section, the legislative assembly had the authority, as expressed in the drainage district law of 1905, authorizing the commissioners of each county desiring to avail itself of the benefits of the act to appoint a drain commissioner with certain powers, among which was his authority to fix assessments to be paid by those directly benefited by the construction of drains, to be collected through the agency of the regular county officers, to confer upon said commissioner the powers specified in the act, since the legislature could, for convenience in carrying out the object of the statute, create new agencies in addition to availing itself of existing ones. Billings Sugar Co. v. Fish, 40 Mont. 256, 280, 106 Pac. 565, 20 Ann. Cas. 264, 26 L. R. A. (N. S.) 973.

It cannot be said that a "patrolman" is a local municipal officer, in contradistinction from a "policeman," and that as such he comes within the designation of "municipal officers" as used in this section; the words are synonymous. State ex rel. Quintin v. Edwards, 40 Mont. 287, 301, 106 Pac. 695, 20 Ann. Cas. 239.

Since a policeman or police officer does not fall within the class designated as "municipal officers" in this section, the legislature did not transcend its power in providing that his term of office shall extend during good behavior, or until he shall become incapacitated by age or disease. State ex rel. Wynne v. Quinn, 40 Mont. 472, 475, 107 Pac. 506.

That the framers of the constitution did not intend municipal corporations to include counties is clear, for the two terms are used, as in this section, to distinguish different organizations. Hersey v. Neilson, 47 Mont. 132, 141, 131 Pac. 30, Ann. Cas. 1914C, 963.

Cited or applied in State ex rel. Bray v. Long, 21 Mont. 26, 33, 52 Pac. 645; Missouri River Power Co. v. Steele, 32 Mont. 433, 438, 80 Pac. 1093; State ex rel. Bailey v. Edwards, 40 Mont. 313, 317, 106 Pac. 703.

ARTICLE XVII.

PUBLIC LANDS.

Section 1. All lands of the state that have been, or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or

may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners, as follows: First, lands which are valuable only for grazing purposes. Second, those which are principally valuable for the timber that is on them. Third, agricultural lands. Fourth, lands within the limits of any town or city or within three miles of such limits; provided, that any of said lands may be re-classified whenever, by reason of increased facilities for irrigation or otherwise, they shall be subject to different classification.

The provisions of this article relate to such lands as the state has acquired or may acquire after the same are selected under the laws provided for that purpose, and are not applicable to lands granted to the state under the act of congress, approved August 18, 1894. State ex rel. Koch v. Wright, 17 Mont. 77, 42 Pac. 103.

Public lands granted to the state by the United States are subject to public sale, and it was so intended by congress and the framers of the state constitution, for the enhancement and enlargement of internal improvements and swelling the common school fund. State ex rel. Galen v. District Court, 42 Mont. 105, 113, 112 Pac. 706.

Neither this provision nor that contained in section 2 of article XI deals with the subject of the capacity of the state to acquire property. Both are limitations upon the power of disposal by the legislature. They also embody an express injunction upon the legislature that the property with which they deal must be devoted exclusively to the purposes for which it has been or may be acquired. In re Beck's Estate, 44 Mont. 561, 576, 121 Pac. 784.

State lands are divided into four classes, of which class 4 comprises "lands within the limits of any town or city, or within three miles of such limits." While lands of the first and third class may be sold or leased, the board is commanded to sell lands of the fourth class, and nothing is said about leasing them. If, however, authority to lease such lands be held to be derived from the Enabling Act, the utmost that can be said is that permission was given the state to lease without requiring it to do so. State ex rel. Gibson v. Stewart, 50 Mont. 404, 406, 147 Pac. 276.

The word "town," within the meaning of this section, is an aggregation of inhabitants and houses used for various purposes so close to one another that the inhabitants may be said to dwell together, upon a regularly platted town site, whether incorporated or not. Davis v. Stewart, 54 Mont. 429, 433, 171 Pac. 281.

This section must be construed in the light of conditions prevailing at the time of its enactment in 1889, and after observing the language used by the framers of the constitution, the subject-matter under consideration, and the object to be attained, all of which justify the conclusion that the framers of the instrument did not intend "incorporated" towns when they used the word "town" without prefix in this section, but that undeniably they intended towns as popularly contemplated, and had in mind the then existing statutes covering the location of "town sites" when they used the word "limits." Davis v. Stewart, 54 Mont. 429, 434, 435, 171 Pac. 281.

The three-mile distance from the limits of towns within which school lands cannot be sold, under the inhibition of this section, must be measured from the nearest point upon the town-site plat. Davis v. Stewart, 54 Mont. 429, 437, 171 Pac. 281.

Cited or applied in State ex rel. Lyman v. Stewart, 58 Mont. 1, 7, 190 Pac. 129.

Applicability of state community property law to real property acquired from federal government, see 26 L. R. A. (N. S.) 1117.

Sec. 2. The lands of the first of said classes may be sold or leased, under such rules and regulations as may be prescribed by law. The lands

of the second class may be sold, or the timber thereon may be sold, under such rules and regulations as may be prescribed by law. The agricultural lands may be either sold or leased, under such rules and regulations as may be prescribed by law. The lands of the fourth class shall be sold in alternate lots of not more than five acres each, and not more than one-half of any one tract of such lands shall be sold prior to the year one thousand nine hundred and ten (1910).

Cited or applied in State ex rel. Koch v. Barret, 26 Mont. 62, 65, 66 Pac. 504; State ex rel. Gibson v. Stewart, 50 Mont. 404, 405, 147 Pac. 276; Davis v. Stewart, 54 Mont. 429, 432, 171 Pac. 429.

Sec. 3. All other public lands may be disposed of in such manner as may be provided by law.

ARTICLE XVIII.

LABOR.

Section 1. The legislative assembly may provide for a bureau of agriculture, labor and industry, to be located at the capital and be under the control of a commissioner appointed by the governor subject to the confirmation of the senate. The commissioner shall hold his office for four years, and until his successor is appointed and qualified; his compensation shall be as provided by law.

Cited or applied in Lloyd v. Silver Bow County, 11 Mont. 408, 415, 28 Pac. 453; State ex rel. Quintin v. Edward, 38 Mont. 250, 264, 99 Pac. 940.

Sec. 2. It shall be unlawful for the warden or other officer of any state penitentiary or reformatory institution in the state of Montana, or for any state officer to let by contract to any person or persons or corporation the labor of any convict confined within said institutions.

Sec. 3. It shall be unlawful to employ children under the age of sixteen (16) years of age in underground mines.

Validity and construction of child labor acts, see 9 Ann. Cas. 1108; 15 Ann. Cas. 473; Ann. Cas. 1913E, 339.

Sec. 4. A period of eight hours shall constitute a day's work on all works or undertakings carried on or aided by any municipal, county or state government, and on all contracts let by them, and in mills and smelters for the treatment of ores, and in underground mines.

Constitutionality of statutes limiting length of day's labor, see 1 Ann. Cas. 82; 9 Ann. Cas. 208; 11 Ann. Cas. 90; 13 Ann. Cas. 959; Ann. Cas. 1912D, 393; Ann. Cas. 1914D, 1263.

Sec. 5. The legislature by appropriate legislation shall provide for the enforcement of the provisions of this article.

Note.—Sections three (3), four (4) and five (5), of this article, are given as added by act approved March 3, 1903 (Ch. 49, L. 1903), declared to be in force by proclamation by the governor December 8, 1904.

ARTICLE XIX.

MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS.

Section 1. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their

respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly, or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law, so help me God." And no other oath, declaration or test shall be required as a qualification for any office or trust.

Before entering upon his duties an alderman must swear that he will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to his office other than the compensation allowed by law. State ex rel. Ryan v. Board of Alderman, 45 Mont. 188, 193, 122 Pac. 569.

The provision of this section, requiring every public officer within the state to take the oath therein prescribed, is self-executing. State ex rel. Scollard v. Board of Examiners, 52 Mont. 91, 96, 156 Pac. 124.

Failure to comply with exact form prescribed by law as affecting binding character of oath, see 5 Ann. Cas. 723.

Sec. 2. The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state.

What constitutes a lottery? see 1 Ann. Cas. 91.

Sec. 3. The legislative assembly shall enact suitable laws to prevent the destruction by fire from any cause of the grasses and forests upon lands of the state or upon lands of the public domain the control of which may be conferred by congress upon this state, and to otherwise protect the same.

Sec. 4. The legislative assembly shall enact liberal homestead and exemption laws.

The laws enacted under this section must receive a liberal construction in favor of the debtor. Ferguson v. Speith, 13 Mont. 487, 496, 34 Pac. 1020, 40 Am. St. Rep. 459; Dayton v. Ewart, 28 Mont. 153, 155, 72 Pac. 420, 98 Am. St. Rep. 549.

The purpose of the homestead statutes of the state is to carry out the mandate of the constitution contained in this section. Mitchell v. McCormick, 22 Mont. 249, 252, 56 Pac. 216.

The mode of obtaining the exemption, and the amount and character of it, are left for the legislature to provide. Yerrick v. Higgins, 22 Mont. 502, 509, 57 Pac. 95.

Sections 9427 and 9428, relating to exempt property of debtors, were enacted in obedience to the injunction contained in this section of the constitution, and must be liberally construed. Mennell v. Wells, 51 Mont. 141, 146, 149 Pac. 954.

Sec. 5. No perpetuities shall be allowed, except for charitable purposes.

Validity, within rule against perpetuities, of gifts to charity not in existence and beginning of whose existence is uncertain or contingent, see Ann. Cas. 1913A, 139.

Sec. 6. All county officers shall keep their offices at the county seats of their respective counties.

Referred to in State ex rel. Geiger v. Long, 43 Mont. 401, 414, 117 Pac. 104.

Sec. 7. In the disposition of the public lands granted by the United States to this state, preference shall always be given to actual settlers thereon, and the legislative assembly shall provide by law for carrying this section into effect.

Sec. 8. The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect.

Power of legislature to formulate and submit to people entire new constitution, see Ann. Cas. 1915C, 240.

Sec. 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one be submitted at the same

election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; provided, however, that not more than three amendments to this constitution shall be submitted at the same election.

The provision of this section, requiring that the secretary of state shall publish a proposed constitutional amendment for three months prior to the next general election, is not only mandatory by its express terms, but is also mandatory by virtue of section 29 of the article III, ante, declaring that the provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise, and a noncompliance with such requirement for publication renders the adoption of a proposed amendment nugatory. State ex rel. Woods v. Tooker, 15 Mont. 8, 18, 37 Pac. 839; 25 L. R. A. 560. See, also, State ex rel. Lloyd v. Rotwitt, 15 Mont. 29, 38, 37 Pac. 845.

A proposed amendment to the constitution, which provided for calling in a district judge when a supreme court judge was disqualified, was void for failure to enter on the journals of both branches of the legislature a full copy of said amendment, before its submission to the people, as required by this section. Durfee v. Harper, 22 Mont. 354, 361, 56 Pac. 582.

The amendment to section 4 of article XVI of the constitution, changing the term of county commissioners from four years to six years, extending the tenure of the then incumbents, and giving district judges power to fill vacancies on the board, approved February 26, 1901, is not violative of this section, but must be considered as one scheme, with the single purpose of establishing and maintaining in existence a board, two of whom at all times are experienced men. State ex rel. Teague v. Board of Commrs., 34 Mont. 426, 430, 87 Pac. 450.

The fact that an amendment to the state constitution may be separated into two or more propositions is not alone decisive of its unconstitutionality under the clause of this section requiring unity of subject in the submission of an amendment: the rule being that if, in the light of common sense, the propositions have to do with different subjects so essentially unrelated that their association is artificial, they are not one, but if they may be logically viewed as parts or aspects of a single plan, the above constitutional requirement is met in their submission as one amendment. State ex rel. Hay v. Alderson, 49 Mont. 387, 404, 142 Pac. 210, Ann. Cas. 1916B, 39.

The provision of this section, requiring publication of a proposed constitutional amendment in full in at least one newspaper in each county for three months previous to the next general election, was satisfied by publication is a weekly, or once a week in a daily or semiweekly paper, in the absence of a provision indicating the number of issues in which the proposed amendment must appear, or designating the character of the paper as monthly, weekly, or daily. State ex rel. Hay v. Alderson, 49 Mont. 387, 409, 142 Pac. 210, Ann. Cas. 1916B, 39.

This section deals with but one subject—amendments to the constitution. In its adoption it was not the purpose of the people to render their fundamental law incapable of change, but, on the contrary, to provide a plain, simple, and easily executed method of amendment. State ex rel. Hay v. Alderson, 49 Mont. 387, 414, 142 Pac. 210, Ann. Cas. 1916B, 39.

Cited or applied in State ex rel. Evans v. Stewart, 53 Mont. 18, 32, 161 Pac. 309.

Provision of constitution for amendment thereof as mandatory or directory, see 15 Ann. Cas. 786.

ARTICLE XX.

SCHEDULE.

That no inconvenience may arise by reason of changing from a territorial to a state form of government, it is declared as follows:

Section 1. All laws enacted by the legislative assembly of the territory of Montana and in force at the time the state shall be admitted into the union and not inconsistent with this constitution or the constitution or laws of the United States of America, shall be and remain in full force as the laws of the state until altered or repealed, or until they expire by their own

limitation; provided, that whenever in said laws the words "territory," "Montana territory" or "territory of Montana" occur, the words "state" or "state of Montana" shall be appropriately substituted and read therefor; and, provided further, that the duties which now by law devolve upon probate judges as jury commissioners and in relation to issuing marriage licenses and filing and recording marriage certificates, and the duties as ex-officio clerks of their own courts, shall until otherwise provided by law, devolve upon and be performed by the clerks of district courts, in their respective counties; and provided further, that the duties of probate judges now imposed by law relative to town sites and to the approval of bonds of other county officers shall, until otherwise provided by law, be performed by the district judges in the several counties in their respective districts.

Cited or applied in State v. Ah Jim, 9 Mont. 167, 171, 23 Pac. 76; State ex rel. Thompson v. Kenney, 9 Mont. 223, 235, 23 Pac. 733; Wallace v. Helena Electric Ry. Co., 10 Mont. 24, 46, 24 Pac. 626, 25 Pac. 278; State v. Kingsley, 10 Mont. 537, 544, 26 Pac. 1066; State ex rel. Maddox v. Kenney, 11 Mont. 553, 555, 29 Pac. 89; State ex rel. Doran v. Hays, 27 Mont. 174, 176, 70 Pac. 321; Montana O. P. Co. v. Boston & M. C. C. & S. M. Co., 27 Mont. 288, 307, 70 Pac. 1114; In re Beck's Estate, 44 Mont. 561, 581, 121 Pac. 784, 1057.

Cited or applied in State ex rel. Metcalf v. District Court, 52 Mont. 46, 51, 155 Pac. 278, L. R. A. 1916F, 132.

The obligations of the territory have been assumed by the state, and the constitution in the most solemn manner protects and enforces the rights of individuals, associations, and corporations which existed at the time the state was admitted into the union. This historic event operated as a repeal or amendment of "all laws enacted by the legislative assembly of the territory of Montana and in force," which were inconsistent with the constitution of the state. State ex rel. Journal Pub. Co. v. Kenney, 9 Mont. 389, 395, 24 Pac. 96.

Sections 324 and 325 of the Probate Practice Act of 1887, providing for appeals directly to the supreme court, enacted prior to the adoption of the constitution, were in conflict with section 1869 of the Revised Statutes of the United States, defining the appellate jurisdiction of the supreme court of the territory, and limiting it to appeals in all cases from the final decisions of the district courts; and also with section 1932 of the Revised Statutes of the United States, providing that in all cases an appeal may be taken from any order, judgment, or decree of the probate court to the district courts, and were therefore null and void in so far as they prescribed direct appeals to the supreme court; and, being null and void, did not, upon the adoption of the constitution, become laws of the state under this section. In re McFarland's Estate, 10 Mont. 445, 447, 26 Pac. 185.

The part of section 6 of the Criminal Practice Act of 1887, enacted by the legislative assembly of the territory, conferring upon the district and justices' courts concurrent jurisdiction in all misdemeanors, is invalid, and did not become a law of the state upon the adoption of the constitution. State v. Myers, 11 Mont. 365, 368, 28 Pac. 650.

The adoption of the laws of the territory did not fix the compensation of a sheriff elected before the adoption of the constitution, and deprived the first legislative assembly of the power to pass an act decreasing the emoluments of his office. Lloyd v. Silver Bow County, 11 Mont. 408, 414, 28 Pac. 453.

It was the policy of the framers of the constitution to preserve in force the body of the statute law on the various subjects of governmental regulation, enacted through a course of years of territorial existence as statutes of the state, except in so far as those statutes were "modified or changed" by the constitution of the state. State ex rel. Coleman v. District Court, 14 Mont. 476, 479, 37 Pac. 7.

Sections 1495 et seq. of the fifth division of the Compiled Statutes of 1887, granting to the owners of mining claims a right of way across the claims of others, and providing for the assessment of damages by commissioners, were not abrogated by the constitution, but merely modified as to the method of determining the damages, leaving the jurisdiction and procedure in other respects unchanged. State ex rel. Coleman v. District Court, 14 Mont. 476, 479, 37 Pac. 7.

This section is self-executing. By it, rights were preserved. It operated of itself to keep in force a system of laws for the government of the state, unless such laws were inconsistent with the constitution. But, as to any such repugnant statutes, it operated as an

effective repeal, for, when the constitution became the fundamental law, acts in conflict with it yielded; and when the question of a conflict is presented to the court, and the conflict clearly appears, the statute must be decided to be inoperative and void. Criswell v. Montana Central Ry. Co., 18 Mont. 167, 172, 44 Pac. 525, 33 L. R. A. 554.

The rights of the individual citizen, acquired under the laws of the territory, are preserved and enforced just as effectively as if the constitution had not been adopted. Wastl v. Montana Union Ry. Co., 24 Mont. 159, 170, 61 Pac. 9.

At the time of the adoption of the constitution, substantially the same procedure which had been provided by the territorial legislature under the Practice Act was continued in force; and this was re-enacted substantially in the codes of 1895. State ex rel. Whiteside v. District Court, 24 Mont. 539, 558, 63 Pac. 395.

When the constitution was adopted, there was an extensive body of statute law, all of which was continued in force except where inconsistent with the constitution. State ex rel. Hillis v. Sullivan, 48 Mont. 320, 326, 137 Pac. 392.

Sec. 2. All lawful orders, judgments and decrees in civil causes, all contracts and claims, and all lawful convictions, judgments and sentences in criminal actions, made and entered, or pronounced by the courts within the territory of Montana, and in force at the time the state shall be admitted into the union, shall continue and be and remain in full force in the state unaffected in any respect by the change from a territorial to a state form of government, and may be enforced and executed under the laws of the state.

Cited or applied in State ex rel. Journal Pub. Co. v. Kenney, 9 Mont. 389, 395, 24 Pac. 96; In re Dewar's Estate, 10 Mont. 426, 438, 25 Pac. 1026.

A decree of divorce of the district court of the territory must be regarded as if pronounced by a district court of the state. The transformation from a territorial to a state form of government is for many purposes to be considered as a continuity of government. Edgerton v. Edgerton, 12 Mont. 122, 148, 29 Pac. 966, 33 Am. St. Rep. 557, 16 L. R. A. 94.

Sec. 3. No crime or criminal offense committed against the laws of the territory of Montana shall abate, or be in any wise affected, by reason of the change from a territorial to a state form of government; but the same shall be deemed and taken to be an offense against the laws of the state, and the appropriate courts of the state shall have jurisdiction over and to hear and determine the same; provided, that this section shall not in any wise be construed to change the law of the statute of limitations, or the due effect or application of the same.

Cited or applied in State v. Ah Jim, 9 Mont. 167, 171, 23 Pac. 76; State v. Kingsly, 10 Mont. 537, 544, 26 Pac. 1066.

Sec. 4. Except as herein otherwise provided, the word "district" shall be substituted and read in lieu of the word "probate" in the terms "probate court" or "probate judge" whenever the same occur in the laws of the territory of Montana, and all said laws which by their terms apply to probate courts or probate judges shall, except as in this constitution otherwise provided, upon a change from territorial to state government, be deemed and taken to apply to district courts and district judges; provided, that all laws allowing fees to probate judges are hereby repealed.

Cited or applied in State ex rel. Murphy v. District Court, 10 Mont. 401, 404, 25 Pac. 1053; In re Dewar's Estate, 10 Mont. 426, 427, 25 Pac. 1026; In re McFarland's Estate, 10 Mont. 445, 450, 26 Pac. 185; Estate of Tuohy, 23 Mont. 305, 308, 58 Pac. 722.

Cited or applied in Davidson v. Wampler, 29 Mont. 61, 66, 74 Pac. 82.

Upon the organization of the state gov-

ernment, probate jurisdiction was given to the district courts by the constitution, and thereafter appeals to the supreme court from judgments and orders therein were possible only by classifying them under the head of special proceedings. Estate of Tuohy, 23 Mont. 305, 308, 58 Pac. 722.

Sec. 5. Clerks of district courts, until otherwise provided by law, shall each perform the duties and be entitled to the same fees as now provided by law for clerks of the district courts of the territory, and until otherwise provided by law shall also perform the services and be entitled to fees therefor that are now provided for clerks of probate courts.

Cited or applied in State v. Ah Jim, 9 Mont. 167, 172, 23 Pac. 76.

Sec. 6. Upon a change from territorial to state government the seals in use by the supreme court and the territorial district courts in and for the several counties respectively, shall pass to and become, until otherwise provided by law, the seals respectively of the supreme court and of the district courts of the state in such counties.

Sec. 7. Prosecutions for criminal offenses against the laws of the territory of Montana, pending at the time the state shall be admitted into the union shall not abate; but the same shall continue and be prosecuted in the name of the state of Montana, and the title of every such action shall be changed to conform to this provision.

Sec. 8. Parties who, at the time of the admission of the state into the union, may be confined under lawful commitments, or otherwise lawfully held to answer for alleged violations of any of the criminal laws of the territory of Montana, shall continue to be so confined or held until discharged therefrom by the proper courts of the state.

Cited or applied in State v. Ah Jim, 9 Mont. 167, 172, 23 Pac. 76; State v. Kingsley, 10 Mont. 537, 544, 26 Pac. 1066.

Sec. 9. All writs, processes, prosecutions, actions, causes of action, defenses, claims and rights of individuals, associations and bodies corporate existing at the time the state shall be admitted into the union, shall continue and be respectively executed, proceeded with, determined, enforced and protected under the laws of the state.

Cited or applied in State ex rel. Journal Pub. Co. v. Kenney, 9 Mont. 389, 395, 24 Pac. 96; State v. Kingsley, 10 Mont. 537, 544, 26 Pac. 1066.

The rights which had accrued under section 697, fifth division, Compiled Statutes of 1887, giving to an employee injured by the negligence of a superior a right of action against the master, prior to the repeal of the law by the constitution, were preserved by this provision of the constitution to be enforced under the laws of the state. Wastl v. Montana Union Ry. Co., 24 Mont. 159, 169, 61 Pac. 9.

Sec. 10. All undertakings, bonds, obligations and recognizances in force at the time the state shall be admitted into the union, which were executed to the territory of Montana, or any officer thereof in his official capacity, or to any official board for the benefit of the territory of Montana, are hereby respectively assigned and transferred to the state of Montana, to the state officer successor to said territorial officer, or to the official board successor to the aforesaid official board, for the use of the state, as the case may be, and shall be as valid and binding as if executed under state law to the

state, or state officer in his official capacity, or official board, for the benefit of the state; and all fines, taxes, penalties and forfeitures due or owing to the territory of Montana or to any county, school district, or municipality therein, at the time the state shall be admitted into the union, are hereby respectively assigned and transferred, and the same shall be payable to the state, county, school district or municipality, as the case may be, and payment thereof may be enforced under the laws of the state.

Cited or applied in State v. Hickman, 11 Mont. 541, 29 Pac. 92.

Cited or applied in State ex rel.. Journal Pub. Co. v. Kenney, 9 Mont. 389, 395, 24 Pac. 96.

Sec. 11. All property, real and personal, and all moneys, credits, claims, demands and choses in action of every kind, belonging to the territory of Montana at the time the state shall be admitted into the union, are hereby assigned and transferred to, and shall be vested in, and become the property of the state of Montana.

Sec. 12. All obligations of the territory of Montana, existing, in force and unpaid at the time of the admission of the state into the union are hereby assumed by the state, which shall and will well and truly pay the same.

Cited or applied in State ex rel. Journal Pub. Co. v. Kenney, 9 Mont. 389, 395, 24 Pac. 96.

Cited or applied in State ex rel. Wade v. Kenney, 10 Mont. 485, 26 Pac. 197.

Sec. 13. All matters, cases and proceedings pending in any probate court in the territory of Montana, at the time the state shall be admitted into the union, and all official records, files, moneys, and other property of, or pertaining to such court, are hereby transferred to the district court in and for the same county, and such district court shall have full power and jurisdiction to hear, determine and dispose of all such matters, cases and proceedings.

In a probate case, where an appeal to the territorial district court was perfected prior to the adoption of the constitution, the appellate jurisdiction of the district court in such case was not ousted by the provisions of the constitution abolishing probate courts and transferring pending probate matters to the district court for the exercise of original jurisdiction. In re Dewar's Estate, 10 Mont. 426, 438, 25 Pac. 1026.

Sec. 14. All actions, cases and proceedings, and matters which shall be pending in the supreme and district courts of Montana territory at the time of the admission of the state into the union whereof the United States circuit or district court might have had jurisdiction, had such court existed at the commencement of such actions, cases, proceedings and matters, respectively, shall be transferred to said United States circuit and district courts respectively; and all the files, records, indictments and proceedings relating to such actions, cases, proceedings and matters shall be transferred to said United States courts; provided, that no civil action, cause or proceeding to which the United States is not a party, shall be transferred to either of said United States courts except upon written request of one of the parties thereto and in the absence of such request, such case shall be proceeded with in the proper state courts.

Sec. 15. All actions, cases, proceedings and matters pending in the supreme and district courts of the territory of Montana at the time the

state shall be admitted into the union, and all files, records and indictments relating thereto, except as otherwise provided herein, shall be appropriately transferred, as may be proper to the supreme and district courts of the state, respectively, and all such actions, cases and matters shall be proceeded with in the proper state courts.

Sec. 16. Upon a change from a territorial to a state government, and until otherwise provided by law, the great seal of the territory shall be deemed and taken to be the great seal of the state of Montana.

Sec. 17. All territorial, county and township officers now occupying their respective positions under the laws of the territory of Montana, or of the United States of America, shall continue and remain in their respective official positions and perform the duties thereof as now provided by law after the state is admitted into the union, and shall be considered state officers until their successors in office shall be duly elected and qualified, as provided by ordinance, notwithstanding any inconsistent provisions in this constitution, and shall be entitled to the same compensation for their services as is now established by law; provided, that the compensation for justices of the supreme court, governor and secretary of the territory shall be paid by the state of Montana.

Cited or applied in State ex rel. Thompson v. Kenney, 9 Mont. 223, 235, 23 Pac. 733.

Done in open convention at the city of Helena, in the territory of Montana, this seventeenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

WILLIAM A. CLARK, president.
E. D. AIKEN,[1]
WALTER M. BICKFORD,
J. F. BRAZELTON,[2]
PETER BREEN,[3]
DAVID G. BROWNE,[4]
SIMON R. BUFORD,[5]
WILLIAM MASON BULLARD,[6]
WALTER A. BURLEIGH,[7]
ALEX F. BURNS,[8]
ANDREW J. BURNS,[9]
EDWARD BURNS,[10]
JAMES E. CALLAWAY,[11]
EDWARD CARDWELL,[12]
B. PLATT CARPENTER,
MILTON CAUBY,
WILLIAM A. CHESSMAN,[13]
TIMOTHY E. COLLINS,[14]
CHARLES E. CONRAD,[15]
WALTER COOPER,
THOMAS F. COURTNEY,[16]
ARTHUR J. CRAVEN,
W. W. DIXON,[17]
D. M. DURFEE,
WILLIAM DYER,[18]
GEORGE O. EATON,
WILLIAM T. FIELD,
J. E. GAYLORD,[19]
PARIS GIBSON,[49]
WARREN C. GILLETTE,[38]
O. F. GODDARD,
FIELDING L. GRAVES,[39]
R. E. HAMMOND,
CHARLES S. HARTMAN,
HENRI J. HASKELL,[50]
LUKE D. HATCH,[40]
LEWIS H. HERSHFIELD,[41]
RICHARD O. HICKMAN,[42]
S. S. HOBSON,
JOSEPH HOGAN,[20]
THOMAS JOYES,[21]
ALLEN R. JOY,
J. E. KANOUSE,
W. J. KENNEDY,[22]
H. KNIPPENBERG,
HIRAM KNOWLES,[23]

CONRAD KOHRS,[24]
C. H. LOUD,
LLEWELLYN A. LUCE,[25]
MARTIN MAGINNIS,[26]
J. E. MARION,[27]
CHARLES S. MARSHALL,[28]
WM. MAYGER,[29]
P. W. MCADOW,[30]
C. R. MIDDLETON,
SAMUEL MITCHELL,[31]
WILLIAM MUTH,
ALFRED MYERS,[32]
WILLIAM PARBERRY,[33]
W. R. RAMSDELL,
G. J. REEK,[34]
JOHN C. ROBINSON,[35]
L. ROTWITT,[36]
J. E. RICKARDS,
FRANCES E. SARGEANT,
LEOPOLD F. SCHMIDT,[37]
GEORGE W. STAPLETON,[38]
JOSEPH K. TOOLE,
J. R. TOOLE,[44]
CHARLES S. WARREN,[51]
WILLIAM H. WATSON,[45]
CHAS. M. WEBSTER,[46]
H. R. WHITEHILL,[47]
GEORGE B. WINSTON,
AARON C. WITTER,[48]

Note.—
[1]Died April 22, 1900.
[2]Died December 19, 1917.
[3]Died October 2, 1920.
[4]Died December 10, 1919.
[5]Died January 15, 1905.
[6]Died April 23, 1900.
[7]Died March 7, 1896.
[8]Died May 27, 1908.
[9]Died November 26, 1893.
[10]Deceased.
[11]Died August 21, 1905.
[12]Died May 4, 1912.
[13]Died October 3, 1920.
[14]Died August 30, 1908.
[15]Died November 27, 1902.
[16]Died March 4, 1901.
[17]Died November 13, 1910.
[18]Died November 17, 1911.
[19]Died July 23, 1920.
[20]Died May 27, 1900.
[21]Died June 4, 1893.
[22]Died August 26, 1920.
[23]Died April 6, 1911.
[24]Died July 23, 1920.
[25]Died January 4, 1903.
[26]Died March 27, 1919.
[27]Died September 27, 1901
[28]Died November 13, 1896.
[29]Died January 19, 1919.
[30]Died July 12, 1918.
[31]Died February 3, 1903.
[32]Died June 1, 1920.
[33]Died October 12, 1902.
[34]Died July 27, 1897.
[35]Died December 5, 1897.
[36]Died December 6, 1910.
[37]Died Sept. 24, 1914.
[38]Died Sept. 8, 1912.
[39]Died December 27, 1913.
[40]Died January 7, 1920.
[41]Died December 4, 1910.
[42]Died July 20, 1895.
[43]Died April 25, 1910.
[44]Died March 4, 1916.
[45]Died August 17, 1894.
[46]Died May 7, 1909.
[47]Died June 11, 1905.
[48]Died January 31, 1891.
[49]Died December 16, 1920.
[50]Died March 5, 1921.
[51]Died April 13, 1921.

ORDINANCE NO. I.

FEDERAL RELATIONS.

BE IT ORDAINED: First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of the state of Montana shall ever be molested in person or property, on account of his or her mode of religious worship.

Cited or applied in State ex rel. Haire v. Rice, 33 Mont. 365, 389, 83 Pac. 874; Stephens v. Nacey, 49 Mont. 230, 241, 141 Pac. 649.

Second. That the people inhabiting the said proposed state of Montana, do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States, that the lands belonging to citizens of the United States, residing without the said state of Montana, shall never be taxed a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the said state of Montana on

lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein contained shall preclude the said state of Montana from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, but said last named lands shall be exempt from taxation by said state of Montana so long and to such extent as such act of congress may prescribe.

The legislature has no power to impose a tax of any character upon any property or instrumentality of the federal government, and this immunity includes special assessments. Ford v. City of Great Falls, 46 Mont. 292, 307, 127 Pac. 1004.

Third. That the debts and liabilities of said territory of Montana shall be assumed and paid by said state of Montana.

Fourth. That provision shall be made for the establishment and maintenance of a uniform system of public schools, which shall be open to all the children of said state of Montana and free from sectarian control.

This section does not prohibit the enactment of a law classifying school districts for the purposes of the election of trustees according to population, but the classification must be reasonable and uniform in its operation and effect on all districts. State ex rel. Bray v. Long, 21 Mont. 26, 30, 52 Pac. 645.

Cited in State ex rel. Shapley v. Board of Commrs. of Yellowstone Co., 12 Mont. 503, 505, 31 Pac. 78.

Fifth. That on behalf of the people of Montana, we in convention assembled, do adopt the constitution of the United States.

Sixth. That the ordinances in this article shall be irrevocable without the consent of the United States and the people of said state of Montana.

Seventh. The state hereby accepts the several grants of land from the United States to the state of Montana, mentioned in an act of congress, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington, to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Approved February 22, 1889, upon the terms and conditions therein provided.

The state accepted public lands from the United States only upon the terms of the Enabling Act, and these terms were, in part, to the effect that the lands, surveyed or unsurveyed, should be reserved for school purposes only. State ex rel. Galen v. District Court, 42 Mont. 105, 113, 112 Pac. 706.

Cited or applied in State ex rel. Koch v. Barret, 26 Mont. 62, 64, 66 Pac. 504.

ORDINANCE II.

ELECTIONS.

Be it Ordained by the Convention assembled to form a Constitution for the State of Montana:

First. That an election shall be held throughout the territory of Montana on the first Tuesday of October, 1889, for the ratification or rejection of the constitution framed and adopted by this convention.

An ordinance, framed and adopted by the constitutional convention, and appended to the constitution, and with it adopted by the people, has the same force and effect as a constitutional provision. State ex rel. Thompson v. Kenney, 9 Mont. 223, 238, 23 Pac. 733.

The effect of an ordinance upon the statute is to change and modify its provisions so far as it is necessary to give the provisions of the ordinance full scope and effect. State ex rel. Thompson v. Kenney, 9 Mont. 223, 241, 23 Pac. 733.

Second. At said election the constitution framed and adopted by this convention shall be submitted to the people of the territory for their ratification or rejection, and all persons who are then qualified electors under the laws of this territory, shall be qualified to vote for the ratification or rejection thereof.

Third. Said elections shall be held at the several polling places and precincts throughout the territory appointed for the holding of elections under the laws of the territory, and shall be conducted in the manner prescribed by the laws of the territory regulating elections. The boards of county commissioners of the several counties of the territory shall appoint judges and clerks of such election in each of said polling places and precincts in the same manner as is now required by law for the appointment of judges and clerks of general elections in the territory.

Fourth. Each elector voting at said election shall have written or printed upon the ticket he may deposit in the ballot box, the words "for the constitution" or "against the constitution."

Fifth. The votes cast at said election for the adoption or rejection of said constitution shall be canvassed by the canvassing boards of the respective counties not later than fifteen days after said election, or sooner, if the returns from all of the precincts shall have been received and in the manner prescribed by the laws of the territory of Montana for canvassing the votes at general elections in said territory, and the returns of said election shall be made to the secretary of the territory, who with the governor, and the chief justice of the territory, or any two of them shall constitute a board of canvassers who shall meet at the office of the secretary of the territory on, or before, the thirtieth day after the election, and canvass the votes so cast and declare the result.

The board of canvassers provided for in this paragraph was the legally constituted canvassing board to canvass the votes for members of the legislative assembly and to declare the result. State ex rel. Thompson v. Kenney, 9 Mont. 223, 237, 23 Pac. 733.

Sixth. That on the first Tuesday in October, 1889, there shall be elected by the qualified electors of Montana, a governor, a lieutenant-governor, a secretary of state, an attorney general, a state treasurer, a state auditor, a state superintendent of public instruction, one chief justice, and two associate justices of the supreme court, a judge for each of the judicial districts established by this constitution, a clerk of the supreme court, and a clerk of the district court in and for each county of the state, and the members of the legislative assembly provided for in this constitution. The terms of officers so elected shall begin when the state shall be admitted into the union and shall end on the first Monday in January, 1893, except as otherwise provided.

Cited or applied in State ex rel. Thompson v. Kenney, 9 Mont. 223, 236, 23 Pac. 733; State ex rel. Jones v. Foster, 39 Mont. 583, 588, 104 Pac. 860.

Seventh. There shall be elected at the same time one representative in the fifty-first congress of the United States.

Cited or applied in State ex rel. Thompson v. Kenney, 9 Mont. 223, 237, 23 Pac. 733.

Eighth. The votes for the above officers shall be returned and canvassed as is provided by law, and returns shall be made to the secretary of the territory and canvassed in the same manner and by the same board as is the vote upon the constitution, except as to the clerk of the district court.

Cited or applied in State ex rel. Thompson v. Kenney, 9 Mont. 223, 237, 23 Pac. 733.

Ninth. There shall also be elected at the same time the following county and township officers: Three county commissioners, one clerk of the board of commissioners and ex-officio recorder, one sheriff, one county treasurer, one county superintendent of common schools, one county surveyor, one county assessor, one coroner, one public administrator, one county attorney, two justices of the peace, and two constables for each township. The terms of office for the above named officers shall begin upon the admission of the state and end upon the first Monday of January, A. D. 1893, except as to county treasurer, whose term shall begin on the first Monday in March succeeding his election, and end on the first Monday of March, A. D. 1893, and also as to county commissioners, whose terms are otherwise provided for in this constitution.

Cited or applied in Lloyd v. Silver Bow County, 11 Mont. 408, 413, 28 Pac. 453; State ex rel. Jones v. Foster, 39 Mont. 583, 590, 104 Pac. 860; State ex rel. Rowe v. Kehoe, 48 Mont. 582, 586, 144 Pac. 162.

Tenth. The votes for the above county and township officers and for clerk of the district court, shall be returned and canvassed and certificates of election to said officers issued as is now provided by law.

Eleventh. Notice of the election for the adoption or rejection of this constitution, and for state, district, county and township officers shall be given by the clerks of the several boards of county commissioners in the same manner as notice of general elections for delegate to congress and county officers is required to be given by the existing laws of the territory.

Twelfth. That the provisions of this ordinance shall apply only to the election and to the officers elected on the first Tuesday of October, 1899.

Note.—Except where otherwise indicated all sections of the constitution were adopted by the constitutional convention August 17, 1889, and ratified by the people October 1, 1889.

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I. POLITICAL CODE

AN ACT TO ESTABLISH A POLITICAL CODE

Be it Enacted by the Legislative Assembly of the State of Montana:

TITLE OF THE ACT.

1. Division of the codes. This act shall be known as The Political Code of the State of Montana, and is divided into six parts, as follows:

Part I. The sovereignty of the state, and the political rights and duties of persons subject to its jurisdiction.
II. The chief political divisions of the state.
III. The government of the state.
IV. The government of counties, cities and towns.
V. The enactment, revision, publication and effect of the codes.
VI. Local and special laws.

History: En. Sec. 1, Pol. C. 1895; re-en. Sec. 1, Rev. C. 1907. Cal. Pol. C. Sec. 1.

Note.—The above section has been changed to conform to the arrangement of this code.

2. When code takes effect. This code takes effect at twelve o'clock, noon, on the first day of July, A. D. 1895.

History: En. Sec. 2, Pol. C. 1895; re-en. Sec. 2, Rev. C. 1907. Cal. Pol. C. Sec. 2.

"From" as word of inclusion or exclusion with respect to time of taking effect of statute, see note in Ann Cas. 1918A, 928.

This section was inoperative upon existing laws before the first day of July, 1895. Dowty v. Pittwood, 23 Mont. 113, 117, 57 Pac. 727.

3. Laws, when retroactive. No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared.

History: En. Sec. 3, Pol. C. 1895; re-en. Sec. 3, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1921. Cal. Pol. C. Sec. 3.

Prospective and retrospective operation of statutes, see 25 R. C. L. 785.

4. Codes, how construed. The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the codes or other statutes of the state of Montana. The codes establish the law of this state respecting the subjects to which they relate and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice.

History: En. Sec. 4, Pol. C. 1895; re-en. Sec. 4, Rev. C. 1907; amd. Sec. 2, Ch. 4, L. 1921. Cal. Pol. C. Sec. 4.

Though a statute must be liberally construed, still the court cannot go beyond its plain provisions. Harrington v. Butte, Anaconda & Pacific Ry. Co., 36 Mont. 478, 483, 93 Pac. 640.

The doctrine that a "statute in affirmance of the common law is to be construed as was the rule by that law" would, perhaps, be modified by this section. Nelson v. Great Northern Ry. Co., 28 Mont. 297, 322, 72 Pac. 642.

The code establishes the law of this state respecting the subjects to which it relates. Lawrence v. Westlake, 28 Mont. 503, 506, 73 Pac. 119.

The statutory requirements as to examining an adverse party before instituting an action are simple, direct, and plain, so that no recourse need be had to similar statutes of other states, and the decisions thereon in those states, in order to understand them. State ex rel. Holcomb v. District Court, 54 Mont. 574, 577, 172 Pac. 329.

Cited or applied as section 4, Revised Codes, in Gehlert v. Quinn, 38 Mont. 1, 3, 98 Pac. 369.

Construction of statutes with reference to the common law, see 25 R. C. L. 1053 et seq.

Liberal and strict construction of statutes, see 25 R. C. L. 1076 et seq.

Preamble as aid to construction of statute, see note in Ann. Cas. 1917C, 500.

Interpretation of statute so as not to recognize casus omissus, see note in Ann. Cas. 1913D, 711.

5. Provisions similar to existing laws, how construed. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

History: En. Sec. 5, Pol. C. 1895; re-en. Sec. 5, Rev. C. 1907. Cal. Pol. C. Sec. 5.

6. Tenure of office preserved. All persons who, at the time this code takes effect, hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by one of the codes adopted at this session of the legislature, and excepting offices filled by appointment.

History: En. Sec. 6, Pol. C. 1895; re-en. Sec. 6, Rev. C. 1907. Cal. Pol. C. Sec. 6.

7. Construction of repeal as to certain officers. When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in either of the four codes, such office ceases at the time the codes take effect.

History: En. Sec. 7, Pol. C. 1895; re-en. Sec. 7, Rev. C. 1907. Cal. Pol. C. Sec. 7.

8. Actions, etc., not affected by this code. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable.

History: En. Sec. 8, Pol. C. 1895; re-en. Sec. 8, Rev. C. 1907. Cal. Pol. C. Sec. 8.

9. Limitations shall continue to run. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code.

History: En. Sec. 9, Pol. C. 1895; re-en. Sec. 9, Rev. C. 1907. Cal. Pol. C. Sec. 9.

The status of a case is not affected by the codes of 1895 when the statute of limitations has fully run, unless tolled, prior to the time when the codes took effect. Wilson v. Pickering, 28 Mont. 435, 439, 72 Pac. 821.

An application by an executor for the sale of real estate does not fall within the provisions of this section and other sections of the code prescribing the time within which actions may be brought to recover real estate, or the possession thereof. In re Tuohy's Estate, 33 Mont. 230, 246, 83 Pac. 486.

Cited or applied as section 9, Political Code, in Guiterman v. Wishon, 21 Mont. 458, 459, 54 Pac. 566.

Retroactive operation of statute of limitations, see notes in 4 Ann. Cas. 166; Ann. Cas. 1912A, 1041.

10. Legal holidays and business days defined. The following are legal holidays in the state of Montana, to-wit: Every Sunday; the first day of January (New Years Day); the twelfth day of February (Lincoln's Birthday); the twenty-second day of February (Washington's Birthday); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twelfth day of October (Columbus Day); the eleventh day of November (Armistice

Day); the twenty-fifth day of December (Christmas Day); every day on which a general election is held throughout the state and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday. If any of the holidays herein enumerated (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days than those herein mentioned are to be deemed business days for all purposes.

History: Ap. p. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921. Cal. Pol. C. Secs. 10-11.

Note.—Columbus Day created by chapter 22, Laws of 1909; Lincoln's Birthday, chapter 11, Laws of 1909.

As more than sixty holidays during the year are provided for by this section, an ordinance making it unlawful to keep open a pawn-shop, loan office, or second-hand store after six o'clock p. m., except on days preceding a holiday, when they may be kept open till ten o'clock p. m., will, in the absence of clear proof to the contrary, be held reasonable. City of Butte v. Paltrovich, 30 Mont. 18, 24, 75 Pac. 521; 104 Am. St. Rep. 698.

Transfer of holiday from Sunday to Monday, see note in 19 L. R. A. 320.

11. Provisions of school code excepted. Nothing herein contained shall be deemed to amend or change the provisions of section 1300 of chapter 76 of the laws of the thirteenth legislative assembly of Montana of 1913 (section 1062 of this code), said section being hereby expressly declared to define legal holidays for school purposes only.

History: En. Sec. 2, Ch. 21, L. 1921.

12. Certain acts not to be done on holidays. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

History: En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907. Cal. Pol. C. Sec. 13.

There is no prohibition against the performance of any public act on Sunday, as such. State ex rel. Hay v. Alderson 49 Mont. 387, 410, 142 Pac. 210, Ann. Cas. 1916B, 39.

Instead of embodying a prohibition, this section merely provides an extra day of grace. Any of the enumerated acts may be done lawfully on a holiday, but are in time if not done until the next business day. State ex rel. Hay v. Alderson, 49 Mont. 387, 411, 142 Pac. 210, Ann. Cas. 1916B, 39.

Computation of time for performance of act required by statute when last day falls on Sunday, see notes in 7 Ann. Cas. 325; 20 Ann. Cas. 1318.

Judicial proceedings on Sunday, see notes in 7 L. R. A. 327; 39 L. R. A. (N. S.) 844; L. R. A. 1915D, 361.

13. Seal defined. When the seal of a court, public officer, or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto.

History: En. Sec. 13, Pol. C. 1895; re-en. Sec. 13, Rev. C. 1907. Cal. Pol. C. Sec. 14.

What is sufficient corporate seal, see note in Ann. Cas. 1912C, 42.

"Seal" as sufficient seal, see note in 11 Ann. Cas. 1110.

14. Joint authority. Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

History: En. Sec. 14, Pol. C. 1895; re-en. Sec. 14, Rev. C. 1907. Cal. Pol. C. Sec. 15.

15. Words and phrases, how construed. Words and phrases used in the codes or other statutes of Montana are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, as amended, are to be construed according to such peculiar and appropriate meaning or definition.

History: En. Sec. 15, Pol. C. 1895; re-en. Sec. 15, Rev. C. 1907; amd. Sec. 3, Ch. 4, L. 1921. Cal. Pol. C. Sec. 16.

"Facility" is not a technical word, but one in common use, and its meaning is to be found in the sense attached to it by approved usage; and moneys raised by a tax to furnish "additional school facilities" may be used to pay the salaries of teachers. State ex rel. Knight v. Cave, 20 Mont. 468, 475, 52 Pac. 200.

Cited or applied as section 15, Revised Codes, in Mullery v. Great Northern Ry. Co., 50 Mont. 408, 416, 148 Pac. 323; State v. Centennial Brewing Co., 55 Mont. 500, 517, 179 Pac. 296.

Words of description or exception as referring to time of passage or time of taking effect of statute, see note in Ann. Cas. 1918D, 825.

Changing, supplying, and eliminating words in statute to correct obvious error, see notes in 1 Ann. Cas. 752; Ann. Cas. 1917C, 500.

16. Certain words defined. Words used in the codes in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one in the term "depose"; signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have in the codes the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes property real and personal.
2. The words "real property" are co-extensive with lands, tenements, hereditaments and possessory titles to public lands.
3. The words "personal property" include money, goods, chattels, things in action and evidence of debt.
4. The word "year," as used in the codes, means a calendar year, and a "month," a calendar month, unless otherwise expressed. Fractions of a year are to be computed by the number of months, thus, half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day and involve no questions of priority.
5. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories.
6. The word "will" includes codicils.
7. The word "writ" signifies an order or precept in writing, issued in the name of the state, or of a court or judicial officer; and the word "process" a writ or summons issued in the course of judicial proceedings.
8. The word "vessel," when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats and every structure adapted to be navigated from place to place.

9. The term "peace officer" signifies any of the officers mentioned in section 8924 of the Penal Code (11620).

10. The term "magistrate" signifies any one of the officers mentioned in section 8923 of the Penal Code (11619).

11. The word "several" as used in the codes in relation, means two or more.

12. The words "third persons," as used in the codes, include all who are not parties to the obligation or transaction concerning which the phrase is used.

13. Usage, within the meaning of the codes, is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general and uniform, that they must be presumed to have acted with reference thereto.

14. The words "usual" and "customary," as used in the code, mean "according to usage."

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921. Cal. Pol. C. Sec. 17.

The legislature has classed an unpatented quartz lode mining claim as real estate, and has provided the same remedies for the protection and enforcement of rights pertaining to it, with the same forms of procedure as it has provided for the protection and enforcement of rights pertaining to other real estate. State ex rel. Baker v. District Court, 24 Mont. 330, 333, 61 Pac. 882.

The singular number when used in this code may include the plural, and the plural the singular; and a statute requiring the notice of a school election to contain "the time and place of holding the election" may designate different "places." Hauswirth v. Mueller, 25 Mont. 156, 161, 64 Pac. 324.

Though the term "person" ordinarily refers to a living human being—a natural person—the definition given it by this and other sections of the codes includes corporations as well as natural persons. In re Beck's Estate, 44 Mont. 561, 572, 121 Pac. 784.

Cited or applied as section 16, Political Code, in Helena Water Works v. Settles, 37 Mont. 237, 239, 95 Pac. 838.

When word "may" in statute is to be deemed mandatory, see notes in 4 Ann. Cas. 420; 5 L. R. A. (N. S.) 340.

Meaning of the word "person," as used in statute, see notes in 20 Ann. Cas. 739; 19 L. R. A. 225; 60 L. R. A. 331.

Signature by mark, see notes in 12 L. R. A. 205; 22 L. R. A. 370.

"Property" within false pretenses statute as including bills and notes, see note in 9 Ann. Cas. 970.

Outstanding accounts as "property" subject to taxation, see note in 29 L. R. A. (N. S.) 60.

Meaning of "year" in computation of time, see note in 78 A. S. R. 384.

Meaning of "month" in computation of time, see note in 78 A. S. R. 384.

Fractions of day in computation of time, see notes in 78 A. S. R. 380; 2 Ann. Cas. 135; Ann. Cas. 1914C, 95.

Meaning of "process" within Pennsylvania statute of 1861, see note in 9 A. L. R. 24.

Legal meaning of "stranger," or third person, see note in Ann. Cas. 1912D, 1189.

17. Effect of codes on prior laws. No statute, law or rule is continued in force because it is consistent with the provisions of the codes on the same subject, but in all cases provided for by the codes all statutes, laws and rules heretofore in force in this state, whether consistent or not with the provisions of the codes, unless expressly continued in force by them, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in the codes provided, nor does it affect any private statute not expressly repealed.

History: En. Sec. 17, Pol. C. 1895; re-en. Sec. 17, Rev. C. 1907; amd. Sec. 5, Ch. 4, L. 1921. Cal. Pol. C. Sec. 18.

This section did not repeal the whole of the Compiled Statutes of 1887, or of the statutes which were in force, but only such statutes as were inconsistent, or were not consistent, with the provisions of the new codes on the same subject, except where the new codes expressly continued the old statutes in force. This section could have no effect before July 1, 1895. Dowty v. Pittwood, 23 Mont. 113, 116, 57 Pac. 727.

Adoption of code as impliedly repealing statutes, see note in 5 Ann. Cas. 202.

Effect on contract made void by statutory provision of subsequent repeal of such statute, see note in Ann. Cas. 1913C, 1398.

18. Certain statutes preserved. Nothing in any of the four codes affects any of the provisions of any special, local, or private statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the codes, except so far as they have been repealed or affected by subsequent laws.

History: En. Sec. 18, Pol. C. 1895; re-en. Sec. 18, Rev. C. 1907. Cal. Pol. C. Sec. 19.

What constitutes "local" statute, see note in 4 Ann. Cas. 659.

PART I.

THE SOVEREIGNTY OF THE STATE AND THE POLITICAL RIGHTS AND DUTIES OF PERSONS SUBJECT TO ITS JURISDICTION.

Chapter 1. Sovereignty and Territorial Jurisdiction of the State.
2. General Rights of the State Over Persons.
3. General Rights of the State Over Property.
4. Persons Composing the People of the State.
5. Political Rights and Duties of Persons Subject to the Jurisdiction of the State.

CHAPTER 1.

SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE.

Section 19. Sovereignty and Style of Process.
20. Territorial Jurisdiction, Limitations on.
21. Military Reservations.
22. Glacier National Park.
23. Yellowstone National Park.
24. Acquisition of Lands by United States.
25. Same—Concurrent Jurisdiction of State.

19. Sovereignty and style of process. The sovereignty of the state resides in the people thereof, but the style of all process must be "The State of Montana," and all prosecutions must be conducted in the name of the state.

History: En. Sec. 30, Pol. C. 1895; re-en. Sec. 20, Rev. C. 1907. Cal. Pol. C. Sec. 30.

20. Territorial jurisdiction, limitations on. The sovereignty and jurisdiction of this state extends to all places within its boundaries, as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States; but the extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States,

is qualified by the terms of such cession, or the laws under which such purchase or condemnation has been or may be made.

History: En. Sec. 40, Pol. C. 1895; re-en. Sec. 21, Rec. C. 1907. Cal. Pol. C. Sec. 33.

Under this section the state consents to the purchase, condemnation, or acquisition of lands by the United States. Where, however, the United States still retains its original ownership of the land, neither purchase, condemnation, nor acquisition is necessary, but actual occupation for any purpose indicated in these sections stands in lieu thereof. Mere occupancy of government land by the military for any purpose not indicated in the law or the constitution would not of itself be sufficient to divest the state of the sovereignty granted to it by congress, nor does the right reserved to serve state process on these reservations infringe on the exclusive jurisdiction of the United States. State v. Tully, 31 Mont. 365, 376, 78 Pac. 760, 3 Ann. Cas. 824.

Subordination or suspension of state law during war, see note in L. R. A. 1918F, 561.

Power of state under Federal Constitution to legislate with respect to army and navy, see note in L. R. A. 1918C, 307.

Indians as subject to state regulation, see notes in 13 Ann. Cas. 192; 1914B, 652; 1915D, 371.

Right of state or territory to tax personalty on government reservation, see note in 14 Ann. Cas. 964.

Liability to state taxation of United States property granted or sold by government, but to which government still holds legal title, see note in 11 Ann. Cas. 391.

Power of eminent domain over property of United States, see note in 4 A. L. R. 548.

21. Military reservations. Authority is granted to and acknowledged in the United States to exercise exclusive legislation, as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the state of Montana.

All legal process of the state, both civil and criminal, may be served upon persons and property found within any of said reservations, or on any Indian reservation, in all cases where the United States has not exclusive jurisdiction.

History: En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907.

The constitution of Montana and this section acknowledge absolute sovereignty in the United States over the places named or referred to therein. State v. Tully, 31 Mont. 365, 375, 78 Pac. 760, 3 Ann. Cas. 824.

Jurisdiction to prosecute crimes committed on federal military reservation, see note in 3 Ann. Cas. 831.

22. Glacier national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all the territory which is now or may hereafter be included in that tract of land in the state of Montana set aside by the act of congress, approved May 11, 1910, for the purposes of a national park, and known and designated as "The Glacier National Park," saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid park in any suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside of said park; and saving, further, to the said state the right to tax persons and corporations, their franchises, and property, on the lands included in said park: provided, however, that jurisdiction shall not vest until the United States, through the proper officers,

notifies the governor of this state that they assume police or military jurisdiction over said park.

History: En. Sec. 1, Ch. 33, L. 1911.

Note.—The boundaries of Glacier national park, as defined in the act above referred to, are as follows: Commencing at a point on the international boundary, between the United States and the Dominion of Canada, at the middle of the Flathead river; thence following southerly along and with the middle of the Flathead river to its confluence with the middle fork of the Flathead river; thence following the north bank of said middle fork of the Flathead river to where it is crossed by the north boundary of the right of way of the Great Northern railroad; thence following the said right of way to where it intersects the west boundary of the Blackfeet Indian reservation; thence northerly along said west boundary to its intersection with the international boundary; thence along said international boundary to the place of beginning.

23. Yellowstone national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over all that part of territory situate in the state of Montana now embraced in the Yellowstone national park, described as follows:

Beginning at the intersection of the east boundary of Yellowstone park with the south boundary of Montana; thence north to the northeast corner of said park; thence west along the north boundary of the park to the northwest corner thereof; thence south along the west boundary of the park to the boundary between Montana and Idaho; thence easterly along that boundary to the west boundary of Wyoming; thence north along the west boundary of Wyoming to the northwest corner thereof; thence east along the boundary between Wyoming and Montana to the east boundary of said park, the place of beginning; containing an area of approximately one hundred ninety-eight square miles, saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid described lands, as long as the lands herein described are used for a national park, and no other purposes, in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside the lands aforesaid; and saving, further, to the said state the right to tax persons and corporations, their franchises and property, on said lands; provided, however, that jurisdiction shall not vest until the United States, through the proper officer or officers, notifies the governor of the state of Montana that they assume police or military jurisdiction over said lands.

History: En. Sec. 1, Ch. 112, L. 1917.

24. Acquisition of lands by United States. The legislative assembly consents to the purchase or condemnation by the United States of any tract of land within this state for the purpose of erecting forts, magazines, arsenals, court-houses, postoffices, and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime, may be served and executed thereon in the same mode and manner, and by the same officers, as if the purchase or condemnation had not been made.

History: En. Sec. 42, Pol. C. 1895; reen. Sec. 23, Rev. C. 1907. Cal. Pol. C. Sec. 34.

The state of Montana has, through its legislative assembly, recognized absolute authority in the general government over all places subsequently acquired and used by the government for any of the purposes named in the constitution of the United States, and by this section has consented to the purchase or condemnation by the United States of any land within the state for the purpose of erecting forts, magazines, arsenals, courthouses, postoffices,

and other needful buildings, and the only condition attached to this consent is that process of the state may be served in any of such places. State v. Tully, 31 Mont. 365, 375, 78 Pac. 760, 3 Ann. Cas. 824.

Acquisition and transfer of property by United States, see 26 R. C. L. 1441.

Nature and extent of power of United States to condemn land, see note in Ann. Cas. 1918E, 39.

25. Concurrent jurisdiction of state. Pursuant to article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as the said lands are held and occupied by the United States for public purposes; reserving, however, to this state a concurrent jurisdiction for the execution upon said lands of all process, civil or criminal, lawfully issued by the courts of the state, and not incompatible with the cession hereby made; provided, that an accurate map or plat and description by metes and bounds of said land shall be filed in the office of the county clerk and recorder of the county in which the same are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city; and provided, further, that the state reserves the right to tax all property of any railroad or other corporation having a right of way or location over or upon the said land.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907.

By this section the state gives its consent to the purchase, and exclusive jurisdiction is ceded to the United States over and with respect to any lands within the limits of the state which shall be acquired by the United States for the purposes described in the federal constitution. State v. Tully, 31 Mont. 365, 375, 78 Pac. 760, 3 Ann. Cas. 824.

CHAPTER 2.

GENERAL RIGHTS OF THE STATE OVER PERSONS.

Section 26. Rights Over Persons Enumerated.

26. Rights over persons enumerated. The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime.
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety.
3. To imprison or confine for the purpose of enforcing civil remedies.
4. To establish custody and restraint for the persons of idiots, lunatics, drunkards, and other persons of unsound mind.
5. To establish custody and restraint of paupers for the purpose of their maintenance.
6. To establish custody and restraint of minors unprovided for by natural guardians, for the purposes of their education, reformation, and maintenance.
7. To require services of persons, with or without compensation, in military duty; in jury duty; as witnesses; as town, village, or city officers; in highway labor; in maintaining the public peace; in enforcing the service

of process; in protecting life and property from fire, pestilence, wreck, and flood; and in such other cases as are provided by statute.

History: En. Sec. 50, Pol. C. 1895; re-en. Sec. 25, Rev. C. 1907. Cal. Pol. C. Sec. 37.

CHAPTER 3.

GENERAL RIGHTS OF THE STATE OVER PROPERTY.

Section 27. Original and Ultimate Title.
28. Property Escheats, When.
29. Acquisition by Taxation.
30. By Right of Eminent Domain.

27. Original and ultimate title. The original and ultimate right of all property, real and personal, within the jurisdiction of this state, and not belonging to the United States, is in the people of the state.

History: En. Sec. 60, Pol. C. 1895; re-en. Sec. 26, Rev. C. 1907. Cal. Pol. C. Sec. 40.

Codes, in In re Beck's Estate, 44 Mont. 561, 579, 121 Pac. 784.

Cited or applied as section 26, Revised

Right of governmental control of property, see 22 R. C. L. 40.

28. Property escheats, when. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state. All property within the limits of this state, which does not belong to any person, belongs to the state.

History: En. Sec. 61, Pol. C. 1895; re-en. Sec. 27, Rev. C. 1907. Cal. Pol. C. Sec. 41.

Codes, in In re Beck's Estate, 44 Mont. 561, 579, 121 Pac. 784.

Cited or applied as section 27, Revised

Property subject to escheat to state, see note in Ann. Cas. 1912D, 382.

29. Acquisition by taxation. The state, or any county thereof, may acquire property by taxation in the modes authorized by law.

History: En. Sec. 62, Pol. C. 1895; re-en. Sec. 28, Rev. C. 1907. Cal. Pol. C. Sec. 43.

30. By right of eminent domain. The state may acquire or authorize others to acquire title to property, real or personal, for public use, in the cases and in the modes provided in sections 9933 to 9958 of these codes.

History: En. Sec. 63, Pol. C. 1895; re-en. Sec. 29, Rev. C. 1907. Cal. Pol. C. Sec. 44.

Nature and exercise of right of eminent domain, see note in 102 A. S. R. 811; 22 L. R. A. (N. S.) 7.

CHAPTER 4.

PERSONS COMPOSING THE PEOPLE OF THE STATE.

Section 31. Who Are the People.
32. Who Are Citizens.
33. Residence, Rules for Determining.

31. Who are the people. The people, as a political body, consist:

1. Of electors.
2. Of citizens not electors.

History: En. Sec. 70, Pol. C. 1895; re-en. Sec. 30, Rev. C. 1907. Cal. Pol. C. Sec. 50.

32. Who are citizens. The citizens of the state are:

1. All persons born in this state and residing within it, except the children of transient aliens.

2. All persons born out of this state who are citizens of the United States and residing within this state.

History: En. Sec. 71, Pol. C. 1895; re-en. Sec. 31, Rev. C. 1907. Cal. Pol. C. Sec. 51.

Where it appeared that the architects for the state capitol building were citizens of the United States, and, before the contract for furnishing plans, specifications, and detail drawings for said building was made, left their former residence without intending to return, and with the intention of residing in this state, they were citizens of the same under this section. Donovan v. State Capitol Commission, 21 Mont. 344, 345, 53 Pac. 1133.

Who are citizens, see 15 R. C. L. 140.

Residence as affecting rights of citizenship, see 6 R. C. L. 288.

Effect of marriage of woman citizen to alien, see notes in Ann. Cas. 1915B, 265; Ann. Cas. 1916E, 648.

Marriage of alien woman to citizen as affecting her citizenship, see note in Ann. Cas. 1915B, 266.

33. Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can only be one residence.

3. A residence cannot be lost until another is gained.

4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.

5. The residence of the husband is presumptively the residence of the wife.

6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

7. The residence can be changed only by the union of act and intent.

History: En. Sec. 72, Pol. C. 1895; re-en. Sec. 32, Rec. C. 1907. Cal. Pol. C. Sec. 52.

What and where is residence, and how lost or changed, see note in 48 A. S. R. 711.

"Residence" as synonymous with "domicile," see notes in Ann. Cas. 1915C, 786; 19 L. R. A. (N. S.) 759.

CHAPTER 5.

POLITICAL RIGHTS AND DUTIES OF PERSONS SUBJECT TO THE JURISDICTION OF THE STATE.

Section 34. Right of Protection.
35. Allegiance.
36. Allegiance, How Renounced.
37. Persons Not Citizens.
38. Eligibility to Office.
39. Rights and Duties of Citizens Not Electors.
40. Rights and Duties of Citizens of Other States.

34. Right of protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907. Cal. Pol. C. Sec. 54.

35. Allegiance. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

History: En. Sec. 81, Pol. C. 1895; re-en. Sec. 34, Rev. C. 1907. Cal. Pol. C. Sec. 55.

36. Allegiance, how renounced. Allegiance may be renounced by a change of residence.

History: En. Sec. 82, Pol. C. 1895; re-en. Sec. 35, Rev. C. 1907. Cal. Pol. C. Sec. 56.

37. Persons not citizens. Persons in this state not its citizens are either:
1. Citizens of other states; or,
2. Aliens.

History: En. Sec. 83, Pol. C. 1895; re-en. Sec. 36, Rev. C. 1907. Cal. Pol. C. Sec. 57.

38. Eligibility to office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907. Cal. Pol. C. Sec. 58.

Eligibility and qualifications of public officers, see 22 R. C. L. 400.

39. Rights and duties of citizens not electors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907. Cal. Pol. C. Sec. 59.

40. Rights and duties of citizens of other states. A citizen of the United States, who is not a citizen of this state, has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907. Cal. Pol. C. Sec. 60.

PART II.

THE CHIEF POLITICAL DIVISIONS OF THE STATE.

Chapter 1. Political Divisions.

CHAPTER 1.

POLITICAL DIVISIONS.

Section 41. Counties.
42. Senatorial Districts.
43. Districts in New Counties.
44. Apportionment of Membership of the House.
45. Number of Representatives From Each County.
46. Representation of New Counties.
47. New Counties to What District Attached.
48. Congressional Districts.
49. Judicial Districts.

41. Counties. The state is divided into counties as declared in part IV. of this code, sections 4293 et seq.

History: En. Sec. 100, Pol. C. 1895; re-en. Sec. 40, Rev. C. 1907. Cal. Pol. C. Sec. 75.

42. Senatorial districts defined. Each county of the state of Montana shall constitute a senatorial district and each senatorial district is entitled to one senator.

History: Ap. p. Sec. 110, Pol. C. 1895; re-en. Sec. 41, Rev. C. 1907 (See Sec. 5, Art. VI, Const. of Mont.); amd. Sec. 1, Ch. 6, L. 1921.

43. Districts in new counties. Whenever new counties are created, each of said counties shall be entitled to one senator, but in no case shall a senatorial district consist of more than one county.

History: En. Sec. 111, Pol. C. 1895; re-en. Sec. 42, Rev. C. 1907.

44. Apportionment of membership of the house. That after the expiration of the seventeenth legislative assembly of Montana, the membership

of the house of representatives of all legislative assemblies of Montana shall be apportioned amongst, and to the several counties of the state, upon and according to the official federal census enumeration of the inhabitants of the several counties of Montana had, as taken by authority of law in the year 1920, and upon the ratio of one representative, or member, therein from each county, for each six thousand (6,000) persons in such county, or fractional part thereof in excess of three thousand (3,000) persons; provided, each county now created, shall be entitled to at least one member.

History: En. Sec. 1, Ch. 38, L. 1911; amd. Sec. 1, Ch. 192, L. 1921.

Validity of apportionment laws and power of courts to declare invalid, see note in 35 A. S. R. 62.

45. Number of representatives from each county. In accordance therewith each county of the state shall be entitled to, and shall elect at each biennial general, state and county election, the number of members of the house of representatives in the legislative assembly of Montana herein below allotted and apportioned to it, and set opposite its name as follows, to-wit:

Beaverhead County	One member
Big Horn County	One member
Broadwater County	One member
Blaine County	Two members
Carbon County	Three members
Carter County	One member
Cascade County	Six members
Chouteau County	Two members
Custer County	Two members
Daniels County	One member
Dawson County	Two members
Deer Lodge County	Three members
Fallon County	One member
Fergus County	Four members
Flathead County	Four members
Gallatin County	Three members
Garfield County	One member
Glacier County	One member
Golden Valley County	One member
Granite County	One member
Hill County	Two members
Jefferson County	One member
Judith Basin County	One member
Lewis and Clark County	Three members
Liberty County	One member
Lincoln County	One member
Madison County	One member
McCone County	One member
Meagher County	One member
Mineral County	One member
Missoula County	Four members
Musselshell County	One member
Park County	Two members

Phillips County	Two members
Pondera County	One member
Powder River County	One member
Powell County	One member
Prairie County	One member
Ravalli County	Two members
Richland County	One member
Rosebud County	One member
Roosevelt County	Two members
Sanders County	One member
Sheridan County	Two members
Silver Bow County	Ten members
Stillwater County	One member
Sweet Grass County	One member
Teton County	One member
Toole County	One member
Treasure County	One member
Valley County	Two members
Wheatland County	One member
Wibaux County	One member
Yellowstone County	Five members

History: En. Sec. 112, Pol. C. 1895; re-en. Sec. 43, Rev. C. 1907; amd. Sec. 2, Ch. 38, L. 1911; amd. Sec. 2, Ch. 192, L. 1921.

46. Representation of new counties. Whenever a new county is created it shall have and be entitled to one member of the house of representatives until otherwise apportioned.

History: En. Sec. 113, Pol. C. 1895; re-en. Sec. 44, Rev. C. 1907; re-en. Sec. 3, Ch. 38, L. 1911; re-en. Sec. 3, Ch. 192, L. 1921.

47. New counties to what district attached. Whenever a new county is created, it shall be attached to and become a part of the representative district, embracing the county from which the largest area included in the new county has been taken.

History: En. Sec. 4, Ch. 192, L. 1921.

48. Congressional districts. All that portion of the state of Montana lying west of the east boundary of Flathead, Lewis and Clark, Broadwater, and Gallatin counties, to-wit: the counties of Lincoln, Sanders, Mineral, Missoula, Ravalli, Beaverhead, Madison, Silver Bow, Jefferson, Deer Lodge, Granite, Powell, Flathead, Gallatin, Lewis and Clark, and Broadwater shall constitute the first congressional district of the state; and that all that portion of the state of Montana lying east of the east boundary of Flathead, Lewis and Clark, Broadwater, and Gallatin counties, to-wit: the counties of Hill, Blaine, Phillips, Valley, Sheridan, Dawson, Wibaux, Prairie, Richland, Fergus, Chouteau, Cascade, Meagher, Musselshell, Rosebud, Custer, Fallon, Big Horn, Carbon, Yellowstone, Stillwater, Sweet Grass, Park, Toole, and Teton shall constitute the second congressional district of the state.

Whenever any county is created, comprised partly of the territory of both such districts, said county shall belong to and become a part of the

district to which major portion of the territory of said county belonged and was a part prior to the creation of such new county.

History: Ap. p. Sec. 120, Pol. C. 1895; re-en. Sec. 47, Rev. C. 1907; amd. Sec. 1, Ch. 44, L. 1917.

49. Judicial districts. The judicial districts of the state of Montana as now constituted are defined by section 8812 of the Code of Civil Procedure.

Note.—New section recommended by code commissioner, replacing section 48, Revised Codes, 1907.

PART III.

THE GOVERNMENT OF THE STATE.

CONTENTS OF PART III.

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PUBLIC OFFICERS AND ADMINISTRATIVE DEPARTMENTS. CHAPTERS 1 TO 43.

Chapter 1. Classification.
2. The Legislative Assembly; Its Composition, Organization, Officers and Employees.
3. The Powers, Duties and Compensation of Members, Officers and Employees of the Legislative Assembly.
4. Witnesses Before the Legislative Assembly.
5. Statutes; Their Enactment, Publication and Operation.
6. Initiative and Referendum.
7. The Executive Department; Classification, Designation, Election and Appointment of Executive Officers and Deputies.
8. The Governor.
9. The Lieutenant-Governor.
10. The Secretary of State.
11. The State Auditor and Commissioner of Insurance.
12. The State Treasurer.
13. The Attorney-General.
14. The State Land Agent.
15. The Superintendent of Public Instruction.
16. The State Examiner.
17. The Stock Commissioner and State Veterinary Surgeon.
18. The Board of Examiners. State Printing and Supplies.
19. The State Purchasing Department.
20. The Budget System.
21. The State Accountant.
22. Custodian of State Capitol.

23. Custodian of Records of Grand Army of Republic.
24. The State Board of Charities and Reform.
25. The State Bureau of Child and Animal Protection.
26. The State Board of Hail Insurance.
27. Other Administrative Departments.
28. Judicial Officers.
29. The Marshal of the Supreme Court.
30. The Clerk of the Supreme Court.
31. The Reporters of the Decisions of the Supreme Court.
32. Notaries Public.
33. Commissioners of Deeds.
34. Attorneys-at-Law.
35. Disqualifications and Restrictions Upon Residence of Officers.
36. Powers of Deputies.
37. Appointments, Nominations and Oath of Office.
38. Compensation of State Officers and Employees.
39. Prohibitions and General Provisions Applicable to Public Officers.
40. Official Bonds.
41. Resignations and Vacancies.
42. The Fiscal Year and General Reports of Officers.
43. The State Seal, Flag and Flower and Official Seals.

CHAPTER 1.

CLASSIFICATION OF PUBLIC OFFICERS.

Section 50. Classification of Public Officers.

50. Classification of public officers. The public officers of this state are classified as follows:

1. Legislative.
2. Executive.
3. Judicial.
4. Ministerial officers and officers of the courts.

But this classification is not to be construed as defining the legal powers of either class.

History: En. Sec. 140, Pol. C. 1895; re-en. Sec. 49, Rev. C. 1907. Cal. Pol. C. Sec. 220.

CHAPTER 2.

THE LEGISLATIVE ASSEMBLY; ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES.

Section 51. Composition of Legislative Assembly.
52. Term of Office.
53. Election of Senators.
54. Same.
55. Time and Place of Meeting.
56. Certificate of Election Evidence of a Right to Seat.
57. Senate, Organization of.
58. House of Representatives, Organization of.
59. Oath to Be Entered on Journals.
60. Election of Officers.
61. Compelling Attendance of Members.
62. Officers and Employees of Senate.
63. Officers and Employees of House.
64. How Elected.

51. Composition of legislative assembly. The legislative assembly consists of senators and representatives elected from the several senatorial and representative districts of the state in the number specified by law.

History: En. Sec. 150, Pol. C. 1895; re-en. Sec. 50, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1921.

52. Term of office. The term of office of a senator is four years, and of a representative two years; and the term of service thereof shall begin on the first Monday of January next succeeding his election, and if a senator or representative be elected to fill a vacancy, his term of service shall begin on the next day after his election.

History: Ap. p. Sec. 151, Pol. C. 1895: re-en. Sec. 51, Rev. C. 1907; en. Sec. 1, Ch. 17, L. 1909. Cal. Pol. C. Sec. 226.

53. Election of senators. At the general election in the year 1892, there must be elected a senator from each of the odd-numbered senatorial districts and hold office for four years, and their successors must be elected in the year 1896, and every four years thereafter.

History: En. Sec. 153, Pol. C. 1895; re-en. Sec. 53, Rev. C. 1907.

54. Same. At the general election in the year 1894, there must be elected a senator from each of the even-numbered senatorial districts, who shall hold office for four years, and their successors must be elected in the year of 1898, and every four years thereafter.

History: En. Sec. 154, Pol. C. 1895; re-en. Sec. 54, Rev. C. 1907.

55. Time and place of meeting. The legislative assembly shall meet at the seat of government, at twelve o'clock, noon, on the first Monday of January, 1897, and each alternate year thereafter, and at other times when convened by the governor.

History: En. Sec. 160, Pol. C. 1895; re-en. Sec. 55, Rev. C. 1907. Cal. Pol. C. Sec. 235.

56. Certificate of election evidence of a right to seat. The certificate of election from the clerk of the proper county is prima facie evidence of the right to membership of the person certified therein to be elected, for all purposes of organization of either branch of the legislative assembly.

History: En. Sec. 1, p. 89, L. 1885; re-en. Sec. 1325, 5th Div. Comp. Stat. 1887; amd. Sec. 161, Pol. C. 1895; re-en. Sec. 56, Rev. C. 1907. Cal. Pol. C. Sec. 236.

Cited or applied as section 56, Revised Codes, in State ex rel. Boulware v. Porter, 55 Mont. 471, 475, 178 Pac. 832.

57. Senate, organization of. At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the legislative assembly, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call the senators and senators-elect to order, and then call over the senatorial districts, in their order, from which members have been elected at the preceding election, and as the same are called the members-elect must present their certificates, take the constitutional oath of office, and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

History: En. H. B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907. Cal. Pol. C. Sec. 238.

58. House of representatives, organization of. At the time specified in section 57, the secretary of state, or in case of his absence or inability, then

the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then call over the roll of counties and districts; and as the same are called the members-elect must present their certificates, take the constitutional oath of office, and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

History: En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907. Cal. Pol. C. Sec. 239.

59. Oath to be entered on journals. An entry of the oath taken by the members of the legislative assembly must be made on the journals of the proper houses, respectively.

History: En. Sec. 165, Pol. C. 1895; re-en. Sec. 59, Rev. C. 1907. Cal. Pol. C. Sec. 240.

60. Election of officers. In all elections of officers of either branch of the legislative assembly, a majority of all the votes given is necessary to a choice.

History: En. Sec. 8, p. 90, L. 1885; re-en. Sec. 166, Pol. C. 1895; re-en. Sec. 60, re-en. Sec. 1332, 5th Div. Comp. Stat. 1887; Rev. C. 1907.

61. Compelling attendance of members. Whenever, at the commencement of or during the regular or extraordinary sessions of the legislative assembly, upon a call of either house it is found that no quorum of members is present, or if any member or members are found to be absent upon any such call, the members present are authorized to direct the sergeant-at-arms of such house, and in his absence, then any other person, to compel the attendance of any or all the absentees. If the house refuse to excuse such absentee, he is not entitled to any per diem during such absence, and is liable for the expenses incurred in procuring his attendance.

History: En. Sec. 9, p. 90, L. 1885; re-en. Sec. 167, Pol. C. 1895; re-en. Sec. 61, re-en. Sec. 1333, 5th Div. Comp. Stat. 1887; Rev. C. 1907.

62. Officers and employees of senate. The officers and employees of the senate shall consist of a president, president pro tem., one secretary, one assistant secretary, one sergeant-at-arms, two assistant sergeants-at-arms, one journal clerk, one assistant journal clerk, one enrolling clerk, one assistant enrolling clerk, one engrossing clerk, one assistant engrossing clerk, one reading clerk, one printing clerk, one bill clerk, one doorkeeper, two assistant doorkeepers, one janitor, two assistant janitors, one day watchman, one night watchman, one chaplain, five pages, and such number of committee clerks as the senate may, by motion, from time to time determine, not exceeding twenty-nine in number.

History: En. Sec. 1, p. 170, L. 1891; re-en. Sec. 180, Pol. C. 1895; re-en. Sec. 62, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1915.

63. Officers and employees of house. The officers and employees of the house of representatives shall consist of a speaker, speaker pro tem., one chief clerk, one assistant chief clerk, one sergeant-at-arms, two assistant sergeant-at-arms, one journal clerk, one assistant journal clerk, one enrolling clerk, one assistant enrolling clerk, one engrossing clerk, one assistant engrossing clerk, one reading clerk, one printing clerk, one bill clerk, one doorkeeper, two assistant doorkeepers, one janitor, three assistant janitors, one day watchman, one night watchman, one chaplain, seven

pages, and such number of committee clerks as the house may, by motion, from time to time determine, not exceeding seventy in number.

History: En. Sec. 2, p. 170, L. 1891; re-en. Sec. 181, Pol. C. 1895; re-en. Sec. 63, Rev. C. 1907; amd. Sec. 2, Ch. 1, L. 1915.

64. How elected. All officers and employees of the legislative assembly, except the president of the senate, must be elected by the house to which such officers and employees are attached.

History: En. Sec. 3, p. 170, L. 1891; re-en. Sec. 182, Pol. C. 1895; re-en. Sec. 64, Rev. C. 1907. Cal. Pol. C. Sec. 247.

CHAPTER 3.

THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY.

Section 65. Power of Officers to Administer Oaths.
66. Duties of Secretary and Clerk.
67. Duties of Assistant Secretary and Assistant Clerk.
68. Journals, How Authenticated.
69. Duties of Sergeant-at-Arms.
70. Duties of Assistant Sergeant-at-Arms.
71. Duties of Subordinate Officers.
72. Duties of Engrossing and Enrolling Clerks.
73. Duties at Close of Session.
74. Per Diem and Mileage of Members.
75. Per Diem and Mileage of President of Senate and Speaker of House.
76. Compensation of Other Officers and Employees.
77. Employment of Additional Help.
78. Compensation for Services After Close of Session.

65. Power of officers to administer oaths. The president and president pro tem. of the senate, and the speaker and speaker pro tem. of the house of representatives, may administer the oath of office to any senator or representative, and to the officers and employees of their respective bodies. The members of any committee may administer oaths to witnesses in any matter under examination. The officers and employees must perform such duties as are required by the rules or orders of the respective bodies which elect them.

History: En. Secs. 4 and 5, p. 170, L. 1891; re-en. Sec. 200, Pol. C. 1895; re-en. Sec. 67, Rev. C. 1907. Cal. Pol. C. Sec. 252.

66. Duties of secretary and clerk. The secretary of the senate and the clerk of the house of representatives must attend each day, call the roll, prepare the journal, and read the journal and bills, and superintend all copying necessary to be done for their respective houses, and keep a correct record of the proceedings.

History: En. Sec. 201, Pol. C. 1895; re-en. Sec. 68, Rev. C. 1907. Cal. Pol. C. Sec. 253.

This section and the following section do not place the custody of bills exclusively in the hands of the assistant secretary of the senate, but the custody is also in the secretary. State v. Bloor, 20 Mont. 574, 584, 52 Pac. 611.

67. Duties of assistant secretary and assistant clerk. The assistant secretary of the senate and the assistant clerk of the house must take charge of all bills, petitions, and other papers presented to their respective houses, file and enter the same in the books provided for that purpose,

and perform such other duties as may be directed by the secretary of the senate and clerk of the house of representatives.

History: En. Sec. 202, Pol. C. 1895; re-en. Sec. 69, Rev. C. 1907. Cal. Pol. C. Sec. 254.

Cited or applied as section 202, Political Code, in State v. Bloor, 20 Mont. 574, 584, 52 Pac. 611.

68. Journals, how authenticated. The journal of the senate must be authenticated by the signature of the president, and the journal of the house of representatives by the signature of the speaker.

History: En. Sec. 203, Pol. C. 1895; re-en. Sec. 70, Rev. C. 1907. Cal. Pol. C. Sec. 256.

In determining whether an act has been passed, the enrolled bill, signed and approved by the proper officers, is conclusive upon the courts, and recourse cannot be had to any other evidence, except where the alleged infirmity of the act is based upon a failure to enter the names of those voting upon its final passage, in which case the journals may be consulted. State ex rel. Gregg v. Erickson, 39 Mont. 280, 289, 102 Pac. 336. See, also, Barth v. Pock, 51 Mont. 418, 427, 155 Pac. 282.

Right of legislature to correct or amend journals, see note in 21 Ann. Cas. 814.

69. Duties of sergeant-at-arms. The sergeant-at-arms of the senate and the sergeant-at-arms of the house of representatives must give a general supervision, under the direction of their presiding officers, to the senate and house, with the rooms attached; attend during the sittings of their respective bodies; execute their commands and all process issued by their authority; keep an account for pay and mileage of members, and prepare checks for the same.

History: En. Sec. 204, Pol. C. 1895; re-en. Sec. 71, Rev. C. 1907. Cal. Pol. C. Sec. 259.

70. Duties of assistant sergeant-at-arms. The assistant sergeant-at-arms of each house must prohibit all persons, except members, officers, and employees, and such other persons as may have the privilege of the floor assigned them by the rules of each house, from entering within the bar of the house, unless upon invitation, and keep order in the halls and lobbies, and perform such other duties as shall be imposed by the presiding officer or the sergeant-at-arms.

History: En. Sec. 205, Pol. C. 1895; re-en. Sec. 72, Rev. C. 1907. Cal. Pol. C. Sec. 260.

71. Duties of subordinate officers. The committee clerks, doorkeeper, janitor, day watchman, night watchman, and pages must perform such duties as shall be assigned to them by the presiding officers of the respective houses, or by the rules and orders of the respective bodies.

History: En. Sec. 206, Pol. C. 1895; re-en. Sec. 73, Rev. C. 1907.

72. Duties of engrossing and enrolling clerks. The engrossing clerks and enrolling clerks must, within forty-eight hours after their reception, engross or enroll all bills delivered to them for engrossment or enrollment, unless further time be granted.

History: En. Sec. 207, Pol. C. 1895; re-en. Sec. 74, Rev. C. 1907; amd. Sec. 3, Ch. 1, L. 1915.

73. Duties at close of session. The secretary of the senate and clerk of the house of representatives, at the close of each session of the legislative assembly, must mark, label, and arrange all bills and papers belonging to the archives of their respective houses, and deliver them, together

with all the books of both houses, to the secretary of state, who must certify to the reception of the same.

History: En. Sec. 6, p. 171, L. 1891; re-en. Sec. 209, Pol. C. 1895; re-en. Sec. 76, Rev. C. 1907. Cal. Pol. C. Sec. 261.

Just what is meant to be included in the phrase, "all bills and papers," is not clear; but it would be extremely dangerous to impeach a duly authenticated record—an enrolled bill—by papers which are not authenticated or identified in any manner; this, however, does not apply to the journals, for they are required, by section 70 (68), ante, to be authenticated. State ex rel. Gregg v. Erickson, 39 Mont. 280, 289, 102 Pac. 336.

74. Per diem and mileage of members. Members of the legislative assembly hereafter elected shall receive ten dollars per day, payable weekly, during the session of the legislative assembly, and ten cents per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909. Cal. Pol. C. Sec. 266.

Cited or applied as section 220, Political Code, before amendment, in Wade v. Lewis and Clark County, 24 Mont. 335, 338, 61 Pac. 879.

Per diem compensation of members and officers of legislature, see note in 1 A. L. R. 286.

75. Per diem and mileage of president of senate and speaker of house. The president of the senate, after the first Monday in January, 1913, and the speaker of the house, shall receive the sum of twelve dollars per day during the session of the legislative assembly, and the same mileage as members.

History: En. Sec. 221, Pol. C. 1895; re-en. Sec. 78, Rev. C. 1907; amd. Sec. 2, Ch. 45, L. 1909. Cal. Pol. C. Sec. 267.

Cited or applied as section 221, Political Code, before amendment, in Wade v. Lewis and Clark County, 24 Mont. 335, 338, 61 Pac. 879.

76. Compensation of other officers and employees. There must be paid to the secretary of the senate, the chief clerk of the house of representatives, the sergeant-at-arms of each house, ten dollars per day each; to the assistant secretary of the senate, the assistant chief clerk of the house of representatives, the journal clerk, the engrossing clerk, enrolling clerk, bill clerk, and assistant sergeant-at-arms, eight dollars per day each; to the assistant journal clerk, assistant enrolling clerk, assistant engrossing clerk, printing clerk, reading clerk, the clerks of the president of the senate and the speaker of the house, the judiciary clerk of each house, the clerks of the chief clerk of the house and the secretary of the senate, six dollars per day each; to the committee clerks, doorkeepers, janitors, assistant janitors, watchman, and chaplain of each house, five dollars per day each; to each page and messenger, four dollars per day; to all employees of the legislative assembly, not herein specifically enumerated, five dollars per day each.

History: En. Sec. 222, Pol. C. 1895; re-en. Sec. 79, Rev. C. 1907; amd. Sec. 3, Ch. 45 L. 1909; amd. Sec. 1, Ch. 37, L. 1913; amd. Sec. 4, Ch. 1, L. 1915; amd. Sec. 1, Ch. 115, L. 1917. Cal. Pol. C. Sec. 268.

77. Employment of additional help. The senate and house of representatives may, by a joint resolution adopted and spread upon the minutes of each house, provide for the employment of additional help in cases of

emergency, where extraordinary conditions render such a course necessary for the orderly and expeditious conduct of the business of the legislative assembly. The resolution shall set forth the facts and circumstances which make such action necessary, and the number of additional employees required, and the general nature of their duties.

History: En. Sec. 5, Ch. 1, L. 1915.

78. Compensation for services after close of session. For services performed under the provisions of section 73 of this code, each of the officers therein named receive a compensation of fifty dollars.

History: En. Sec. 223, Pol. C. 1895; re-en. Sec. 81, Rev. C. 1907. Cal. Pol. C. Sec. 269.

CHAPTER 4.

WITNESSES BEFORE THE LEGISLATIVE ASSEMBLY.

Section 79. Subpoenas.
80. Service of Subpoenas.
81. Contempt.
82. Compelling Attendance.
83. Witness Will Not Be Held to Answer Criminally—Refusal to Testify.

79. Subpoenas. A subpoena requiring the attendance of any witness before either house of the legislative assembly, or a committee thereof, may be issued by the president of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness is desired; and it is sufficient if:

1. It states whether the proceeding is before the house of representatives, or the senate, or a committee.
2. It is addressed to the witness.
3. It requires the attendance of such witness at a time and place certain.
4. It is signed by the president of the senate, speaker of the house, or chairman of a committee.

History: En. Sec. 260, Pol. C. 1895; re-en. Sec. 95, Rev. C. 1907. Cal. Pol. C. Sec. 300.

80. Service of subpoenas. The subpoena may be served by any elector of the state, and his affidavit that he delivered a copy to the witness is evidence of service.

History: En. Sec. 261, Pol. C. 1895; re-en. Sec. 96, Rev. C. 1907. Cal. Pol. C. Sec. 301.

81. Contempt. If any witness neglects or refuses to obey such subpoena, or appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit him for contempt.

History: En. Sec. 262, Pol. C. 1895; re-en. Sec. 97, Rev. C. 1907. Cal. Pol. C. Sec. 302.

Power of legislature or legislative committee to punish witness for contempt, see notes in 7 Ann. Cas. 877; Ann. Cas. 1916B, 1118; L. R. A. 1917F, 288.

82. Compelling attendance. Any witness neglecting or refusing to attend in obedience to subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize such arrest is a copy of a resolution of the senate

or house, signed by the president or speaker of the house of representatives, and countersigned by the secretary or clerk.

History: En. Sec. 263; Pol. C. 1895; re-en. Sec. 98, Rev. C. 1907. Cal. Pol. C. Sec. 303.

83. Witness will not be held to answer criminally—Refusal to testify. No person sworn and examined before either house of the legislative assembly, or any committee thereof, can be held to answer criminally, or be subject to any penalty or forfeiture, for any fact or act touching which he is required to testify; nor is any statement made or paper produced by any such witness competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper touching which he is examined, for the reason that his testimony, or the production of such paper, tends to disgrace him or render him infamous. Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

History: En. Sec. 264, Pol. C. 1895; re-en. Sec. 99, Rev. C. 1907. Cal. Pol. C. Sec. 304.

CHAPTER 5.

STATUTES; THEIR ENACTMENT AND OPERATION.

Section 84. Bills Received by the Governor, How Indorsed.
85. Approval of Bills.
86. Bills Returned Without Approval.
87. Return, When House Not in Session.
88. Bills Remaining With the Governor More Than Five Days.
89. Effect of Final Adjournment on Bills.
90. Statutes, When Effective.
91. "Final Passage," Meaning of.
92. When Joint Resolution Takes Effect.
93. Effect of Amendment.
94. Construction of Statutes.
95. Repeal of Statutes.
96. Act Repealed Not Revived by Repeal of Repealing Act.
97. Repeal of Laws Creating Criminal Offenses, When Bar to Prosecution.
98. Amendatory Act, When Void.

84. Bills received by the governor, how indorsed. Every bill must, as soon as delivered to the governor, be indorsed as follows: "This bill was received by the governor this .... day of ....., 19...." The indorsement must be signed by the private secretary of the governor, or by the governor himself.

History: En. Sec. 270, Pol. C. 1895; re-en. Sec. 100, Rev. C. 1907. Cal. Pol. C. Sec. 309.

Presentation of bill to governor for his signature, see note in Ann. Cas. 1914D, 268.

85. Approval of bills. When the governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the secretary of state. If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and his objections thereto. If the legislative assembly be in session, the governor must transmit to the house in which the bill originated a copy of such statement, and the items

so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907. Cal. Pol. C. Sec. 310.

Power of governor to approve bill in part only, see note in 20 Ann. Cas. 162.

86. Bills returned without approval. When a bill has passed both houses of the legislative assembly, and is returned by the governor without his signature, and with objections thereto, or if it be a bill containing several items of appropriation of money, with objections to one or more items, and upon reconsideration, such bill, or item, or items, pass both houses by the constitutional majority, the bill, or item, or items must be authenticated as having become a law by a certificate indorsed on or attached to the bill, or indorsed or attached to the copy of the statement of objections, in the following form: "This bill having been returned by the governor with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, has become a law this .... day of ....., A. D. .....;" or, "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority, have become a law this .... day of ....., A. D. .....," which indorsement, signed by the president of the senate and the speaker of the house of representatives, is a sufficient authentication thereof. Such bill or statement must then be delivered to the governor, and by him must be deposited with the laws in the office of the secretary of state.

History: En. Sec. 272, Pol. C. 1895; re-en. Sec. 102, Rev. C. 1907. Cal. Pol. C. Sec. 311.

87. Return, when house not in session. If, on the day the governor desires to return a bill without his approval, and with his objections thereto, to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message, notifies it of such delivery, and of the time when and the person to whom such delivery was made.

History: En. Sec. 273, Pol. C. 1895; re-en. Sec. 103, Rev. C. 1907. Cal. Pol. C. Sec. 312.

88. Bills remaining with the governor more than five days. Every bill which has passed both houses of the legislative assembly, and has not been returned by the governor within five days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the governor five days (Sundays excepted), and the legislative assembly being in session, it has become a law this .... day of ....., A. D. .....," which certificate must be signed by the secretary of state and deposited with the laws in his office.

History: En. Sec. 274; Pol. C. 1895; re-en. Sec. 104, Rev. C. 1907. Cal. Pol. C. Sec. 313.

89. Effect of final adjournment on bills. No bill shall become a law after the final adjournment of the legislative assembly, unless approved

by the governor within fifteen days after such adjournment. In case the governor fails to approve of any bill after the final adjournment of the legislative assembly, it must be filed, with his objections, in the office of the secretary of state.

History: En. Sec. 275, Pol. C. 1895; re-en. Sec. 105, Rev. C. 1907.

90. Statutes, when effective. Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval.

History: En. Sec. 3466, C. Civ. Proc. 1895; re-en. Sec. 8074, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1921. Cal. Pol. C. Sec. 323.

Fractions of day in computation of time of taking effect of statute, see note in 2 Ann. Cas. 136.

Conclusiveness of legislative declaration of emergency with respect to time of taking effect, see note in 7 L. R. A. 519.

Validity of statute made to take effect upon the happening of some future event, see note in 114 A. S. R. 317.

Effect of invalidity of provision in statute as to time of taking effect, see note in Ann. Cas. 1916D, 32.

91. "Final passage," meaning of. The words "final passage," as used in the preceding section, shall be held to mean the enactment into law of a bill which has passed the legislative assembly, either with or without the approval of the governor, as provided in section 12 of article VII of the constitution.

History: En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907.

Meaning of statutory terms, referring to time of "passage of act," see notes in 3 Ann. Cas. 737; 21 Ann. Cas. 989.

What is time of "passage" of an act, see note in 15 L. R. A. 243.

92. When joint resolutions take effect. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

History: En. Sec. 291, Pol. C. 1895; re-en. Sec. 118, Rev. C. 1907. Cal. Pol. C. Sec. 324.

Joint resolution as having force and effect of law, see notes in 18 Ann. Cas. 706; 2 L. R. A. 612.

93. Effect of amendment. Where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

History: En. Sec. 292, Pol. C. 1895; re-en. Sec. 119, Rev. C. 1907. Cal. Pol. C. Sec. 325.

This section merely states a general rule as it was recognized by the authorities at the time of the adoption of the codes. State ex rel. Jacobson v. Board of Commrs., 47 Mont. 531, 539, 134 Pac. 291.

Where the legislature declares that an existing statute is amended "to read as follows," the new act takes the place of the old one exclusively, and so much only of the original act as is repeated in the new statute is continued in force. State ex rel. Paige v. District Court, 54 Mont. 332, 334, 169 Pac. 1180.

Cited or applied as section 292, Political Code, in Dowty v. Pittwood, 23 Mont. 113, 116, 57 Pac. 727; as section 119, Revised Codes, in State ex rel. Hay v. Hindson, 40 Mont. 353, 356, 106 Pac. 362; Edwards v. County of Lewis and Clark, 53 Mont. 359, 367, 165 Pac. 297; State ex rel. Esgar v. District Court, 56 Mont. 464, 469, 185 Pac. 157.

Effect of partial invalidity of amending statutes, see note in Ann. Cas. 1916D, 21.

When change in statute is to be regarded as creating new statute instead of mere amendment thereof, see note in Ann. Cas. 1914D, 1171.

94. Construction of statutes. The general rules for the construction of statutes are contained in the provisions of the different codes.

History: En. Sec. 293, Pol. C. 1895; re-en. Sec. 120, Rev. C. 1907. Cal. Pol. C. Sec. 326.

95. Repeal of statutes. Any statute may be repealed at any time, except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907. Cal. Pol. C. Sec. 327.

96. Act repealed not revived by repeal of repealing act. No act or part of an act, repealed by another act of the legislative assembly, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

History: Ap. p. Sec. 2, p. 390, Cod. Stat. 1871; re-en. Sec. 146, 5th Div. Rev. Stat. 1879; re-en. Sec. 203, 5th Div. Comp. Stat. 1887; amd. Sec. 295, Pol. C. 1895; re-en. Sec. 122, Rev. C. 1907. Cal. Pol. C. Sec. 328.

Cited or applied as section 122, Revised Codes, in State ex rel. Esgar v. District Court, 56 Mont. 464, 469, 185 Pac. 157.

Effect of repeal or amendment of repealing statute as reviving repealed statute, see note in Ann. Cas. 1918B, 281.

97. Repeal of laws creating criminal offenses, when bar to prosecution. The repeal of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act.

History: Ap. p. Sec. 8, p. 390, Cod. Stat. 1871; re-en. Sec. 152, 5th Div. Rev. Stat. 1879; re-en. Sec. 209, 5th Div. Comp. Stat. 1887; amd. Sec. 296, Pol. C. 1895; re-en. Sec. 123, Rev. C. 1907. Cal. Pol. C. Sec. 329.

Effect of repeal of criminal statute after conviction, see notes in 1 Ann. Cas. 220; 16 Ann. Cas. 469; 23 L. R. A. (N. S.) 243.

98. Amendatory act, when void. An act amending a section of an act repealed is void.

History: En. Sec. 297, Pol. C. 1895; re-en. Sec. 124, Rev. C. 1907. Cal. Pol. C. Sec. 330.

CHAPTER 6.

INITIATIVE AND REFERENDUM.

Section 99. Form of Petition for Referendum.
100. Form of Petition for Initiative.
101. County Clerk to Verify Signatures.
102. Notice to Governor and Proclamation.
103. Certification and Numbering of Measures.
104. Manner of Voting—Ballot.
105. Printing and Distribution of Measures.
106. Canvass of Votes.
107. Who May Petition.
108. Referred Bills Not Effective Until Approved.

99. Form of petition for referendum. The following shall be substantially the form of petition for the referendum to the people on any act passed by the legislative assembly of the state of Montana:

Warning.

Any person signing any name other than his own to this petition, or

signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a legal voter of this state, is punishable by a fine not exceeding five hundred dollars ($500.00), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Petition for referendum.

To the Honorable ....., Secretary of State for the State of Montana:

We, the undersigned citizens and legal voters of the state of Montana, respectfully order that Senate (House) Bill Number ....., entitled (title of act), passed by the ..... Legislative Assembly of the state of Montana, at the regular (special) session of said legislative assembly, shall be referred to the people of the state for their approval or rejection, at the regular, general, or special election to be held on the ..... day of . ....., 19.. ., and each for himself says: I have personally signed this petition; I am a legal voter of the state of Montana; and my residence, postoffice address, and voting precinct are correctly written after my name.

Name ..... Residence .....
Postoffice address ....
If in city, street and number..... .....
Voting precinct .....

(Here follow numbered lines for signatures.)

History: En. Sec. 1, Ch. 62, L. 1907; Sec. 106, Rev. C. 1907.

Matters relating to practical exercise of initiative and referendum powers, see notes in 50 L. R. A. (N. S.) 209; L. R. A. 1917B, 24.

Construction of provision in constitution or statute for initiative or referendum, see notes in Ann. Cas. 1916B, 819, 855, 860, 865; Ann. Cas. 1917E, 739, 985.

Judicial review of initiative and referendum proceedings, see note in Ann. Cas. 1916B, 829.

Effect of declaring emergency in the enactment of a law without declaring it free from the operation of the referendum, see note in 7 A. L. R. 530.

100. Form of petition for initiative. The following shall be substantially the form of petition for any law of the state of Montana proposed by the initiative:

Warning.

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a legal voter of this state, is punishable by a fine not exceeding five hundred dollars ($500.00), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Petition for Initiative.

To the Honorable ....., Secretary of State of the State of Montana:

We, the undersigned legal voters of the state of Montana, respectfully demand that the following proposed law shall be submitted to the legal electors of the state of Montana, for their approval or rejection, at the regular, general, or special election to be held on the ..... day of ....., 19...., and each for himself says:

I have personally signed this petition, and my residence, postoffice address, and voting precinct are correctly written after my name.

Name ..... Residence .....
Postoffice address .....
If in city, street and number.....
Voting precinct .....

(Numbered lines for names on each sheet.)

Every such sheet for petitioner's signature shall be attached to a full and correct copy of the title and text of the measure so proposed by initiative petition; but such petition may be filed with the secretary of state in numbered sections, for convenience in handling, and referendum petitions may be filed in sections in like manner.

History: En. Sec. 2, Ch. 62, L. 1907; Sec. 107, Rev. C. 1907.

101. County clerk to verify signatures. The county clerk of each county in which any such petition shall be signed shall compare the signatures of the electors signing the same with their signatures on the registration books and blanks on file in his office, for the preceding general election, and shall thereupon attach to the sheets of said petition containing such signatures his certificate to the secretary of state, substantially as follows:

State of Montana, }
County of .....} ss.

To the Honorable ....., Secretary of State for Montana:

I, ..., county clerk of the county of ....., hereby certify that I have compared the signatures on (number of sheets) of the referendum (initiative) petition, attached hereto, with the signatures of said electors as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers), numbering (number of genuine signatures), are genuine. As to the remainder of the signatures thereon, I believe that they are not genuine, for the reason that ....; and I further certify that ..... the following names (..... .....) do not appear on the registration books and blanks in my office.

Signed:..... ..
....., County Clerk.

(Seal of Office) By .....,
Deputy.....

Every such certificate shall be prima facie evidence of the facts stated therein, and of the qualifications of the electors whose signatures are thus certified to be genuine, and the secretary of state shall consider and count only such signatures on such petitions as shall be so certified by said county clerks to be genuine; provided, that the secretary of state may consider and count such of the remaining signatures as may be proved to be genuine, and that the parties so signing were legally qualified to sign such petitions, and the official certificate of a notary public of the county in which the signer resides shall be required as to the fact

for each of such last-named signatures; and the secretary of state shall further compare and verify the official signatures and seals of all notaries so certifying with their signatures and seals filed in his office. Such notaries' certificate shall be substantially in the following form:

State of Montana, }
County of .....} ss.

I, ..., a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: that I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition, and I know of my own knowledge that they are legal voters of the state of Montana, and of the county and precincts written after their several names in the annexed petition, and that their residence and postoffice address is correctly stated therein, to-wit: (Names of such electors.)

In Testimony Whereof, I have hereunto set my hand and official seal this ..... day of ....., 19.....

Notary Public, in and for ..... County,
State of Montana.

The county clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures, or fraction thereof, on the sheets presented to him, and at the expiration of such time he shall forward the same to the secretary of state, with his certificate attached thereto, as above provided. The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.

History: En. Sec. 3, Ch. 62, L. 1907; Sec. 108, Rev. C. 1907.

The provision of this section requiring county clerks to compare the signatures on a petition for referendum with their signatures on the registration books and blanks for the preceding general election and certify them to the secretary of state as legal voters, is invalid as excluding all persons who had become legal voters in the interim between the last general election and the time of signing such petition. State ex rel. Gleason v. Stewart, 57 Mont. 397, 188 Pac. 904.

102. Notice to governor and proclamation. Immediately upon the filing of any such petition for the referendum or the initiative with the secretary of state, signed by the number of voters and filed within the time required by the constitution, he shall notify the governor in writing of the filing of such petition, and the governor shall forthwith issue his proclamation, announcing that such petition has been filed, with a brief statement of its tenor and effect. Said proclamation shall be published four times for four consecutive weeks in one daily or weekly paper in each county of the state of Montana.

History: En. Sec. 4, Ch. 62, L. 1907; Sec. 109, Rev. C. 1907.

Cited or applied as section 109, Revised Codes, in State ex rel. Gleason v. Stewart, 57 Mont. 397, 405, 188 Pac. 904.

103. Certification and numbering of measures. The secretary of state, at the same time that he furnishes to the county clerk of the several counties certified copies of the names of the candidates for office, shall also furnish the said county clerks his certified copy of the titles and numbers of the various measures to be voted upon at the ensuing general or special election, and he shall use for each measure a title designated for

that purpose by the legislative assembly, committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum, or in the petition or act; provided, that such title shall in no case exceed one hundred words, and shall not resemble any such title previously filed for any measure to be submitted at that election which shall be descriptive of said measure, and he shall number such measures; and such title shall be printed on a separate official ballot in the order in which the acts referred by the legislative assembly and petitioned by the people shall be filed in his office.

The first measure filed after this act shall go into effect shall be numbered number 6, and the next succeeding measures shall be numbered in numerals consecutively 7, 8, 9, and so on, from one election to another, no measure to be numbered with the same number of any other measure.

The affirmative and negative of each measure shall have the same number.

It shall be the duty of the several county clerks to print said titles and numbers upon a separate official ballot in the order presented to them by the secretary of state and the relative position required by law.

Measures proposed by the initiative shall be designated and distinguished from measures proposed by the legislative assembly by the heading "Proposed Petition for Initiative."

History: En. Sec. 5, Ch. 62, L. 1907; Sec. 110, Rev. C. 1907; amd. Sec. 1, Ch. 66, L. 1913.

Cited or applied as section 110, Revised Codes, as amended, in State ex rel. Hay v. Alderson, 49 Mont. 387, 388, 142 Pac. 210, Ann. Cas. 1016B, 39.

104. Manner of voting—Ballot. The manner of voting on measures submitted to the people shall be by marking the ballot with a cross in or on the diagram opposite and to the left of the proposition for which the voter desires to vote. The following is a sample ballot representing negative vote:

	For Initiative Measure No. 6 Relating to Duties of Sheriffs.
X	Against said Measure No. 6.
	For Referendum Measure No. 7 Relating to Purchase of Insane Asylum.
X	Against said Measure No. 7.

and no title on a ballot shall contain more than ten words, which shall be descriptive of the measure proposed.

History: En. Sec. 6, Ch. 62, L. 1907; Sec. 111, Rev. C. 1907; amd. Sec. 2, Ch. 66, L. 1913.

105. Printing and distribution of measures. The secretary of state shall, not later than the first Monday of the third month next before any general or special election at which any proposed law is to be submitted to the people, cause to be printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on a separate official ballot. The paper to be used for the covers of such pamphlets shall be twenty by twenty-five

inches, and fifty pounds weight to the ream. The persons, committees, or duly authorized officers of any organization filing any petition for the initiative, but no other person or organization, shall have the right to place with the secretary of state for distribution any pamphlets advocating such measure, not later than the first Monday of the fifth month before the regular general or special election at which the measure is to be voted on; any person, committee, or organization opposing any measure may place with the secretary of state for distribution any pamphlets they may desire, not later than the first Monday of the fourth month immediately preceding such election; as to pamphlets advocating or opposing any measure referred to the people by the legislative assembly, they shall be governed by the same rules of time, but they may be placed with the secretary of state by any person, committee, or organization; provided, that all such pamphlets shall be furnished to the secretary of state in sheets of uniform size, as follows: Size of pamphlet page to be six inches wide by nine inches long; size of type page to be twenty-six ems pica wide, by forty ems pica long, set in long primer or ten-point type, and printed on sized and supercalendered paper, twenty-five by thirty-eight inches, weighing fifty pounds to the ream. All such pamphlets shall be furnished to the secretary of state at the sole expense of the persons interested, and without cost to the state. In no case shall the secretary of state be obliged to receive any such pamphlets unless a sufficient number is furnished to supply one to every legal voter in the state, but in such case he shall forthwith notify the persons offering the same of the number required. The secretary of state shall cause one copy of each of said pamphlets to be bound in with his copy of the measures to be submitted as herein provided. The title-page of every such pamphlet shall show the official numbers for and against, and the ballot title of the measure to which it refers, and whether it is intended to favor or oppose such measure, and by whom it is issued. The secretary of state shall distribute to each county clerk, before the second Monday in the third month next preceding such regular general election, a sufficient number of said bound pamphlets to furnish one copy to every voter in his county. And each county clerk shall be required to mail to each registered voter in each of the several counties in the state at least one copy of the same, within thirty days from the date of his receipt of the same from the secretary of state. The mailing of said bound pamphlets shall be a part of the official duty of the county clerk of each of the several counties, and his official compensation shall be full compensation for this additional service. The secretary of state shall not be obliged to receive or distribute any pamphlets advocating or opposing any measure unless the same shall be filed with him within the time herein provided.

History: En. Sec. 7, Ch. 62, L. 1907; Sec. 112, Rev. C. 1907.

106. Canvass of votes. The votes on measures and questions shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided by sections 801 and 802 of this code for abstracts of votes for state officers. It shall be the duty of the state board of can-

vassers to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, which shall be published in two daily newspapers printed at the capital, giving the whole number of votes cast in the state for and against each measure and question, and declaring such measures as are approved by a majority of those voting thereon to be in full force and effect as the law of the state of Montana from the date of said proclamation, designating such measures by their titles.

History: En. Sec. 8, Ch. 62, L. 1907; Sec. 113, Rev. C. 1907.

107. Who may petition—False signature—Penalties. Every person who is a qualified elector of the state of Montana may sign a petition for the referendum or for the initiative. Any person signing any name other than his own to such petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a legal voter of this state, or any officer or any person wilfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment, in the discretion of the court before which such conviction shall be had.

History: En. Sec. 9, Ch. 62, L. 1907; Sec. 114, Rev. C. 1907.

108. Referred bills not effective until approved. A bill passed by the legislative assembly and referred to popular vote at the next general election, or at a special election, shall not be in effect until it is approved at such general or special election by a majority of those voting for and against it.

History: En. Sec. 10, Ch. 62, L. 1907; Sec. 115, Rev. C. 1907.

Cited or applied as section 115, Revised Codes, in State ex rel. Eagye v. Bawden, 51 Mont. 357, 362, 152 Pac. 761.

Validity of statute, other than local option law, which takes effect only on ratification by voters, see notes in 20 Ann. Cas. 652; Ann. Cas. 1916A, 110; Ann. Cas. 1918E, 573.

Time when initiative or referendum measures take effect, see notes in 50 L. R. A. (N. S.) 209; L. R. A. 1917B, 25.

Power of governor to veto or of legislature to repeal or amend initiative or referendum measures, see notes in 50 L. R. A. (N. S.) 208; L. R. A. 1917B, 24.

CHAPTER 7.

THE EXECUTIVE DEPARTMENT, CLASSIFICATION, DESIGNATION, ELECTION AND APPOINTMENT OF EXECUTIVE OFFICERS AND DEPUTIES.

Section 109. Classification of Executive Officers.
110. Military Officers.
111. Certain Officers, How Elected.
112. State Sealer of Weights and Measures.
113. State Board of Equalization.
114. State Board of Education.
115. Officers of Libraries.
116. Board of Examiners.
117. State Prison Commissioners.
118. Board of Pardons.
119. Board of Land Commissioners.
120. Governor's Private Secretary.
121. Duties of Secretary.
122. Deputy State Officers.
123. Consolidated Clerkships.

109. Classification of executive officers. Executive officers are either:

1. Civil; or,
2. Military.

History: En. Sec. 330, Pol. C. 1895; re-en. Sec. 125, Rev. C. 1907. Cal. Pol. C. Sec. 341.

110. Military officers. Military officers are designated and their duties prescribed in sections 1330 to 1412 of this code.

History: En. Sec. 331, Pol. C. 1895; re-en. Sec. 126, Rev. C. 1907. Cal. Pol. C. 342.

111. Certain officers, how elected. The mode of election of the governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, and superintendent of public instruction is prescribed by the constitution.

History: En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907. Cal. Pol. C. Sec. 348.

Self-executing provisions of constitution relating to public officers, see notes in 7 Ann. Cas. 631; 18 Ann. Cas. 201; Ann. Cas. 1914C, 1116.

112. State sealer of weights and measures. The secretary of state is ex-officio state sealer of weights and measures, and his duties as such officer are defined by sections 4235 to 4264 of this code.

History: En. Sec. 342, Pol. C. 1895; re-en. Sec. 130, Rev. C. 1907.

113. State board of equalization. The governor, secretary of state, state treasurer, state auditor, and attorney-general constitute a state board of equalization.

History: En. Sec. 343, Pol. C. 1895; re-en. Sec. 131, Rev. C. 1907.

114. State board of education. The state board of education consists of eleven members, and is constituted as provided in section 830 of this code.

History: En. Sec. 344, Pol. C. 1895; re-en. Sec. 132, Rev. C. 1907.

115. Officers of libraries. The trustees of the state library and the state librarian are constituted and appointed as prescribed in sections 1548 to 1550 of this code.

History: En. Sec. 345, Pol. C. 1895; re-en. Sec. 133, Rev. C. 1907.

116. Board of examiners. The governor, secretary of state, and attorney-general constitute a board of examiners.

History: En. Sec. 346, Pol. C. 1895; re-en. Sec. 134, Rev. C. 1907.

117. State prison commissioners. The governor, secretary of state, and attorney-general constitute a board of state prison commissioners.

History: En. Sec. 347, Pol. C. 1895; re-en. Sec. 135, Rev. C. 1907.

118. Board of pardons. The secretary of state, attorney-general, and state auditor constitute the board of pardons.

History: En. Sec. 348, Pol. C. 1895; re-en. Sec. 136, Rev. C. 1907.

119. Board of land commissioners. The governor, superintendent of

public instruction, secretary of state, and attorney-general constitute the state board of land commissioners.

History: En. Sec. 349, Pol. C. 1895; re-en. Sec. 137, Rev. C. 1907.

120. Governor's private secretary. The private secretary of the governor is appointed by him, and holds office at the governor's pleasure.

History: En. Sec. 351, Pol. C. 1895; re-en. Sec. 139, Rev. C. 1907. Cal. Pol. C. Sec. 370.

121. Duties of secretary. The secretary shall perform such duties as may be required of him by the governor and the laws of the state.

History: En. Sec. 2, p. 68, L. 1893; re-en. Sec. 353, Pol. C. 1895; re-en. Sec. 141, Rev. C. 1907.

122. Deputy state officers. The secretary of state, state treasurer, state auditor, and the state superintendent of public instruction shall each appoint a deputy, who, in the absence of the principal, or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties. The principal shall be responsible under his official bond for all the official acts of his deputy, and may revoke his appointment at his pleasure, and may require the deputy to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved, and filed as other state bonds; provided, nothing herein contained shall be construed to authorize an increase of the number of employees in any office.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907.

Deputy as public officer; see note in Ann. Cas. 1913C, 88.

In whose name deputy must act, see note in 106 A. S. R. 825.

Validity of contract by public officer with his deputy as to latter's compensation, see note in Ann. Cas. 1913A, 904.

123. Consolidated clerkships. The several clerkships of the board of pardons, board of commissioners for the insane, board of state prison commissioners, the state board of equalization, are hereby consolidated; that there shall be one clerk, to be appointed by the governor, who shall perform all the duties of clerk pertaining to the several boards herein mentioned; and the said clerk shall receive a salary of three thousand dollars per annum, payable monthly out of the state treasury; provided, that the state board of equalization may, in their discretion, employ additional clerical assistance, if, in their judgment, same shall at any time be required to properly transact the business of that board during the months when the board is engaged in equalizing assessments.

History: En. Sec. 1, Ch. 126, L. 1903; re-en. Sec. 144, Rev. C. 1907.

Note.—The salary of this office is given as fixed by chapter 107, Laws of 1919.

CHAPTER 8.

THE GOVERNOR.

Section 124. Powers and Duties of Governor.
125. To Transmit List of Appointments to Legislative Assembly.
126. Records in Office.
127. Persons Acting as Governor.
128. Salary of Governor.
129. Residence of Governor.

124. Powers and duties of governor. In addition to those prescribed by the constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers.

2. He is to see that all offices are filled and the duties thereof performed, or, in default thereof, apply such remedy as the law allows, and if the remedy is imperfect, acquaint the legislative assembly therewith at its next session.

3. He is to make the appointments and supply the vacancies as required by law.

4. He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney-general to appear on behalf of the state, and may employ such additional counsel as he may judge expedient.

6. He may require the attorney-general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney-general to aid the county attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison, or any person who has committed or is charged with an offense punishable by death.

9. He must perform such duties respecting fugitives from justice as are prescribed by sections 12415 to 12428 of the Penal Code.

10. He must issue and transmit election proclamations, as prescribed by sections 533 to 536 of this code.

11. He must issue land warrants and patents, as prescribed in section 1864 of this code.

12. He must, on or before the second Monday of November, in the year 1892, and in each second year thereafter, deliver to the secretary of state for publication all biennial reports of officers and boards for the two preceding years.

13. He may require any officer or board to make special reports to him, upon demand, in writing.

14. He must discharge the duties of member of the board of examiners, of member of the state board of education, of member of the state board of land commissioners, of member of the state board of equalization, of member of the board of state prison commissioners, and of the board of commissioners of the insane, deaf, dumb, and blind.

15. He has such other powers and must perform such other duties as are devolved upon him by this code, or any other law of this state.

History: En. Sec. 370, Pol. C. 1895; re-en. Sec. 145, Rev. C. 1907. Cal. Pol. C. Sec. 380.

Right of governor to make appointment to office where term does not begin until after expiration of term of appointing power, see note in 18 Ann. Cas. 142.

Power of governor to appoint in absence of constitutional or statutory authority, see note 19 Ann. Cas. 823.

Power of governor to employ counsel for state, see note in 55 L. R. A. 493.

Pardoning power of governor as confined to offenses against state, see notes in 19 Ann. Cas. 115; Ann. Cas. 1914A, 484.

Power of executive in remission of fines and forfeitures, see note in 17 Ann. Cas. 603.

Power of governor to declare martial law, see notes in Ann. Cas. 1914C, 24; 65 L. R. A. 195.

Power of governor, in suppressing insurrection, to authorize arrest and detention of persons without turning them over to civil authorities, see note in 12 L. R. A. (N. S.) 979.

125. **To transmit list of appointments to legislative assembly.** Within ten days after the meeting of the legislative assembly, the governor must transmit to it a list of all appointments made by him under the provisions of section 515 of this code, made during the recess of the legislative assembly.

History: En. Sec. 371, Pol. C. 1895; re-en. Sec. 146, Rev. C. 1907. Cal. Pol. C. Sec. 381.

126. **Records in office of.** The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2. An account of all his official expenses and disbursements, including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

3. A register of all appointments made by him, with date of commission, names of appointee, and predecessor.

History: En. Sec. 372, Pol. C. 1895; re-en. Sec. 147, Rev. C. 1907. Cal. Pol. C. Sec. 382.

127. **Persons acting as governor.** Every provision of the laws of this state in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by others toward him, extends to the persons performing, for the time being, the duties of governor.

History: En. Sec. 373, Pol. C. 1895; re-en. Sec. 148, Rev. C. 1907. Cal. Pol. C. Sec. 383.

Pardon by lieutenant-governor or governor pro tem., see note in 47 L. R. A. (N. S.) 1036.

128. **Salary of governor.** The annual salary of the governor, to include all services rendered ex-officio as member of any board or commission, as now required, or which may be by law hereafter devolved upon him, is seven thousand five hundred dollars.

History: En. Sec. 374, Pol. C. 1895; re-en. Sec. 149, Rev. C. 1907; amd. Sec. 1, Ch. 22, L. 1913. Cal. Pol. C. Sec. 384.

129. **Residence of governor.** The state furnishing board is hereby authorized and directed to provide an executive residence in the city of

Helena for the use of the governor of the state, said residence to be secured by purchase or otherwise, as may seem best to said board.

History: En. Sec. 1, Ch. 51, L. 1913.

CHAPTER 9.

THE LIEUTENANT-GOVERNOR.

Section 130. Duties of Lieutenant-Governor.
131. Compensation.
132. Same—When Acting as Governor.

130. Duties of lieutenant-governor. The duties of the lieutenant-governor are prescribed in article VII of the constitution.

History: En. Sec. 390, Pol. C. 1895; re-en. Sec. 150, Rev. C. 1907. Cal. Pol. C. Sec. 396.

131. Compensation. The lieutenant-governor receives the same per diem and mileage as the speaker of the house of representatives, and that only during the session of the legislative assembly.

History: En. Sec. 391, Pol. C. 1895; re-en. Sec. 151, Rev. C. 1907. Cal. Pol. C. Sec. 397.

Cited or applied as section 391, Political Code, in Wade v. Lewis and Clark County, 24 Mont. 335, 338, 61 Pac. 879.

132. Same—When acting as governor. When the lieutenant-governor acts as governor, he is entitled to receive during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time; but during such time he is not entitled, as lieutenant-governor, to any other compensation or mileage.

History: En. Sec. 392, Pol. C. 1895; re-en. Sec. 152, Rev. C. 1907.

CHAPTER 10.

THE SECRETARY OF STATE.

Section 133. Custody of Records.
134. Duties of Secretary of State.
135. Distribution of Senate and House Journals and Session Laws.
136. To Mark Books Distributed.
137. To Furnish Fuel and Stationery.
138. Form of Documents.
139. Series of Documents.
140. Exceptions to Application of Law.
141. Secretary of State to Number Bills in the Order of Filing.
142. Publication of Laws—Index.
143. Description of County Boundaries Included in Session Laws.
144. Expenses Incurred, How Paid.
145. Fees of Secretary of State.
146. Fees of Religious and Fraternal Societies.
147. Water Users' Association Exempt From Payment of Fees.
148. Official Bond.
149. Secretary of State Trust Fund Abolished.
150. Transfer of Funds.

133. Custody of records. The secretary of state is charged with the custody:

1. Of the enrolled copy of the constitution.
2. Of all the acts and resolutions passed by the legislative assembly.
3. Of the journals of the legislative assembly.
4. Of the great seal.

5. Of all books, records, deeds, parchments, maps, and papers, kept or deposited in his office pursuant to law.

History: En. Sec. 400, Pol. C. 1895; re-en. Sec. 153, Rev. C. 1907. Cal. Pol. C. Sec. 407.

134. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1. To attend at every session of the legislative assembly, for the purpose of receiving bills and resolutions thereof, and to perform such other duties as may be devolved upon him by resolution of the two houses, or either of them.

2. To keep a register of and attest the official acts of the governor.

3. To affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required.

4. To record in proper books all conveyances made to the state, and all articles of incorporation filed in his office.

5. To receive and record in proper books the official bonds of all the state officers whose bonds are fixed by part III, of this code, and then deliver the originals to the state treasurer.

6. To take and file in his office receipts for all books distributed by him, and to direct the county clerk of each county to do the same.

7. To certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor.

8. To furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office.

9. To deliver to the printer entitled to the same, at the earliest day practicable after the final adjournment of each session of the legislative assembly, copies of all laws, resolutions (with marginal notes), and journals, kept, passed, or adopted at such session, with proper indexes to the same.

10. To notify in writing, the county attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

11. To present to the legislative assembly, at the commencement of each session thereof, a full account of all purchases made and expenses incurred in furnishing fuel, lights, and stationery.

12. To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

13. To file in his office descriptions of seals in use by the different state officers, and furnish such officers with new seals whenever required.

14. To discharge the duties of member of the state board of examiners, of member of the state board of prison commissioners, of member

of the state board of equalization, of member of the state board of pardons, of member of the state board of land commissioners, of member of state board of commissioners of insane, deaf, dumb, and blind, and state sealer of weights and measures, and all other duties required of him by law.

15. To report to the governor, at the time prescribed in section 519, of this code, a detailed account of all official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended; and to report as provided in section 522 of this code.

16. To receive, designate, and record trade-marks as provided in section 4287 of this code.

17. He must distribute the bound volumes of the decisions of the supreme court, in the manner provided by section 384 of this code.

History: En. Sec. 401, Pol. C. 1895; re-en. Sec. 154, Rev. C. 1907. Cal. Pol. C. Sec. 408.

Note.—Subdivision 17 changed in this code to conform to later amendments.

135. Distribution of senate and house journals and session laws. Immediately after the senate and house journals and the session laws mentioned in subdivision nine of the preceding section are bound, the secretary of state must distribute the same as follows:

1. To the county clerk of each county one copy of the senate journal and one copy of the house journal for the use of the county.

2. To the state historical library such number of copies of the senate and house journals, not exceeding 150 of each, as may be required by it for purposes of distribution and exchange.

He shall distribute the session laws as follows:

1. To each department of the government at Washington, and of the government of this state, one copy.

2. To the library of congress, and the state library, two copies each.

3. To the state historical and miscellaneous library, two copies; to the state law librarian, three copies and in addition to the state law librarian for the purpose of exchange, a sufficient number of copies to meet the exchanges established by him.

4. To the law libraries and the legislative reference libraries of each of the states and territories such number of copies as are given by them in exchange with the Montana state law library and the legislative reference libraries.

5. To the members of congress, to the United States district judge, to each of the judges of the supreme and district courts, and to each of the state officers of this state, one copy.

6. To the lieutenant-governor, each member of the legislative assembly, secretary of the senate, and chief clerk of the house of representatives at the session at which laws and journals were adopted, one copy.

7. To each of the incorporated colleges of the state and to the state university, one copy; to the law librarian of the state of Montana as

many copies not to exceed fifty, as may be required by him for exchange with libraries maintained by other states and territories.

8. To the county clerk of each county, three copies for the use of the county.

9. To each county attorney, and to each clerk of the district court, one copy.

History: En. Sec. 1, Ch. 86, L. 1907; Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1921. Cal. Pol. C. 409.

136. To mark books distributed. The secretary of state must indelibly mark each book distributed to officers in this state (except legislative officers), with the name of the county to which, and the official designation of the officer to whom it is sent. Such marked books remain the property of the state, and must be, by the officers receiving them, delivered to their successors.

History: En. Sec. 403, Pol. C. 1895; re-en. Sec. 156, Rev. C. 1907. Cal. Pol. C. Sec. 411.

137. To furnish fuel and stationery. It is the duty of the secretary of state to receive and keep all supplies and articles purchased by the board of examiners as a board of supplies, and he must issue to any state officer or board, on the requisition of the board of examiners, any stationery, book, or other supplies, and take a receipt therefor, and file said requisition and receipt in his office. He must keep a book called a "book of supplies," and enter therein a complete list of all stationery, books, articles, or other supplies furnished him under contracts made by such board, making a separate list of each class of articles, and all purchases made by the board, the amount and cost of each article furnished each state officer or board, and each member of the legislative assembly. He must embody in his report to the legislative assembly a statement taken from such book, showing the amount of supplies purchased and disposed of.

History: En. Sec. 405, Pol. C. 1895; re-en. Sec. 158, Rev. C. 1907. Cal. Pol. C. Sec. 413.

138. Form of documents. As to their form, the public documents of the state of Montana shall be published under the direction of the secretary of state, with the view to such uniformity of size, quality of paper, type, and other particulars as will permit them to be formed in continuous numbers in consecutive volumes, and before any public printer or other person shall print any public document appropriate to be published in pamphlet or book form, the pay for which is to come from some public or municipal treasury, the proper party to print the same shall submit the copy to the secretary of state, who shall give such directions as to the form and quality of the work and the paging thereof as will permit it to be bound with other preceding or subsequent documents of like character, to the end that the same may be preserved in the archives of the state without confusion and for the convenience of its citizens.

History: En. Sec. 406, Pol. C. 1895; re-en. Sec. 159, Rev. C. 1907.

139. Series of documents. The secretary of state shall divide the public documents to be published into several series, according to their several subjects, so near as may be, and no moneys shall be paid out of the treas-

ury except on compliance herewith for any printing or publishing aforesaid.

History: En. Sec. 407, Pol. C. 1895; re-en. Sec. 160, Rev. C. 1907.

140. Exceptions to application of law. The provisions of this act shall not apply to the decisions of the supreme court, the contributions of the historical society, nor to bills printed for the legislative assembly, or other printing for its use during its session, not appropriate to be put in pamphlet form.

History: En. Sec. 408, Pol. C. 1895; re-en. Sec. 161, Rev. C. 1907.

141. Secretary of state to number bills in the order of filing. It shall be the duty of the secretary of state, when bills passed by any legislative assembly of the state of Montana are filed in his office, as directed in sections 85 and 86 of this code, to note thereon the date of said filing, and to number such bills, except resolutions, memorials, and bills appropriating money, in the order of their reception by him, chapter 1, and upwards, using Arabic numerals for such numbering.

History: En. Sec. 1, Ch. 17, L. 1903; re-en. Sec. 162, Rev. C. 1907.

142. Publication of laws—Index. The secretary of state, in pursuance of subdivision 9 of section 134 of the Political Code, shall cause such laws as are therein specified, except resolutions, memorials, and bills appropriating money, to be printed with the heading of each law,

Chapter ————

numbered from 1 upward, using Arabic numerals for such numbering, and he shall omit from the laws the statement "Senate Bill No. ——" and "House Bill No. ——", and hereafter reference to the laws of any legislative session may be made as follows: "Chapter —— (giving number) of the laws of ——" (giving the year in which same was enacted). Such laws shall be published in their numerical order, from 1 upwards, as same have been filed in his office, and in such manner that each section shall have a side head or marginal summary, and that the chapter number shall appear as part of each page heading; provided, that resolutions, memorials, and bills appropriating money shall be printed in the latter part of the volume containing the said laws, in the form and manner heretofore practised in publishing such laws. The secretary of state shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several codes of this state have been amended, repealed, altered, or changed by any of the laws published in that volume, which shall be known and designated as the "Code Index."

History: En. Sec. 2, Ch. 17, L. 1903; re-en. Sec. 163, Rev. C. 1907.

143. Description of county boundaries included in session laws. It shall be the duty of the secretary of state to include in the session laws of the state of Montana published by him a description of the county boundaries of all new counties of the state of Montana created by petition and election, commencing with counties so created on and after January 1, 1921, inserting in each of said session laws such new counties as have been so created since the publication of the acts of the previous session.

History: En. Sec. 1, Ch. 67, L. 1921.

144. Expenses incurred, how paid. The expenses incurred by the secretary of state in carrying into effect the provisions of sections 134 to 137 inclusive must be audited by the board of examiners, and paid out of any moneys specially appropriated for the purpose.

History: En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907.

145. Fees of secretary of state. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, twenty cents per folio.

2. For affixing certificate and seal, one dollar.

3. For issuing each certificate of incorporation and each certificate of increase of capital stock, three dollars.

4. For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, one dollar per thousand dollars.

Additional from one hundred thousand dollars to two hundred and fifty thousand dollars, eighty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, sixty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, forty cents per thousand dollars.

Additional over one million dollars, twenty cents per thousand dollars.

Providing, that no fee for filing any articles of incorporation or increase of capital stock shall be less than fifty dollars, except religious societies, churches, and organizations for religious purposes, not having a capital stock, and not being organized for the purpose of profit.

5. For issuing each certificate of decrease of capital stock, ten dollars.

6. For recording and filing each certificate of decrease of capital stock, five dollars.

7. For issuing each certificate of continuance of corporate existence, ten dollars.

8. For recording and filing each certificate of continuance of corporate existence, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, fifty cents per thousand dollars.

Additional from one hundred thousand dollars to two hundred and fifty thousand dollars, forty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, thirty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, twenty cents per thousand dollars.

Additional over one million dollars, ten cents per thousand dollars.

9. For recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making capital stock assessable, five dollars.

10. For filing each certified copy of charter or articles of incorpora-

tion of any foreign corporation, the same fee shall be charged as is provided for in paragraph 4 of this section, for domestic corporations.

11. For filing each notice of appointment of agents, five dollars.

12. For filing each annual or semi-annual statement of any foreign corporation, five dollars.

13. For receiving and recording each official bond, five dollars.

14. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon and military commissions excepted), five dollars.

15. For searching the records and archives of the state, one dollar.

16. For filing each trade mark, five dollars; and for issuing each certificate of record, one dollar.

17. For recording miscellaneous papers, records, or other documents, for filing, one dollar; for recording, twenty cents per folio.

18. For filing any other paper not otherwise herein provided for, one dollar for filing and twenty cents per folio for recording. That no member of the legislative assembly, or state or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. Fees must be collected in advance, and when collected by the secretary of state, must be paid to the state treasurer at the end of each quarter, as provided in the constitution.

History: Ap. p. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921. Cal. Pol. C. Sec. 416.

The fact that the trustees of a corporation may have increased the capital stock of the company immediately after its incoporation for the purpose of evading the provisions of this section authorizing a fee of fifty cents on each one thousand dollars of the capital stock, upon the filing of the certificate of incorporation, does not warrant the secretary of state in refusing to file such certificate of increase. State ex rel. Home B. & L. A. v. Rotwitt, 17 Mont. 537, 539, 43 Pac. 922.

Where each of two foreign corporations, upon entering the state to transact business, had paid the full legal fees for filing its articles of incorporation, and subsequently the former absorbed the latter and increased its capital stock, the certificate presented to the secretary of state showing an increase of capital stock, the secretary was not required to deduct the amount of the capital stock of the absorbed corporation, upon which the fees have once been paid, from the amount shown by the certificate of increase, but properly charged a fee based upon the difference between its former capitalization and the present one. United Missouri River Power Co. v. Yoder, 41 Mont. 245, 248, 108 Pac. 912.

This section is void in so far as it affects a corporation engaged in interstate commerce, organized under the laws of a sister state, which seeks to do business in this state, in that it imposes a tax upon interstate commerce, is an imposition upon the corporation's property beyond the limits of the state, and constitutes a taking thereof, without due process of law, to the amount of the fee sought to be collected. Chicago, Milwaukee & St. Paul Ry. Co. v. Swindlehurst, 47 Mont. 119, 124, 130 Pac. 966.

The fee demanded by this section is not a property tax; it is graduated according to the par value of the company's capital stock, without reference to the full cash value of the property owned by the corporation; and it does not become a lien upon any property which the corporation may have in this state, as does a property tax under section 2152, post. State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 32, 33, 140 Pac. 82.

The fee fixed by this section, based on the amount of capital stock, for the recording and filing of certificates of incorporation in the office of the secretary of state, is not a property tax but a license tax exacted of every corporation, domestic as well as foreign, engaged in intrastate business, for the privilege of doing business within the state, enjoying the

protection of its laws, and the pecuniary advantages afforded by its markets. State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 33, 140 Pac. 82.

The secretary of the state cannot demand the fee mentioned in the fourth and tenth subdivisions of this section from a foreign corporation that seeks to engage in interstate commerce in this state; to permit him to do so would impose a burden upon interstate commerce. State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 37, 140 Pac. 82.

This section, though inoperative so far as it authorizes the secretary of state to exact prescribed fees for recording and filing certificates of incorporation of foreign corporations engaged in interstate commerce, is valid as to such corporations seeking to engage in strictly private, intrastate business. State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 37, 140 Pac. 82.

This section, fixing a fee for the recording and filing of certificates of incorporation "of any foreign corporation," applies to foreign corporations that seek to conduct private intrastate business—those over which this state has the right to exercise some degree of regulation or control; it has no application to foreign coporations that seek to engage in interstate commerce in this state. State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 39, 140 Pac. 82.

If an express company is a foreign corporation, it must pay, for the privilege of entering this state to do business, the fees prescribed by this section, as modified by chapter 37, Laws of 1915. Wells Fargo & Co. v. Harrington, 54 Mont. 235, 244, 169 Pac. 463.

Cited or applied as section 410, Political Code, before amendment, in State ex rel. Aachen & Munich F. Ins. Co. v. Rotwitt, 17 Mont. 41, 43, 41 Pac. 1004; State ex rel. Travelers' Ins. Co. v. Rotwitt, 18 Mont. 87, 89, 44 Pac. 409; as section 165, Revised Codes, in State ex rel. Cascade Bank v. Yoder, 39 Mont. 202, 208, 103 Pac. 499; as modified, in Wells Fargo & Co. v. Harrington, 54 Mont. 235, 244, 169 Pac. 463.

146. Fees of religious and fraternal societies. The secretary of state shall charge and collect from each foreign or domestic religious society, church organization for religious purposes and fraternal society not having capital stock, and not being organized for the purpose of profit hereafter organized, a fee of twenty dollars for all services in connection with the issuance of certificate, filing and recording.

History: En. Sec. 1, Ch. 43, L. 1903; re-en. Sec. 166, Rev. C. 1907; amd. Sec. 2, Ch. 91, L. 1921.

147. Water users' association exempt from payment of fees. Any water users' association, organized in conformity with the requirements of the laws of the United States and of the state of Montana, under the reclamation act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax and from the payment of any annual franchise tax, and upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of ten dollars for the filing and recording of such articles of incorporation, and the issuance of certificate of incorporation.

History: En. Sec. 1, Ch. 66, L. 1905; re-en. Sec. 167, Rev. C. 1907.

148. Official bond. The secretary of state must execute an official bond in the sum of ten thousand dollars.

History: En. Sec. 412, Pol. C. 1895; re-en. Sec. 169, Rev. C. 1907. Cal. Pol. C. Sec. 423.

149. Secretary of state trust fund abolished. The fund account heretofore created and known as the "Secretary of State Trust Fund" be, and the same is hereby abolished.

History: En. Sec. 1, Ch. 86, L. 1921.

150. Transfer of funds. All moneys now standing to the credit of said secretary of state trust fund, or which may hereafter accrue thereto

are hereby transferred to the general fund, and the state treasurer and state auditor are hereby directed to make such entries upon their books of account as will fully effectuate such transfer.

History: En. Sec. 2, Ch. 86, L. 1921.

CHAPTER 11.

THE STATE AUDITOR AND COMMISSIONER OF INSURANCE.

Section 151. General Duties.
152. Certificate of Settlement.
153. Special Duty as to School Fund.
154. Order in Which Warrants Must Be Drawn.
155. Proceedings Against Defaulters.
156. To Have Access to Offices.
157. Official Bond.
158. Cancellation of Unclaimed State Warrants.
159. Issuance of Duplicate Warrant.
160. Auditor Ex-Officio Investment Commissioner.
161. Auditor Ex-Officio Real Estate Commissioner.
162. Auditor as Commissioner of Insurance—Appointment of Deputy.
163. Salary of Deputy Commissioner of Insurance.
164. Employment of Actuary.
165. Appointment of Chief Clerk.
166. Examination of Insurance and Surety Companies by Commissioner of Insurance.
167. Publication of Examination—Revocation of License.
168. Commissioner and Deputy Commissioner—Meaning of Terms.
169. Keeping of Securities by Commissioner of Insurance.
170. Abstracting Life Insurance Policies—License and Fee.
171. Application for License—Contents.
172. Granting and Revocation of License.
173. Penalty for Violation of Act—Revocation of License.

151. General duties. It is the duty of the state auditor:

1. To superintend the fiscal concerns of the state.

2. To report to the governor, on the first Monday of November next preceding each regular session of the legislative assembly, a statement of funds of the state, its revenues, of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriation, and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed, and to make a semi-annual report to the governor, as provided in section 522 of this code.

3. To accompany his biennial reports with tabular statements, showing: first, the amount of each appropriation for the two preceding fiscal years, the amount expended, and the balance, if any; second, the amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom.

4. When requested, to give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or the duties of his office.

5. To suggest plans for the improvement and management of the public revenues.

6. To keep and state all accounts in which the state is interested.

7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation.

8. To keep an account between the state and the state treasurer, and therein charge the state treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him.

9. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered.

10. To audit all claims against the state in cases where there are sufficient provisions of law for the payment thereof.

11. To examine and settle the accounts of all persons indebted to the state, and certify the amount to the treasurer, and, upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith.

12. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

13. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.

14. In his discretion to inspect the books of any persons charged with the receipt, safe keeping, or disbursement of public moneys.

15. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render statements at such times and in such form as he may require.

16. To direct and superintend the collection of all moneys due the state, and institute suits in its name for all official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property, and failed to pay over or deliver the same, and against all debtors of the state; of which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

17. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof.

18. To furnish the state treasury with a list of warrants drawn upon the treasury, specifying the amount and number of each warrant, and the name of the person in whose favor it is drawn.

19. To procure and have printed all state licenses, and to sign the same and furnish the state treasurer with such licenses and charge him with the same.

20. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office.

21. To collect and pay into the state treasury all fees received by him.

22. To perform the duties of a member of the state board of equalization, and such other duties as are prescribed by law.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907. Cal. Pol. C. Sec. 433.

152. Certificate of settlement. The certificate mentioned in subdivision 11, of section 151, must show by whom the payment is to be made; the amount thereof, and the fund into which it is to be paid, and must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

History: En. Sec. 421, Pol. C. 1895; re-en. Sec. 171, Rev. C. 1907. Cal. Pol. C. Sec. 434.

153. Special duty as to school fund. The state auditor must keep a separate account of the school fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. He must, on the first day of February and the first day of August of each year, report to the superintendent of public instruction a statement of the securities belonging to the school fund, of the moneys in the treasury subject to apportionment, and the several sources from which they accrued. He must draw his warrant on the state treasurer in favor of any county treasurer whenever such county treasurer presents, with his indorsement, an order drawn by the superintendent of public instruction in favor of such county.

History: En. Sec. 422, Pol. C. 1895; re-en. Sec. 172, Rev. C. 1907. Cal. Pol. C. Sec. 435.

154. Order in which warrants must be drawn. All warrants for claims which have been audited by the board of examiners and filed in his office must be drawn in the order of the numbers placed upon them by that board.

History: En. Sec. 423, Pol. C. 1895; re-en. Sec. 173, Rev. C. 1907. Cal. Pol. C. Sec. 436.

155. Proceedings against defaulters. Whenever any person has received moneys, or has money or other personal property which belongs to the state by escheat or otherwise, or has been entrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to, and make settlement with, the state auditor within the time prescribed by law, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the state auditor, within twenty days after such requisition, the state auditor must state an account with such person, charging twenty-five per cent. damages, and interest at the rate of ten per cent. per annum from the time of the failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated; but in case the state auditor cannot, for want of information, state an account, he may in any action brought by him aver that fact, and allege

generally the amount of money or other property which is due to or which belongs to the state.

History: En. Sec. 424, Pol. C. 1895; re-en. Sec. 174, Rev. C. 1907. Cal. Pol. C. Sec. 437.

156. To have access to offices. The state auditor shall have access to all offices of the state for the inspection of such books, papers, and accounts thereof as may concern his duties.

History: En. Sec. 426, Pol. C. 1895; re-en. Sec. 176, Rev. C. 1907.

157. Official bond. The state auditor must execute an official bond in the sum of ten thousand dollars.

History: En. Sec. 427, Pol. C. 1895; re-en. Sec. 177, Rev. C. 1907. Cal. Pol. C. Sec. 442.

Note.—Bond is given as fixed by chapter 229, Laws of 1921.

158. Cancellation of unclaimed state warrants. The state auditor shall cause to be plainly stamped the words "canceled because not claimed" upon any warrant issued by him, the owner of which may not have been found within six months after the date of the issue of such warrant, which cancellation shall be by stamp across the face of such warrant in red ink, and shall show the date of such cancellation. Such canceled warrant shall also be filed in a special place or file in the office of the state auditor, properly indexed, and shall be separated according to the designated funds shown thereon. The register of warrants in the office of the state auditor, showing the issue of such warrant, shall show the cancellation of such warrant, and the date thereof, and the proper warrant account shall be charged therewith. Should a person subsequently claim such warrant the state auditor shall, upon a satisfactory showing that such person is the holder of the claim, and is entitled to receive the warrant, issue a lieu warrant to such owner, in the same amount and upon the same fund as that for which the original warrant was drawn, and shall enter such lieu warrant upon the warrant register in the usual manner, and note upon the canceled warrant the date of the issue of such lieu warrant.

History: En. Sec. 1, Ch. 80, L. 1907; Sec. 178, Rev. C. 1907.

159. Issuance of duplicate warrant. The state auditor is hereby empowered and authorized to issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana shall have been lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate," and no such warrant shall be issued or delivered by the state auditor, except the person entitled to receive the same shall deposit with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana, and its officers, harmless on account of the issuance of said duplicate warrant.

History: En. Sec. 1, Ch. 19, L. 1909.

160. Auditor ex-officio investment commissioner. The state auditor is ex-officio investment commissioner, and his powers and duties as such officer are defined by sections 4026 to 4055 of this code.

Note.—New section recommended by code commissioner.

161. Auditor ex-officio real estate commissioner. The state auditor is ex-officio real estate commissioner, and his powers and duties as such officer are defined by sections 4056 to 4078 of this code.

Note.—New section recommended by code commissioner.

162. Auditor as commissioner of insurance—Appointment of deputy. The state auditor, in addition to his present title, shall be hereafter designated as commissioner of insurance ex-officio. He shall appoint a deputy in addition to the deputy state auditor provided for in section 122 of this code, who shall have the same authority and powers granted by said section, and, in addition thereto, shall be known as deputy commissioner of insurance, and shall be in charge of the department of insurance in the said auditor's office, under the direction and control of said state auditor and commissioner of insurance ex-officio; provided, that nothing herein contained shall be construed to authorize an increase of the number of employees in said office, and the office of insurance clerk is hereby abolished.

History: En. Sec. 1, Ch. 12, L. 1909.

163. Salary of deputy commissioner of insurance. The deputy commissioner of insurance shall receive a salary of twenty-four hundred dollars per annum, payable monthly.

History: En. Sec. 1, Ch. 93, L. 1919.

164. Employment of actuary. The state auditor and commissioner of insurance ex-officio may employ an actuary, when required, who shall be experienced and skilled in insurance matters and fully competent to perform any actuarial duties of the insurance department, and to assist in or take charge of the examination of insurance companies under the general direction of the commissioner or his deputy.

History: En. Sec. 3, Ch. 12, L. 1909.

165. Appointment of chief clerk. The state auditor and commissioner of insurance ex-officio is hereby authorized and empowered to appoint a chief clerk, at a salary of twenty-one hundred dollars per year, payable monthly; providing that nothing herein contained shall be construed to authorize an increase of the number of employees in said office at this time.

History: En. Sec. 1, Ch. 130, L. 1913.

Note.—Salary is given as fixed by chapter 154, Laws of 1919.

166. Examination of insurance and surety companies by commissioner of insurance. The commissioner of insurance shall examine and inquire into violations of insurance laws of this state, and for this purpose, or to see if the laws are obeyed, or to examine the financial condition, affairs, and management of any insurance company, including surety companies, organized under the laws of this state, or any other state or territory, or foreign country, he may visit, or cause to be visited, by any competent person or persons he may appoint, the head office in this state, or in the United States, of any domestic or foreign insurance company applying for admission to or already admitted to do business in this state, and may for these purposes examine or investigate any company organized under

the laws of Montana, and any agency of any company doing business in this state. The cost of such examinations shall be paid by the company examined, and shall include the reasonable expenses of the commissioner, his deputies, and assistants employed therein, whose services are paid for by the insurance department, and the compensation and reasonable expenses of his assistants employed therein whose services are not paid for by the department. Duplicate receipts showing the entire cost of the examination authorized by the commissioner of insurance shall be taken and certified to by the company examined, and shall be filed in and become a part of the public records of the insurance department. When insurance companies not admitted to do business in this state, or companies adjudged insolvent, or companies for any cause withdrawing from the state, neglect, fail, or refuse to pay the charges for examination as approved by the commissioner of insurance, such charges shall be paid out of the expense account of the commissioner of insurance in the same manner as other expenses of said office, or from any other such fund created to cover the expenses of the insurance department upon such approval and the amount so paid shall be a first lien upon all the assets and property of such company, and may be recovered by suit by the attorney-general on behalf of the state of Montana, and restored to the said expense account, or other proper fund. The commissioner may also examine companies on the request of five or more of the policy-holders, representing at least one hundred thousand dollars insurance in force, who shall make affidavit of their belief, with specifications of their reasons therefor in writing, that such company is in an unsound or insolvent condition; provided, that only the United States branches of companies incorporated in foreign countries shall be examined by said commissioner. For the purposes of the examinations, inquiries, or investigations as aforesaid, the commissioner of insurance or his deputy, or the person authorized to make them, shall have free access to all books and papers of an insurance company that relate to its business, and the books and papers kept by any officer, agent, or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations, in the examination of the directors, trustees, officers, agents, or employees of any such company, and any other person in relation to its affairs, transactions, and conditions. He may require and compel the production of records, books, papers, contracts, or other documents by attachments, if necessary. Any person knowingly or wilfully testifying falsely in reference to any matter material to said investigation, examination, or inquiry, shall be deemed guilty of perjury, and punished accordingly, and any person who shall wilfully refuse or fail to attend, answer, or produce books or papers, or who shall refuse to give said commissioner of insurance, or the person authorized by him, full and truthful information and answer in writing to any inquiry or question made in writing by said commissioner, or the person authorized by him, in regard to the business of insurance, or suretyship, carried on by such person, or other matters under investigation, or refuse or wilfully fail to appear and testify under oath before the commissioner of insurance, or the person authorized by him, shall be deemed guilty of a misdemeanor. Any director, trustee, officer, agent, or employee of an insurance company,

or any other person, who shall knowingly or wilfully make any false certificate, entry, or memorandum upon any of the books or papers of any insurance company, or upon any statement filed or offered to be filed in the insurance department of this state, or used in the course of any examination, inquiry, or investigation, with the intent to deceive the commissioner of insurance, or any person employed or appointed by him to make such examination, inquiry, or investigation, shall be deemed guilty of a misdemeanor.

History: En. Sec. 1, Ch. 13, L. 1909.

167. Publication of examination—Revocation of license. When the commissioner of insurance deems it to the interest of the public, he may publish the result of any examination or investigation in a newspaper of general circulation published at the state capital. If the commissioner finds upon examination, hearing, or other evidence, that any insurance company, including surety companies, organized in this state, or in any other state, territory, or foreign country, is in an unsound condition, or has failed to comply with the law or with the provisions of its charter, or that its condition is, or its methods are, such as to render its operations hazardous to the public or to its policy-holders, or that its actual assets, exclusive of its capital, are less than its liabilities, or if its officers or agents refuse to submit to examination, or to perform any legal obligation relative thereto, or refuse on behalf of the company to pay the examination charges, he shall suspend or revoke all certificates of authority granted to said insurance company, and to its officers or agents, and shall cause notice thereof to be published in one or more daily newspapers of general circulation published at the state capital, and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored. Before suspending or revoking the certificate of authority of any such company, the commissioner shall, unless it is insolvent or its capital impaired, grant it fifteen days in which to show cause why such action should not be taken. Any insurance company, including surety companies, organized under the laws of this state, or any other state, territory, or foreign country, whose certificate of authority has been suspended or revoked by the commissioner, may, within fifteen days thereafter, appeal from said order to the district court, which court, upon the filing of the proper petition, shall cause the record and orders of the commissioner to be brought before it, and upon a hearing of the case by the court de novo, the court shall either confirm or revoke the order of the commissioner, as the law and the fact of the case may warrant.

History: En. Sec. 2, Ch. 13, L. 1909.

168. Commissioner and deputy commissioner—Meaning of terms. The word "commissioner" and the words "deputy commissioner," as used in this act, shall designate the state auditor and insurance commissioner ex-officio and the deputy commissioner of insurance, respectively. Wherever in the laws of Montana which are not repealed by this act other titles are used to designate the chief officers and the second officer of the insurance department, such titles shall be understood as meaning the com-

missioner of insurance and the deputy commissioner of insurance, as hereinbefore specified.

History: En. Sec. 3, Ch. 13, L. 1909.

169. Keeping of securities by commissioner of insurance. The commissioner of insurance shall give vouchers for all securities deposited with him to the company depositing them. It shall be the duty of the commissioner, upon the receipt of such securities from any insurance company, to forthwith deposit the same in the presence of the president or authorized agent of the company in a strong iron box, which shall require two distinct and different keys, or one key and separate combination, to unlock the same; one key or combination to be kept by the commissioner of insurance and the other key or the combination by the company, and the box shall not be opened except in the presence of the commissioner or deputy and the president or authorized agent of the company; provided, however, that in case the company having such securities on deposit shall be adjudged insolvent or be dissolved, the court may make and enforce the necessary orders to place such securities, or any part of them, at the sole disposal of the court or commissioner of insurance. The boxes shall be placed in the vault of a safe deposit company or bank in the city of Helena, Montana, to be selected by the commissioner, and the insurance company shall pay the several fees for the safe keeping of their several boxes. So long as the company so depositing shall continue solvent the commissioner shall permit such company to collect and receive the interest and dividends on its securities so deposited, and from time to time withdraw any such securities and deposit other securities in the stead of those to be withdrawn, such new securities to be of the same value as those withdrawn.

If the commissioner, or his deputy, shall wilfully fail, refuse or neglect to faithfully keep, deposit, account for or surrender, in the manner by law authorized or required, any such securities as aforesaid transferred to and received by him or under his custody under the provisions of this act, or shall wilfully fail, refuse or neglect to furnish proper certificates of the securities so held by him as herein provided, said commissioner or his deputy shall be responsible upon his official bond and suit may be brought upon said bond by any person injured.

History: En. Sec. 1, Ch. 182, L. 1921.

170. Abstracting life insurance policies—License and fee. It shall not be lawful for any person, firm or corporation in the state of Montana to engage, or to advertise or to hold himself or itself out as engaged in the business of auditing or abstracting policies of life insurance or annuities, or of giving or affording any advice, counsel or opinion with respect to the benefits promised under any policy of life insurance or annuity issued or proposed to be issued by any company authorized to transact the business of life insurance in this state, or the terms, value, effect, advantages or disadvantages thereof, or, directly or indirectly, to take or receive any commission or other compensation or reward in money, or otherwise, or directly or indirectly, to obtain or acquire any benefit or advantage in consideration of, return for, or as a result of, the auditing or abstracting of a policy of life insurance or annuity, or policies of life insurance or

annuities, or the giving or affording of advice, counsel or opinion with respect thereto, or with respect to the plan of insurance of any such company, until a license shall have been issued to him or it by the commissioner of insurance issuing to him or it so to act. Such licenses may be issued by the commissioner for the period of one year and shall be renewed annually. The fee for each such license issued or renewed shall be ten dollars, provided, however, that the provisions of this act shall not apply to attorneys or certified public accountants, furnishing advice or information to their clients in the regular and ordinary course of their business.

History: En. Sec. 1, Ch. 208, L. 1921.

171. Application for license—Contents. No license shall be granted under this act until the person, or if it be a firm or corporation, then the person or persons representing such firm or corporation, applying therefor, shall have filed with the commissioner of insurance an application duly signed and verified by him or them, which application shall be in the following form, to-wit:

To the commissioner of insurance of the state of Montana:

I hereby make application for a license to audit and abstract policies of life insurance and annuities and to give counsel and advice with respect to such policies of life insurance and annuities, and the plans of insurance of corporations authorized to transact the business of life insurance in the state of Montana, and make the following statement on oath:

First, I will not violate any of the insurance laws of this state during the term of the license applied for if issued;

Second, I will not deceive any applicants for insurance or misrepresent any of the terms or conditions of any policy of life insurance or annuity, or the financial responsibility or business practices of any life insurance company authorized to transact business in this state;

Third, I will not upon the basis of any incomplete comparison or misrepresentation, advise or persuade, or attempt to persuade any person to drop or discontinue any insurance that he may have with any company or association during the term of such insurance for the purpose of taking insurance in any like company or association, or otherwise.

The commissioner of insurance shall have authority to address any additional inquiries to any such applicant, and the entire application shall be sworn to and signed by the applicant.

History: En. Sec. 2, Ch. 208, L. 1921.

172. Granting and revocation of licenses. The commissioner of insurance shall have the power after a hearing to refuse to grant any license requested under the provisions of this act, should he be satisfied the person, firm or corporation applying therefor is not a proper or fit person, firm or corporation to be permitted to engage in such business within this state. The commissioner of insurance shall have power to revoke for cause shown and upon hearing given to all parties concerned, any license issued by him under the provisions of this act; provided, that any action taken by the commissioner of insurance under the provisions of this section shall be subject to review by any court of competent jurisdiction.

The commissioner of insurance may at any time require such additional information from such person, firm or corporation, which, in his judgment, may be deemed necessary to enforce the provisions of this act.

History: En. Sec. 3, Ch. 208, L. 1921.

173. Penalty for violation of act—Revocation of license. Any person violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or both such fine and imprisonment in the discretion of the court, and upon the conviction of any person, firm or corporation licensed under this act, of any violation of the provisions thereof, the commissioner of insurance shall revoke the authority of such person, firm or corporation to act under such license within the state of Montana for a period of not less than one year.

History: En. Sec. 4, Ch. 208, L. 1921.

CHAPTER 12.

THE STATE TREASURER.

Section 174. General Duties.
175. Duty of State Treasurer to Distribute Forest Reserve Money.
176. Apportionment of Forest Reserve Funds Among Counties.
177. Per Cent. Allotted to General Fund and Common School Fund.
178. Correction of Errors in Apportionment.
179. General Fund.
180. Registration and Interest on State Warrants.
181. Act Not to Apply to Land Grant Warrants.
182. State Depository Board—Funds in the Hands of State Treasurer.
183. Posting List of Warrants.
184. Books to be Kept Open.
185. Appointment and Salary of Stenographer.
186. Access to Offices.
187. Quarterly Reports to Governor.
188. Bond of State Treasurer.
189. Quarterly Report of Depositories.
190. Temporary Suspension of Treasurer.
191. Appointment in Place of Suspended Treasurer.
192. State Officers to Deposit Moneys With State Treasurer, When.
193. State Moneys, How Expended by Treasurer.
194. Appropriation for Support State Institutions—Revolving Appropriations.
195. Contingent Revolving Accounts—When Established.
196. Authorization State Institutions to Retain Certain Moneys.
197. Violation of Act Misdemeanor.
198. Transfer Special Bond Funds to General Fund Authorized.

174. General duties. It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.

2. To file and keep the certificates of the state auditor delivered to him when moneys are paid into the treasury.

3. To deliver to each person paying money into the treasury and to the state auditor a duplicate receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants drawn by the state auditor out of the funds upon and in the order in which they are drawn.

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds.

8. To report to the state auditor, on the last day of each month, the amount disbursed for the redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund.

9. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

10. To report to the governor at the time prescribed in section 519 of this code the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the two preceding fiscal years; and to make a semi-annual report to the governor as provided in section 522 of this code.

11. To authenticate with his official seal all writings and papers issued from his office.

12. To discharge the duties of a member of the board of equalization, and such other duties as may be imposed upon him by law.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907. Cal. Pol. C. Sec. 452.

175. Duty of state treasurer to distribute forest reserve money. The state treasurer, for the purpose of carrying out the provisions of an act of congress of May 23, 1908, 35 United States statutes at large, p. 260, and all acts subsequent thereto, shall divide and distribute all forest reserve moneys received by the state of Montana thereunder, to and among the several counties entitled thereto, and pay the same to the several county treasurers of such counties within thirty days after receiving same, as directed by the state auditor.

History: En. Sec. 1, Ch. 26, L. 1915.

176. Apportionment of forest reserve funds among counties. The state auditor shall apportion said forest reserve funds between the several counties as follows, to-wit:

All funds received from each forest reserve shall be apportioned between the counties in which such forest reserve is situated in proportion to the acreage of such forest reserve in each county, and the state treasurer shall pay the several amounts so apportioned to the respective counties.

History: En. Sec. 2, Ch. 26, L. 1915.

177. Per cent. allotted to general fund and common school fund. The forest reserve funds so apportioned to each county shall be apportioned by the county treasurer in each county between the several funds as follows:

To the general road fund, sixty-six and two-thirds per cent. of the total amount received. To the common school fund thirty-three and one third per cent. of the total sum received.

History: En. Sec. 3, Ch. 26, L. 1915.

178. Correction of errors in apportionment. In the event of any error or errors heretofore or hereafter made in the apportionment or distribution of said forest reserve funds, such error or errors shall be corrected by the state auditor and state treasurer, equalizing future payments to the several counties so that the total proportionate sum received by each county shall be as fixed in section 2 of this act (176).

History: En. Sec. 4, Ch. 26, L. 1915.

179. General fund. The general fund consists of moneys received into the treasury and not specially appropriated to any other fund.

History: En. Sec. 441, Pol. C. 1895; re-en. Sec. 180, Rev. C. 1907. Cal. Pol. C. Sec. 454.

180. Registry and interest on state warrants. It is the duty of the state treasurer on the presentation of state warrants, regularly issued, to pay the same out of any funds available for such payments, and in the event that there are no funds available for such payment he must register each warrant in a book or register to be kept for the purpose, entering the date of issue, date of registration, name in whose favor warrant is drawn, the number and amount thereof, and he shall endorse on each warrant so registered, on its face "Presented for payment and not paid for want of funds, and registered in this office this ..... day of .....," inserting the date of registration; and he shall affix his signature as such treasurer thereto; and all warrants so registered and endorsed shall bear interest at the rate of four per cent. per annum until called for payment, after which date interest shall cease; and all warrants shall be redeemed and paid in the order of their registration and in the manner set forth in section 183 of this code; provided, however, that all warrants so registered and indorsed between the 1st day of March, 1921, and the 1st day of January, 1922, shall bear interest at the rate of seven per cent. per annum until called for payment, after which date interest shall cease, but after said date of January 1, 1922, all warrants so registered and endorsed shall bear interest at the rate of four per cent. per annum as above provided.

History: En. Sec. 1, p. 98, L. 1899; Ch. 260, L. 1921; amd. Sec. 1, Ch. 6, Ex. re-en. Sec. 181, Rev. C. 1907; amd. Sec. 1, L. 1921.

181. Act not to apply to land grant warrants. Nothing herein contained shall be construed to apply to any warrants issued on account of any land grant fund, or by virtue of any special act authorizing the issuance thereof.

History: En. Sec. 2, p. 99, L. 1899; re-en. Sec. 182, Rev. C. 1907.

182. State depository board—Funds in the hands of state treasurer. The state depository board shall designate as depositories as many banks within the state as in its judgment are necessary for the safe keeping of the public moneys in the hands of the state treasurer, as hereinafter directed; provided, that all banks so designated shall undertake and agree, as a condition precedent to the deposit of any funds in such bank, that interest shall be paid upon the daily balances of all such deposits at a rate prescribed by the said board, which shall not be less than two and one-half per cent. per annum, and all deposits shall be adequately and properly secured to the treasurer as herein specified. No deposits shall

be made of state funds by said depository board, nor by the state treasurer under the direction of said board, unless such bank shall first have delivered to the state treasurer as security thereof bonds of the United States, or of the state of Montana, or county, school, or municipal bonds, in at least an amount equivalent to the amount of such deposit, or the bond of some good surety company authorized to do business in the state of Montana in at least the amount of such deposit, which bonds, or security, shall first be approved by the state depository board; provided, that the state depository board may require security in a greater amount than that above named. No deposit of said funds shall be made or permitted to remain in any bank unless such bank shall have first been designated as a depository by said state board, nor until the security for the deposit shall have first been deposited with the treasurer and been approved by the state depository board. In designating the depositories for state funds, the state depository board shall, as near as may be found practicable, make designation of depositories in the respective counties of the state, and cause to be deposited in them public funds proportionate to the amount of public revenue received from such counties by the state. All interest paid and collected on deposits shall be by the state treasurer credited to the general fund of the state. The state depository board shall have the power of directing the withdrawal by the state treasurer of all moneys from any bank for any reason. When moneys shall have been deposited, under the direction of said depository board, and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct. It shall be the duty of the state treasurer to deposit funds in such bank, and in such amounts, as may be designated by the state depository board, and to withdraw such deposits when instructed so to do by the said board; provided, that the state treasurer shall at all times keep a cash reserve in state depositories provided for by this act, of at least fifteen per cent. of all state funds, and no permanent investment shall be permitted which will in any manner impair said reserve. But such treasurer shall have the authority, either with or without the direction of said state board, to withdraw all of such deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state duly presented to him in accordance with the law, except as above. Nothing herein shall be construed as limiting or impairing the right of the state board of land commissioners to invest public moneys in bonds or other securities as otherwise provided by law.

History: Ap. p. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909.

183. Posting list of warrants. The state treasurer must quarterly post upon the door of his office a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the last quarter.

History: En. Sec. 444, Pol. C. 1895; re-en. Sec. 184, Rev. C. 1907.

184. Books to be kept open. The treasurer must keep his books open at all times for the inspection of the governor, state examiner, board of

examiners, the members of the legislative assembly, and any committee appointed to examine them by either house thereof.

History: En. Sec. 445, Pol. C. 1895; re-en. Sec. 185, Rev. C. 1907.

185. Appointment and salary of stenographer. The state treasurer is hereby authorized and empowered to appoint a stenographer, at a salary of twelve hundred dollars per year, payable monthly.

History: En. Sec. 1, Ch. 5, 1909.

186. Access to offices. The state treasurer shall have full access to all offices of the state for inspection of such books, papers, and accounts thereof as concern his duties.

History: En. Sec. 447, Pol. C. 1895; re-en. Sec. 187, Rev. C. 1907.

187. Quarterly reports to governor. The state treasurer must keep a separate account of each fund in his hands, and must at the end of each quarter of the fiscal year report to the governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The governor must verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government.

History: En. Sec. 448, Pol. C. 1895; re-en. Sec. 188, Rev. C. 1907.

188. Bond of state treasurer. The state treasurer must execute an official bond in the sum of two hundred thousand dollars, and may furnish as surety on said bond any surety company or companies which have complied with the laws of this state authorizing surety companies to do business herein, and in the event that he does furnish such surety on said bond the premium therefor shall be a proper charge against the state and paid as other expenses of his office.

History: En. Sec. 2, Ch. 141, L. 1907; Sec. 189, Rev. C. 1907. Cal. Pol. C. Sec. 459.

Note.—Bond is given as fixed by chapter 229, Laws of 1921.

189. Quarterly report of depositories. The president and cashier of every bank in which state funds are deposited shall, quarterly, make a full and complete verified statement of account showing the amount of money which has been on deposit with the bank which they represent during the quarter, and the amount of interest they have credited, allowed, or paid to the state treasurer on account of such deposit, and further, such affidavit shall contain a statement that no interest, consideration, or emolument, other than that prescribed by law, has been by such depository, or any of its officers, paid in to the state treasurer or to any other person as an inducement for the deposit or for continuing the same with such depository.

History: En. Sec. 3, Ch. 141, L. 1907; Sec. 190, Rev. C. 1907.

190. Temporary suspension of treasurer. The state board of examiners, if, upon examination, find that the books of the state treasurer do not correspond with the amount of funds on hand, or do not show the actual condition of the funds, or if it appear to said board that any moneys belonging to the state have been embezzled, diverted, or in any

manner taken from the treasury, without authority of law, or that the state treasurer has been guilty of negligence in keeping his books, or of taking care of the public moneys, must certify the fact to the governor, who, upon receipt of such certificate, must forthwith take possession of all books, moneys, papers, and other property belonging to the state which have come into the possession of such state treasurer, by virtue of his office or otherwise, and must temporarily suspend him from his office of state treasurer.

History: En. Sec. 450, Pol. C. 1895; re-en. Sec. 191, Rev. C. 1907.

191. Appointment in place of suspended treasurer. The state board of examiners must thereupon procure the services of an expert to examine the books, papers, and all matters connected with the office of the state treasurer so suspended, and if it appears to said board on such examination that such state treasurer has embezzled or converted to his own use the public moneys, or has been negligent in keeping his books, or in taking care of the public moneys, the governor, on the certificate of said board of that fact, must appoint another person to fill the place of such suspended state treasurer, and such person so appointed must execute an official bond and enter upon the office of state treasurer, as provided by law.

The governor must report all his acts done under this and the next preceding section to the next succeeding legislative assembly, and the state treasurer so appointed holds his office until the suspended state treasurer is restored or his successor is elected and qualified.

History: En. Sec. 451, Pol. C. 1895; re-en. Sec. 192, Rev. 1907.

192. State officers to deposit moneys with state treasurer, when. The state treasurer is hereby designated the treasurer of each and every state board, commission, bureau, department and state institution, now existing or hereafter to be created or established. On the tenth and twenty-fifth days of each calendar month every state officer and every other employee or agent of the state of Montana must deposit with the state treasurer all moneys, securities, or other evidences of indebtedness, except such securities or other evidences of indebtedness as covered under chapter 96, Session Laws 1915 as amended (2816-3033), coming into his possession or under his control since the date of his last preceding remittance, save as hereinafter provided. The state treasurer shall issue his official receipt for each and every such payment, and shall deposit such payments by him received in the respective funds for and on account of which the same were collected and received.

History: En. Sec. 1, Ch. 112, L. 1921.

193. State moneys, how expended by treasurer. No moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer save by virtue of unexhausted appropriation therefor made by the legislative assembly, and after the presentation to him of a claim duly approved by the state board of examiners, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require

an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department.

History: En. Sec. 2, Ch. 112, L. 1921.

194. Appropriations for support state institutions—Revolving appropriations. For the support and endowment of each and every of the state institutions of the state of Montana now existing or hereafter to be created there is annually and perpetually appropriated respectively:

1. The income from all permanent funds and endowments, and from all land grants as provided by law;

2. All fees and earnings of each and every of such state institutions, from whatsoever source they may be derived;

3. All such contributions as may be derived from public or private bounty.

The entire income from all such permanent funds and endowments and from all land grants, and all contributions from public and private bounty, shall be kept by the state treasurer in specific fund accounts, so entitled as to indicate clearly their purposes and sources. All income from fees and earnings of each and every of such state institutions, from whatsoever source they may be derived, other than as hereinbefore specified, shall be deposited by the state treasurer to the credit of the general fund, but the state auditor shall keep upon his books such separate accounts with each and every of such institutions as may be required by the state board of examiners, and shall exhibit in each of said accounts all receipts and payments into and from each of said accounts. Said accounts shall be entitled "Revolving Appropriations," preceded by the name of the institution to which they pertain, and with such other descriptive titles as may be necessary to designate them clearly and unmistakably.

History: En. Sec. 3, Ch. 112, L. 1921.

195. Contingent revolving accounts—When established. The state board of examiners may in its discretion, by resolution duly adopted and entered upon the minutes of said board, authorize the establishment and maintenance at any and all of the state institutions, or in any of the departments, boards, or commissions, of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, under specific regulations to be established by said board of examiners. But each and every state institution granted a contingent revolving account shall report to the state board of examiners monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state board of examiners may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921.

196. Authorization state institutions to retain certain moneys. The state board of examiners may in its discretion, by resolution duly adopted and entered upon the minutes of said board, permit any state institution to retain in its possession, under such conditions as the board may pre-

scribe, incomes from dormitories conducted by state institutions, and moneys deposited in trust by students, members, inmates or other persons, which may be subject to refund to the depositors on demand or otherwise. The state board of examiners may cancel such permission and require the deposit of any or all such funds with the state treasurer at its pleasure.

History: En. Sec. 5, Ch. 112, L. 1921.

197. Violation of act misdemeanor. Any state officer or other employee or agent of the state who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not exceeding five hundred dollars for each and every offense.

History: En. Sec. 6, Ch. 112, L. 1921.

198. Transfer special bond funds to general fund authorized. The state treasurer of Montana is hereby authorized to transfer to the general fund of the state all moneys now in the following special bond funds and all moneys which may hereafter be received on account of said special bond funds, to-wit:

The state bond fund,

The state insane asylum bond fund, and

The state insane asylum and tuberculosis sanitarium improvement bond fund.

History: En. Sec. 1, Ch. 128, L. 1921.

CHAPTER 13.

THE ATTORNEY-GENERAL.

Section 199. General Duties.
200. Salary of Attorney-General.
201. Official Bond.
202. Assistant Attorneys-General—Appointment and Salary.
203. Qualification of Assistants.
204. Law Clerk and Stenographer—Salary.
205. Additional Stenographer—Salary.
206. Duty as to Escheats.

199. General duties. It is the duty of the attorney-general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the cases

have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge.

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof, and to any state officer, board, or commission, any county attorney, and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices.

7. When required by the public service, or directed by the governor, to assist the county attorney of any county in the discharge of his duties.

8. To bid upon and purchase in the name of the state, and under the direction of the board of examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or incumbrance taking precedence of the judgment in favor of the state, under the direction of the board of examiners to redeem such property from such prior judgment, lien, or incumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

10. When in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the duties of a member of the board of examiners, board of pardons, state board of land commissioners, state board of education, state board of equalization, board of state prison commissioners, state board of commissioners for the insane, deaf, dumb and blind, and other duties prescribed by law.

12. To report to the governor, at the time prescribed by section 519 of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by

him from county attorneys, and to report to the governor as provided in section 522 of this code.

History: En. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907. Cal. Pol. C. Sec. 470.

The attorney-general, by virtue of the power conferred upon him by the seventh subdivision of this section, has the right to appear before the grand jury, and examine witnesses before it, in assisting a county attorney. State ex rel. Nolan v. District Court, 22 Mont. 25, 27, 55 Pac. 916.

When the emergency arises calling the attorney-general to the assistance of the county attorney, he necessarily has the authority to do anything that the inferior officer may do, or, if the circumstances require it, undo what has already been done. State ex rel. Nolan v. District Court, 22 Mont. 25, 28, 55 Pac. 916; Independent Publishing Co. v. County of Lewis and Clark, 30 Mont. 83, 85, 75 Pac. 860.

The attorney-general must appear in all cases to which the state is a party but there is no law which authorizes him to contract on behalf of the county, and the county cannot legally pay expenses incurred in printing briefs on behalf of the state in a criminal cause on appeal. Independent Publishing Co. v. County of Lewis and Clark, 30 Mont. 83, 86, 75 Pac. 860.

The attorney-general, being by law the attorney of record in all causes pending in the supreme court to which a county may be a party, and as such entitled to be served with a copy of the transcript and appellant's brief, and appeal by plaintiff in an action against a county may be dismissed for failure to so serve him. McIntosh Hardware Co. v. Flathead County, 32 Mont. 254, 256, 80 Pac. 239.

Under the constitution and this section, imposing upon the attorney-general certain duties and "other duties prescribed by law," and in view of the fact that the office of the attorney-general, as it existed in England under the common law, was adopted as a part of the governmental machinery of this state, the common-law duties of that officer attach themselves to the office, in the absence of express restrictions, in so far as they are applicable and in harmony with our system of government. State ex rel. Ford v. Young, 54 Mont. 401, 403, 170 Pac. 947.

Cited or applied as section 193, Revised Codes, in State ex rel. Pew v. Porter, 57 Mont. 535, 537, 189 Pac. 618.

Right of attorney-general to contest will, see note in 130 A. S. R. 204.

Right of attorney-general to intervene in proceeding in interest of public charity, see note in Ann. Cas. 1913D, 138.

Exclusive control of attorney-general over litigation in which state is interested, see note in Ann. Cas. 1914D, 155.

Right of attorney-general to appear before grand jury, see note in Ann. Cas. 1912D, 945.

Right of attorney-general to file and prosecute information, see note in Ann. Cas. 1914B, 143.

Quo warranto as matter of right by attorney-general, see notes in 1 L. R. A. (N. S.) 826; 6 Ann. Cas. 912; Ann. Cas. 1915C, 392.

Right of attorney-general to maintain suit to enforce or prevent violation of statutory regulations affecting rates, see note in 18 L. R. A. (N. S.) 664.

Right of attorney-general to maintain suit or proceeding to remove officers of private corporations, see note in 18 L. R. A. (N. S.) 672.

200. Salary of attorney-general. The annual salary of the attorney-general of the state of Montana, to include all services rendered ex-officio as member of any board or commission, as now required, or which may be hereafter devolved upon him by law, is four thousand five hundred dollars.

History: En. Sec. 1, Ch. 78, L. 1915.

201. Official bond. The attorney-general must execute to the state an official bond in the sum of twenty-five thousand dollars.

History: En. Sec. 462, Pol. C. 1895; re-en. Sec. 195, Rev. C. 1907.

Note.—Bond is given as fixed by chapter 229, Laws of 1921.

202. Assistant attorneys-general—Appointment and salary. The attorney-general of the state of Montana is hereby authorized to appoint one assistant attorney-general, who shall receive a salary of thirty-six hundred dollars per annum, and three assistant attorneys-general, who shall receive as salary the sum of three thousand dollars per annum, who shall hold

such appointments during the pleasure of the attorney-general making such appointments.

History: Ap. p. Sec. 1, Ch. 13, L. 1907; Sec. 196, Rev. C. 1907; amd. Sec. 1, Ch. 77, L. 1915; amd. Sec. 1, Ch. 116, L. 1917; amd. Sec. 1, Ch. 112, L. 1919.

203. Qualification of assistants. Each of said assistant attorneys-general must be duly licensed to practice law in the state of Montana at the time of his appointment.

History: Ap. p. Sec. 2, p. 96, L. 1901; en. Sec. 2, Ch. 13, L. 1907; Sec. 197, Rev. C. 1907.

204. Law clerk and stenographer—Salary. The attorney-general is hereby authorized to appoint a law clerk and stenographer, who shall receive as salary the sum of two thousand one hundred dollars per annum, and shall hold such appointment during the pleasure of the attorney-general making such appointment.

History: En. Sec. 1, Ch. 77, L. 1915.

205. Additional stenographer—Salary. The attorney-general is hereby authorized to appoint an additional stenographer at a salary of twelve hundred dollars per annum, when in his judgment the work devolving upon his office and the public service seem to require such appointment.

History: En. Sec. 1, Ch. 77, L. 1915.

206. Duty as to escheats. It is the duty of the attorney-general to institute investigation for the discovery of all real and personal property which may have escheated or should escheat to the state, and for that purpose has the power to cite any and all persons before any of the district courts of this state to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property is discovered, which should escheat to the state, the attorney-general must institute suit in the district court of the county where said property shall be situated, for the recovery, to escheat the same to the state. The proceedings in all such actions shall be those provided for in sections 9959 to 9962 of these codes.

History: En. Sec. 463, Pol. C. 1895; re-en. Sec. 200, Rev. C. 1907. Col. Pol. C. Sec. 474.

CHAPTER 14.

THE STATE LAND AGENT.

207. The appointment, powers and duties of the state land agent are defined by sections 1824 to 1829 of this code.

Note.—New section recommended by code commissioner.

CHAPTER 15.

THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

208. The powers and duties of the superintendent of public instruction are defined by sections 931 to 949 of this code.

Note.—New section recommended by code commissioner.

CHAPTER 16.

THE STATE EXAMINER.

Section 209. Appointment and Term of Office.
210. Duties of State Examiner.
211. Duty of State and County Officers to Aid in Examination.
212. Power to Examine Books and Papers.
213. Failure of County Officers to Transmit Statements to State Examiner—Penalty.
214. Access to Accounts of Public Officers—Actions to Compel.
215. Examination of Accounts of Cities, Towns and School Districts.
216. Laws Applicable to Such Examinations.
217. Amounts Payable by Municipalities to State Treasurer.
218. Salary and Expense.
219. Assistants.
220. Additional Deputy and Assistant.
221. State Examiner's Fund.
222. Penalty for Failure to Pay Examiner's Fee.
223. Bonds of State Examiner and Assistants.
224. Preparation of County Budget.
225. County Officers to Submit Estimates.
226. Publication of Proposed Budget.
227. Examination and Procedure Upon Budget.
228. Expenditures Limited to Amount of Budget—Emergencies.
229. Budgets Public Records.
230. Scope of Act—Judicial Officers Excepted.

209. Appointment and term of office. There shall be a state examiner who shall be appointed by the governor and confirmed by the senate, and shall hold his office for the term of four years and keep his office at the capitol.

History: En. Sec. 490, Pol. C. 1895; re-en. Sec. 1, p. 105, L. 1897; re-en. Sec. 1, Ch. 100, L. 1903; re-en. Sec. 208, Rev. C. 1907.

This act being of a highly penal nature, it must be strictly construed. State v. Aetna Banking & Trust Co., 34 Mont. 379, 382, 87 Pac. 268.

210. Duties of state examiner. The duties of state examiner and his assistants are:

1. To examine at least once every year the books and accounts of the state treasurer, state auditor, secretary of state, clerk of the supreme court, state boiler inspector, state game warden, register of the state land offices and any other state officer having the collection or handling of state money, county treasurers, county clerks, county assessors, district court clerks, county auditors, sheriffs, public administrators, boards of county commissioners of each county, and all other officers and boards, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection, or disbursement of any public moneys of any character or description.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the state or counties, and to require of all officers an adherence to such general method and details as are required by law or prescribed by the state examiner.

3. To visit each and every office of the officers and institutions named in this act at least once in every year; and at such times to examine the books, accounts, and vouchers in said offices, to verify statements of receipts, expenditures, and indebtedness, and to examine and pass upon the character and amounts of any commissions, percentage, or charges

for services, exacted by any officer, and of all claims allowed by boards of county commissioners.

4. To visit once each year or oftener, without previous notice, each of the banks, banking corporations, and savings banks, building and loan associations, investment and loan companies, incorporated under the laws of this state, or doing business under any law of the state concerning corporations, and to examine into their affairs and ascertain their financial condition; to inspect and verify the value and the amount of their securities and assets, and to inquire into any violations of laws governing such banks, institutions, and building and loan associations.

5. The state examiner, after the examination of the affairs of any state officer, board, or institution, or board of county commissioners, must make report to the governor and to the attorney-general, of the result of such examinations, within thirty days thereafter; and if any violation of law or non-performance of duty is found on the part of any such officer or board, they must be proceeded against by the attorney-general or county attorney as provided by law.

6. The state examiner, or his assistant, after the examination of the affairs of any county officers, must make report of such examinations to the county commissioners and to the county attorney of such county, within thirty days after such examinations; and if any violation of law or non-performance of duty is found on the part of any county officer or board, such officer or board must be proceeded against by the county attorney of the county as provided by law.

7. The state examiner must make an annual report to the governor immediately after the end of each fiscal year.

History: Ap. p. Sec. 491, Pol. C. 1895; amd. Sec. 1, p. 105, L. 1897; amd. Sec. 491, Ch. 100, L. 1903; re-en. Sec. 209, Rev. C. 1907.

Cited or applied as section 491, chapter 100, Laws of 1903, in State v. Aetna Banking & Trust Co., 34 Mont. 379, 381, 87 Pac. 268.

211. Duty of state and county officers to aid in examination. All officers of the state and counties, and all officers and employees of all banking and other institutions mentioned in this act, must afford all reasonable facilities for the investigation provided for in this act, and all such officers, managers, and employees must make return and exhibits to the state examiner under oath, in such form and in such manner as he may prescribe, not conflicting with the present form of county records. Every officer or person violating the provisions of this section is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars or both.

History: En. Sec. 492, p. 107, L. 1897; re-en. Sec. 492, Ch. 100, L. 1903; re-en Sec. 210, Rev. C. 1907.

212. Power to examine books and papers. The state examiner or his assistant has power to examine any books, papers, accounts, and documents in the office or possession of any county or state officer, or banking or other institution referred to in this act, and to send for persons or papers and to examine under oath any and all persons concerning the same.

History: Ap. p. 494, Pol. C. 1895; amd. Sec. 493, p. 107, L. 1897; amd. Sec. 493, Ch. 100, L. 1903; re-en. Sec. 211; Rev. C. 1907.

213. Failure of county officers to transmit statements to state examiners—Penalty. If any county clerk or county treasurer shall fail to make and transmit to the state examiner's office any copy of any quarterly report required by the state examiner, within ten days after the end of a quarter, or any annual financial statement of the county within twenty days after end of fiscal year, then said officer so required to furnish such report or copy shall forfeit to the county one hundred dollars to be deducted from his salary by the board of county commissioners of such county on notice of such failure from the state examiner.

If any officer refuses or neglects to comply with any lawful regulation prescribed by the state examiner, under authority of paragraph 2 of section 210 of this code, the salary of such officer shall, on request of the state examiner, to the proper official, be withheld until such recreant official obeys, and the state examiner certifies approval to the disbursing officer.

History: Ap. p. Sec. 494, p. 107, L. 1897; amd. Sec. 494, Ch. 100, L. 1903; amd. Sec. 1, Ch. 149, L. 1907; Sec. 212, Rev. C. 1907.

Note.—The above section changed by code commissioner to eliminate reference to earlier acts.

214. Access to accounts of public officers—Actions to compel. The state examiner shall have full power and authority to count the cash, verify the bank accounts, and verify any and all accounts of any public officer, whose accounts he is examining, pursuant to law.

Any state, county, city or school district officer who shall refuse to accord the state examiner access, during an examination of such officer's accounts, to his cash, bank accounts, or any of the paper, vouchers, or records of his office, shall be immediately suspended from office.

The attorney-general shall, upon information furnished by the state examiner, institute such proceedings or action as may be necessary to enforce the provisions of this act.

History: En. Sec. 1, Ch. 84, L. 1915.

215. Examination of accounts of cities, towns, and school districts. The state examiner, in addition to the duties now imposed upon his office, shall have the power and authority, and it shall be his duty, to make at least one examination each year of the books and accounts of all incorporated cities and towns, and the books and accounts of all school districts of the first and second class, in like manner as is now required by law for the examination of the books and accounts of state and county officers.

History: En. Sec. 1, Ch. 84, L. 1913.

216. Laws applicable to such examinations. That all laws now in force relative to the examination of the books and accounts of state and county officers, are, and the same are hereby declared to be applicable to the examination of the books and accounts of incorporated cities and towns, and to the books and accounts of school districts of the first and second class.

History: En. Sec. 2, Ch. 84, L. 1913.

217. Amounts payable by municipalities to state treasurer. Cities and towns shall pay to the state treasurer, on or before the first day of November of each year, the following amounts:

Cities of the first class, one hundred and fifty dollars.

Cities of the second class, one hundred dollars.

Cities of the third class, fifty dollars.

Towns having a population of seven hundred or more, twenty-five dollars.

Towns having a population of less than seven hundred, ten dollars.

The state examiner shall examine the books and accounts of the school districts of the first and second class upon receiving a request signed by a majority of the board of trustees of such district; said school districts upon making a request for such examination shall pay the state treasurer the following amounts:

School districts of the first class, one hundred dollars.

School districts of the second class, twenty-five dollars.

All moneys collected under the provisions of this act shall be deposited in the general fund.

History: En. Sec. 3, Ch. 84, L. 1913; amd. Sec. 1, Ch. 73, L. 1915; amd. Sec. 1, Ch. 70, L. 1919.

218. Salary and expenses. The salary of the state examiner for all services rendered in any capacity whatever shall be five thousand dollars per year, and in addition thereto the state shall pay the necessary office and traveling expenses of himself and assistants.

History: En. Sec. 1, Ch. 149, L. 1907; Sec. 213, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1911.

Note.—Salary is given as fixed by chapter 259, Laws of 1921.

219. Assistants. The state examiner shall be allowed one first assistant at a salary of three thousand dollars per year; and one second assistant at a salary of two thousand seven hundred dollars per year; one deputy at a salary of two thousand four hundred dollars per year; and one clerk at a salary of one thousand five hundred dollars per year.

History: En. Sec. 1, Ch. 149, L. 1907; Sec. 214, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1911.

Note.—The latter portion of the original section is omitted and salaries are given as fixed by chapter 107, Laws of 1919.

220. Additional deputy and assistant. The state examiner is hereby empowered to appoint an additional deputy at a salary of twenty-four hundred dollars per annum and necessary traveling expenses. In the event, however, that it should become necessary to employ an assistant to such additional deputy examiner, to perform the duties provided for in this act, the state board of examiners may authorize the employment of such assistant at a salary of one hundred fifty dollars per month, and necessary traveling expenses.

History: En. Sec. 4, Ch. 84, L. 1913.

Note.—Salary is given as fixed by chapter 107, Laws of 1919.

221. State examiner's fund. For the purpose of the just distribution of the expenses incurred in pursuance of this chapter, there is created a fund designated "state examiner fund." For the credit of said fund each county of the state shall pay to the state treasurer, on or

before the first day of July of each year, according to its classification, as follows:

Counties of the first class, seven hundred and fifty dollars each.
Counties of the second class, three hundred and fifty dollars each.
Counties of the third class, two hundred and fifty dollars each.
Counties of the fourth class, two hundred dollars each.
Counties of the fifth class, one hundred and fifty dollars each.
Counties of the sixth class, one hundred and twenty-five dollars each.
Counties of the seventh and eighth class, one hundred dollars each.

Any counties hereafter created are to be deemed counties of the seventh class until an assessment of such county has been made and the class thereof determined, and for the maintenance of this fund for the years 1907 and 1908, if there is no subsequent legislation hereon, each county shall pay on its present classification and thereafter on the classification as made by law.

Each bank, banking corporation, savings bank, investment, and loan company, subject to supervision of the state examiner under the laws of this state, shall pay to the state treasurer for the state examiner's fund, on or before the first day of November of each year, a fee according to its capitalization at the following rates:

Capital stock up to twenty-five thousand dollars inclusive, fifty dollars; capital stock over twenty-five thousand and less than fifty thousand dollars, fee seventy-five dollars; capital stock from fifty thousand dollars to seventy-five thousand dollars inclusive, fee one hundred dollars; capital stock over seventy-five thousand dollars and to one hundred thousand dollars inclusive, fee one hundred and fifty dollars; capital stock over one hundred thousand dollars and to two hundred thousand dollars inclusive, fee two hundred dollars; capital stock over two hundred thousand dollars and less than three hundred thousand dollars, fee two hundred and fifty dollars; capital stock three hundred thousand dollars and over, fee three hundred dollars.

Each building and loan association subject to examination by the state examiner shall pay the state treasurer, on or before the first day of November of each year, a fee of one-twentieth of one per cent. of its assets, as shown by its last annual statement; provided, that no examination fee shall be less than twenty nor more than fifty dollars for a domestic association, nor more than two hundred dollars for a foreign corporation.

History: Ap. p. Sec. 504, Pol. C. 1895; amd. Sec. 497, p. 107, L. 1897; amd. Sec. 497, Ch. 100, L. 1903; amd. Sec. 497, Ch. 149, L. 1907; Sec. 215, Rev. C. 1907.

Foreign banking corporations doing business in this state were not intended to be included in this section, as it existed prior to its amendment, and such a concern was not subject to the penalties prescribed in the following section for non-compliance with the provisions of the former. State v. Aetna Banking & Trust Co., 34 Mont. 379, 387, 87 Pac. 268.

222. Penalty for failure to pay examiner's fee. Any bank, banking corporation, savings bank, building and loan association, investment and loan company, liable for a fee under section 221 of this code that shall fail or neglect to pay the state treasury, within ten days after the first day of November each year, the sum due as specified in the section next

preceding, shall forfeit to the state ten dollars for every day it shall so fail or neglect, to be sued for and recovered in the name of the state by the county attorney of the county in which the business of such banking association or corporation shall be located, and when so recovered, the amount shall be paid into the treasury of such county for the use of the common schools therein.

History: Ap. p. Sec. 505, Pol. C. 1895; amd. Sec. 498, p. 108, L. 1897; amd. Sec. 498, Ch. 100, L. 1903; amd. Sec. 498, Ch. 149, L. 1907; Sec. 216, Rev. C. 1907.

Cited or applied as section 498, chapter 100, Laws of 1903, before amendment, in State v. Aetna Banking & Trust Co., 34 Mont. 379, 382, 87 Pac. 268.

223. Bonds of state examiner and assistants. The state examiner and his assistants may each be required to give an official bond in such sum as the board of examiners may fix; if required, said bond may be a surety company bond, in which event the cost of said bond shall be a part of the expenses of the office, and paid out of the appropriation for said expenses.

History: Ap. p. Sec. 496, Pol. C. 1895; amd. Sec. 499, p. 109, L. 1897; amd. Sec. 499, Ch. 100, L. 1903; amd. Sec. 499, Ch. 149, L. 1907; Sec. 217, Rev. C. 1907.

Note.—See section 464.

224. Preparation of county budget. The state examiner of the state of Montana shall annually prepare and submit to the county commissioners of the several counties of the state of Montana, a form or forms for the preparation of budgets or a budget system of expenditures of public moneys for all county officers, institutions and agencies, including the boards of county commissioners, of the several counties of the state of Montana.

History: En. Sec. 1, Ch. 209, L. 1921.

225. County officers to submit estimates. Not less than sixty days prior to the day upon which the board of county commissioners of the several counties of this state shall meet to fix and determine the levy upon the property within their counties for taxation purposes, each and every and all county officers, including boards of county commissioners, and the heads or persons in charge and control of county institutions and agencies shall, upon the forms prepared by the state examiner, submit and file with the clerk of the board of county commissioners of their respective counties, a budget or estimate of the necessary expenditures and need for funds of their respective offices, institutions or agencies, including expenditures for general, contingent, road, bridge and poor funds, for the next fiscal year.

History: En. Sec. 2, Ch. 209, L. 1921.

226. Publication of proposed budget. During the first week of the calendar month of July of each year, the county commissioners of the several counties shall cause to be published in the official newspaper of the county, each and every and all of the proposed budgets of estimate of necessary expenditures of the several county officers, including county commissioners, institutions and agencies of the county as filed with the clerk of said board, according to the provisions hereof. Setting forth in said notice the day upon which the county commissioners will approve,

amend or disapprove such budgets or estimate of expenditures, which shall be not later than the second Monday in August of each year.

History: En. Sec. 3, Ch. 209, L. 1921.

227. Examination and procedure upon budget—Tax levy. Upon the day fixed in the notice, the county commissioners shall proceed to examine such budgets or application for expenditures as may have been filed with the clerk of said board, and proceed to approve, amend or disapprove the same; and said budgets or estimate of expenditures as shall be finally fixed and determined by the board of county commissioners in accordance with provisions of this law, shall be the budgets and estimate of expenditures of the several county officers, institutions and agencies, including the boards of county commissioners. The board of county commissioners shall in accordance with the provisions of the laws of this state, fix and determine tax levies sufficient to provide and care for and make funds available for all such budgets of all county officers, institutions and agencies.

History: En. Sec. 4, Ch. 209, L. 1921.

228. Expenditures limited to amount of budget—Emergencies. Each and every and all county officers, institutions and agencies, including boards of county commissioners, shall be limited in their expenditures for the fiscal year for which such budget was made, to the amount and in the manner as in such budget, as finally approved, shall be set forth, provided that should any emergency or just cause arise for the allowance of a greater sum or sums for any particular office, officer, institution or agency of the county, and the county commissioners shall have determined that such is an emergency or just cause for the allowance of the additional amount, they may permit expenditures to be made for such emergency or just cause and include the same in their estimate for tax levy in the succeeding fiscal year.

History: En. Sec. 5, Ch. 209, L. 1921.

229. Budgets public records. All budgets or applications for expenditures prepared and filed in accordance with the provisions hereof, shall be public records, and no warrant shall be drawn for any expenditure except those provided for in said budget.

History: En. Sec. 6, Ch. 209, L. 1921.

230. Scope of act—Judicial officers excepted. Nothing in this act shall be construed as defining the district courts as county officers, institutions or agencies, nor shall such district judge or courts be required to file a budget or application for expenditures as herein contemplated.

History: En. Sec. 7, Ch. 209, L. 1921.

CHAPTER 17.

THE STOCK COMMISSIONER AND STATE VETERINARY SURGEON.

Section 231. Stock Commissioner and State Veterinary Surgeon.

231. The appointment, powers and duties of the livestock commission, livestock sanitary board, and state veterinary surgeon are defined by sections 3260 to 3295 of this code.

History: Sec. 218, Rev. C. 1907.
Note.—Section rewritten by code commissioner.

CHAPTER 18.

THE BOARD OF EXAMINERS—STATE PRINTING AND SUPPLIES.

Section 232. Board, How Composed.
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235. Rules and Regulations.
236. Witnesses.
237. Depositions.
238. Claims for Which Appropriations Have Been Made.
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240. Disapproval of Claims.
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232. Board, how composed. The governor, secretary of state, and attorney-general constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. No claim against the state, except salaries and compensation of officers fixed by law, must be passed upon by the legislative assembly without first having been considered and acted upon by said board.

History: Sections 232 to 253 were enacted as Sections 1 to 21, p. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907. Cal. Pol. C. Secs. 654-685.

Both this section and section 20 of article VII of the constitution apply to unliquidated claims, and not to those the amounts of which have been fixed specifically by contract or by any department of the state government having authority to fix them. State ex. rel. Schneider v. Cunningham, 39 Mont. 165, 172, 101 Pac. 962.

233. Meetings and officers. The meetings of the said board are held at the seat of government on the third Monday in each month, and such other times as the president may call it together; and the governor is the president and the secretary of state is the secretary of said board, and, in the absence of either, an officer pro tempore may be elected from their number.

History: Sec. 227, Rev. C. 1907. See also history of Sec. 232.

234. Records. The board must keep a record of all its proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such record. And all claims must be entered upon the minutes of the board before the same are acted upon.

History: Sec. 228, Rev. C. 1907. See also history of Sec. 232.

235. Rules and regulations. The board may, in writing, establish rules and regulations not inconsistent with law for its government.

History: Sec. 229, Rev. C. 1907. See also history of Sec. 232.

236. Witnesses. The president may issue subpoenas and compel the attendance of witnesses before the board, or any member thereof, in the same manner that any court in the state may; and whenever the testimony of any witness against a demand pending before it is material, the president must cause the attendance of the witness before the board, or a member thereof, to testify concerning the demand, and the board may make a reasonable allowance therefor, not exceeding the fees of witnesses in civil cases, which must be paid out of the appropriation for the contingent expenses of the board, but in no instance can an allowance be made in favor of a witness who appeared in behalf of the claimant.

History: Sec. 230, Rev. C. 1907. See also history of Sec. 232.

237. Depositions. Each member of the board may take depositions to be used before it.

History: Sec. 231, Rev. C. 1907. See also history of Sec. 232.

238. Claims for which appropriations have been made. Any person having a claim against the state, for which an appropriation has been made, may present the same to the board in the form of an account or petition, and the secretary of the board must date, number, and file such claim, and the board must allow or reject the same in the order of its presentation. The board may for cause postpone action upon a claim for not exceeding one month.

History: Sec. 232, Rev. C. 1907. See also history of Sec. 232.

239. Approval and warrant. If the board approve such claim they must indorse thereon, over their signatures, "Approved for the sum of ——— dollars," and transmit the same to the office of the state auditor; and the auditor must draw his warrant for the amount so approved in

favor of the claimant, or his assigns, in the order in which the same was approved.

History: Sec. 233, Rev. C. 1907. See also history of Sec. 232.

Cited or applied in State ex rel. Palmer v. Hickhan, 11 Mont. 541, 553, 29 Pac. 92.

240. Disapproval of claims. If the board disapprove such claim, it must cause the same to be filed with the records of the board, with a statement showing such disapproval and the reasons therefor.

History: Sec. 234, Rev. C. 1907. See also history of Sec. 232.

241. Claims provided for, but for which there is no appropriation. If no appropriation has been made for the payment of any claim presented to the board, the settlement of which is provided for by law, or if an appropriation made has been exhausted, the board must audit the same, and if they approve it, must transmit it to the legislative assembly with a statement of their approval.

History: Sec. 235, Rev. C. 1907. See also history of Sec. 232.

242. Unsettled claims. Any person having a claim against the state, the settlement of which is not otherwise provided for by law, must present the same to the board of examiners, at least two months before the meeting of the legislative assembly, accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions.

History: Sec. 236, Rev. C. 1907. See also history of Sec. 232.

243. Time for meeting for action on unsettled claims. On the first Monday of November preceding the meeting of each legislative assembly, the board must hold a session for the purpose of examining the class of claims referred to in the preceding section, and may adjourn from time to time until their work is completed. They must cause a list and brief abstract of all claims filed with them up to that date to be made and published in some newspaper at the seat of government for such time as they may prescribe. The list must be accompanied by a general notice of the order in which and of the time when the board will proceed to examine the claims.

History: Sec. 237, Rev. C. 1907. See also history of Sec. 232.

244. Proof and examination of such claims. The board must, at the time designated, proceed to examine and adjust all such claims. They may hear evidence in support of or against them, and report to the legislative assembly such facts and recommendations concerning them as they may think proper. In making their recommendations they may state and use any official or personal knowledge which any member of the board may have touching such claims.

History: Sec. 238, Rev. C. 1907. See also history of Sec. 232.

245. Report on such claim. The board must make up their report and recommendations at least thirty days before the meeting of the legislative assembly. A brief abstract of their report, showing the claims rejected, and those, or the amounts thereof, allowed, must be published in a newspaper published at the seat of government for such time as the board may prescribe before the meeting of the legislative assembly.

History: Sec. 239, Rev. C. 1907. See also history of Sec. 232.

246. Disqualifications. No member of the board must act upon any claim in which he is interested, or for expenditures incurred in his office, nor must he be present when the decision thereon is made.

History: Sec. 240, Rev. C. 1907. See also history of Sec. 232.

247. Restrictions on power of board. The board must not entertain for the second time a demand against the state once rejected by it or by the legislative assembly, unless such facts are presented to the board as in suits between individuals would furnish sufficient ground for granting a new trial.

History: Sec. 241, Rev. C. 1907. See also history of Sec. 232.

248. Appeals. Any person interested, who is aggrieved by the disapproval of a claim by the board, may appeal from the decision to the legislative assembly of the state, by filing with the board a notice thereof, and upon the receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the legislative assembly.

History: Sec. 242, Rev. C. 1907. See also history of Sec. 232.

249. Auditor not to draw warrant for claims not audited. The state auditor must not draw his warrant for any claim unless it has been approved by the board, except for salaries or compensation of officers fixed by law.

History: Sec. 243, Rev. C. 1907. See also history of Sec. 232.

250. Board may prevent payment of auditor's warrants. Whenever the board has reason to believe that the state auditor has drawn, or is about to draw his warrant without authority of law, or for a larger amount than the state actually owes, the board must notify the state treasurer not to pay the warrant so drawn or to be drawn; and thereupon the treasurer is prohibited from paying the warrant, whether already drawn or not, until he is otherwise directed by the legislative assembly or the board.

History: Sec. 244, Rev. C. 1907. See also history of Sec. 232.

251. Must examine books of auditor and treasurer. As often as it may deem proper the board must examine the books of the state auditor and state treasurer, the accounts and vouchers in their offices, and count the money in the treasury, and for that purpose they may demand, and the state auditor and state treasurer must furnish without delay, all information touching the books, papers, vouchers, or matters pertaining to their offices.

History: Sec. 245, Rev. C. 1907. See also history of Sec. 232.

252. Must make statement. The board must, at least once in each month, make and file in the office of the secretary of state, and publish in some newspaper at the seat of government, a statement showing the amount of money in the treasury.

History: Sec. 246, Rev. C. 1907. See also history of Sec. 232.

253. Anditor and treasurer must permit examination, etc. The state auditor and state treasurer must permit the board of examiners to exam-

ine the books and papers in their respective offices, and the treasurer must permit the money in the treasury, without delay on any pretense whatever, to be counted whenever the board wishes to make an examination or count.

History: Sec. 247, Rev. C. 1907. See also history of Sec. 232.

254. Furnishing board. The governor, secretary of state, and attorney-general of the state of Montana are hereby constituted ex-officio a furnishing board, with the powers and duties hereinafter specified.

History: En. Sec. 702, Pol. C. 1895; re-en. Sec. 248, Rev. C. 1907.

255. Board of supplies. The board of examiners is also a board of supplies and furnishing board.

History: En. Sec. 703, Pol. C. 1895; re-en. Sec. 249, Rev. C. 1907.

256. Duties of such board. It is the duty of such board:

1. To contract for the furnishing of all stationery, printing, binding, paper, fuel, lights, and other necessary supplies, to be used by the legislative assembly and all other departments of the government, and the printing, binding, and distributing of the laws, codes, journals, department reports, reports of the decisions of the supreme court, and all other printing and binding, and repairing of any books used by any state officer or department.

2. To hire all offices for the state officers, and to furnish the same; to keep the furniture in repair, and to hire and furnish halls and rooms for the use of the legislative assembly, and to provide furniture therefor, and keep the same in repair.

3. To cause to be deposited in the office of the secretary of state all stationery, books, and other articles and supplies furnished and on hand, and to issue to any officer a requisition on the secretary of state for any books, stationery, or other supplies needed by such officer.

4. At the end of each fiscal year, and at such other times as the board thinks proper, to cause an inventory to be taken of all articles and supplies on hand and contracted for, and to make an examination of all accounts and vouchers for such supplies.

5. To establish rules for the government of the board in relation to all contracts not inconsistent with law.

History: En. Sec. 704, Pol. C. 1895; re-en. Sec. 250, Rev. C. 1907.

257. Contracts must be advertised. Before any contract is let the board must advertise for twenty days in two daily newspapers printed in the state, one of which must be published at the seat of government, for sealed proposals to furnish any and all the supplies mentioned in the next preceding section.

History: En. Sec. 705, Pol. C. 1895; re-en. Sec. 251, Rev. C. 1907.

Where advertising for bids is a statutory requirement, neither the municipality nor its agents can make a contract binding upon it without compliance with the formalities so prescribed. State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 35, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

Where an advertisement for proposals for the furnishing of supplies was not made in compliance with this section, but was made only in a newspaper which had the contract for the public printing, the contention that the publication was lawful because the advertisement was public printing was without merit. State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 35, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

This section is not repugnant to section 30, article V of the constitution. State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 36, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

258. Contents of advertisement. The board must specify in the advertisement the amount and kind of each article required. A sample and minute description of each article must accompany and be deposited with each proposal.

History: En. Sec. 706, Pol. C. 1895; re-en. Sec. 252, Rev. C. 1907.

Cited or applied as section 706, Political Code, in State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 27, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

259. Awarding the contract. The proposals received must be directed to the board, opened and compared by it at its office at twelve o'clock, noon, of the day specified in the advertisement, and the board must award the contract for furnishing such supplies, or any of them, to the lowest responsible bidder at such time.

History: En. Sec. 707, Pol. C. 1895; re-en. Sec. 253, Rev. C. 1907.

The statute imposes upon the board of examiners the duty to award the contract to the lowest responsible bidder, unless the bids be rejected; and whenever, after a compliance with the statutory prerequisites essential to the valid acceptance of a bid, it has regularly awarded the contract, there spring into existence vested rights which the board cannot destroy or impair. It cannot insert into the formal written contract any condition not consonant with the contract already made by virtue of the acceptance of the bid. In the absence of fraud, accident, and mistake, or other legal reason sufficient to render the acceptance void or voidable, the contract resulting therefrom cannot (unless by mutual consent) be changed or annulled, nor by its obligation be impaired, by any act of the board. State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 29, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

Where the board regularly accepts a bid for supplies, its action in subsequently attempting to rescind the contract because the bidder is shown to be a corporation employing non-union workmen, and hostile to labor organizations, is void. State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 30, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

260. State printing—Union label. All printing for which the state of Montana is chargeable, including reports of state officers, state boards, pamphlets, blanks, letter heads, envelopes, and printed matter of every kind and description, save and except certificates of appointment and election to office, shall have the label of the branch of the international typographical union of the city in which they are printed.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907.

Validity of statute protecting use of union label, see note in Ann. Cas. 1912D. 373.

261. Penalty. Any officer of the state who shall accept any printed matter, save and except certificates named in the preceding section, for which the state is chargeable, which does not bear a label indicating that it was printed in an office under the jurisdiction of the international typographical union, shall be subject to a fine of fifty dollars for each and every offense.

History: En. Sec. 1, p. 58, L. 1897; re-en. Sec. 255, Rev. C. 1907.

262. The bond. Each bid must be accompanied by a bond, with two or more sureties, in a sum not less than twice the amount of the value of the articles to be supplied, payable to the state, conditioned that if the bidder receives the contract he will deliver the supplies for which he has

contracted, under such rules and regulations as the board may prescribe, and for the faithful performance of the contract.

History: En. Sec. 708, Pol. C. 1895; re-en. Sec. 256, Rev. C. 1907.

Cited or applied as section 708, Political Code, in State ex rel. State Pub. Co. v. Hogan, 22 Mont. 384, 385, 56 Pac. 818; State ex rel. State Pub. Co. v. Smith, 23 Mont. 44, 46, 57 Pac. 449; State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 27, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

263. Supplies may be classified. The board may in the advertisement classify the supplies and articles to be furnished, and may receive bids, and award contracts for such separate class of supplies, or such separate articles, as it considers the lowest and best bid. The board may require any class of supplies or separate articles thereof to be delivered in installments. Any and all bids may be rejected, and the board may advertise again.

History: En. Sec. 709, Pol. C. 1895; re-en. Sec. 257, Rev. C. 1907.

Cited or applied as section 709, Political Code, in State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 29, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

264. Must be approved by governor and state treasurer. All contracts made by the board must be approved by the governor and the state treasurer.

History: En. Sec. 710, Pol. C. 1895; re-en. Sec. 258, Rev. C. 1907.

A compliance with this section is indispensable to the validity of a contract for public printing, and such a contract, entered into by a party with the state board of examiners, without the approval of the governor and state treasurer, is void. State ex rel. State Pub. Co. v. Hogan, 22 Mont. 384, 390, 56 Pac. 818.

The duty of the governor and state treasurer to approve a contract for state printing is not ministerial, but involves judicial discretion, and cannot be controlled by mandamus. State ex rel. State Pub. Co. v. Smith, 23 Mont. 44, 50, 57 Pac. 449.

Cited or applied as section 710, Political Code, in State ex rel. Robert M. F. Co. v. Toole, 26 Mont. 22, 29, 66 Pac. 496, 91 Am. St. Rep. 386, 55 L. R. A. 644.

265. For supplies for the legislative assembly. The board must, at least one month before the meeting of the legislative assembly, advertise as provided in the preceding sections for the repairing and furnishing the halls and rooms, and stationery, fuel, light, and such other supplies as are necessary for the members of the legislative assembly, at the ensuing session, and at the commencement of each session thereof the board must report to the legislative assembly an account of the supplies, expenditures for the same, and the stock on hand.

History: En. Sec. 711, Pol. C. 1895; re-en. Sec. 259, Rev. C. 1907.

266. Rooms for state officers. The board may hire the necessary rooms for the state officers, and halls and rooms for the legislative assembly and its committees, without advertising as provided in this chapter, if the board so decide.

History: En. Sec. 712, Pol. C. 1895; re-en. Sec. 260, Rev. C. 1907.

267. No officer to be interested in contracts. No member or officer of any department of the government must be in any way interested in any contract made under the provisions of this chapter.

History: En. Sec. 713, Pol. C. 1895; re-en. Sec. 261, Rev. C. 1907.

268. Board may employ clerical help for state officers. The board of examiners may, at any time when necessary, employ clerical help for

any state officer or board, and no clerks must be employed by such officers or board without the authority of the board of examiners, and no such clerks must be employed by the board of examiners except when all the duties of the office cannot be performed by the officer himself.

History: En. Sec. 714, Pol. C. 1895; re-en. Sec. 262, Rev. C. 1907.

This section does not apply to the employees of the supreme court; that court, viewed as a department of the state government, is neither an officer nor a board, and therefore does not fall within the provision concerning "clerical help for any state officer or board." State ex rel. Schneider v. Cunningham, 39 Mont. 165, 172, 101 Pac. 962.

Cited or applied as section 714, Political Code, in State ex rel. State Pub. Co. v. Smith, 23 Mont. 44, 50, 57 Pac. 449; as section 262, Revised Codes, in State ex rel. Hillis v. Sullivan, 48 Mont. 320, 331, 137 Pac. 392.

269. Contracts in excess of appropriation prohibited. No state officer, state board of trustees, or managers or commissioners shall have any authority to, or shall contract any liability or indebtedness whatever in excess of the amount appropriated to such officer, board of trustees, or managers or commissioners, or for the office, institution, commission, or organization under his or their management or control, without previous authorization from the state board of examiners, and if any liability or indebtedness be incurred or expenditure be made, in violation of this act, no claim therefor shall be allowed by the state board of examiners.

History: En. Sec. 1, Ch. 26, L. 1907; Sec. 263, Rev. C. 1907.

270. Investment of special funds in general fund warrants. The state board of examiners is hereby empowered to invest any moneys available in the following funds: State banking fund, escheated estate fund, fish and game fund, state insane asylum bond fund, state insane asylum and tuberculosis sanitary improvement bond fund, state land office expense fund, or war defense fund, in the hands of the state treasurer in state general fund warrants.

History: En. Sec. 1, Ch. 1, L. 1921.

271. Transfer certain special accounts of state institutions. For the purpose of correcting errors heretofore made at the state institutions affected hereby in the allocation of claims audited by the state board of examiners and paid upon warrants issued by the state auditor, the said state board of examiners and the state auditor are directed to transfer the following sums to and from the special accounts and appropriation accounts hereinafter named:

1. From state university special account into students' traveling fare refund appropriation, the sum of one hundred twenty dollars and ten cents ($120.10).

2. From tuberculosis sanitarium buildings appropriation into tuberculosis sanitarium maintenance appropriation, the sum of three thousand nine dollars and nine cents ($3,009.09).

3. From state orphans' home buildings appropriation into state orphans' home maintenance account, the sum of seventeen thousand four hundred twenty-three dollars and eighty cents ($17,423.80).

History: En. Sec. 1, Ch. 191, L. 1921.

272. Moneys, when available. The moneys transferred by the preceding section shall be available only for the payment of claims maturing on or before February 28, 1921.

History: En. Sec. 2, Ch. 191, L. 1921.

273. Powers concerning employment assistants to civil executive officers. From and after the passage of this act the state board of examiners of the state of Montana shall by resolution fix and designate the number, compensation, term, and tenure of office of all assistants, clerks, and stenographers for all civil executive state officers, boards, commissions, or departments. Said board shall likewise have the power to discontinue in any or all state offices or to discharge any of said assistants, clerks, or stenographers, for cause or otherwise, whenever in their judgment the best interests of the service requires such actions.

History: En. Sec. 1, Ch. 108, L. 1921.

274. Compensation assistants civil executive officers. The compensation paid to each of the several assistants, clerks and stenographers for all civil executive officers, boards, commissions or departments shall not exceed the maximum sum specified in the annual appropriation bill passed by the legislative assembly for the year specified, and the sum so specified in the annual appropriation bill shall be in full compensation for all services rendered by such assistants, clerks and stenographers.

History: En. Sec. 2, Ch. 108, L. 1921.

275. Appointment assistants civil executive officers. The civil executive state officers, boards, commissions, or departments shall have the power to appoint their own assistants, clerks and stenographers in the number and for the compensation fixed by the state board of examiners.

History: En. Sec. 3, Ch. 108, L. 1921.

276. Establishment prices for state printing. Hereafter in all cases and instances where any publication is required by law, or is duly authorized, to be made, executed or accomplished by or for or on behalf of the state of Montana, or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof, or any of the officers, agents or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the price for such publication and by whomsoever accomplished shall not exceed the following rate and standard hereby established and prescribed as the maximum rate and standard for all publications as aforesaid:

(a) For every folio of one hundred (100) words, or any fraction thereof, one dollar and fifty cents ($1.50) for the first insertion, and fifty cents (50c) for each subsequent insertion thereof required by law to be made.

(b) For rule and figure work, two dollars ($2.00), for every folio of one hundred (100) words or any fraction thereof, for the first insertion and fifty cents (50c) for each subsequent insertion thereof required by law to be made.

History: En. Sec. 1, Ch. 157, L. 1921.

277. Basis of measurement. The following basis of measurement for the computation of folios in the various sizes of type is hereby fixed and prescribed as follows:

Twelve (12) lines of six (6) point type; fourteen (14) lines of seven (7) point type; or sixteen (16) lines of eight (8) point type; or eighteen (18) lines of nine (9) point type; or twenty (20) lines of ten point type; in each and every instance, by actual count, carefully verified, shall constitute a folio within the meaning of this act, when set in a column thirteen (13) ems pica wide.

History: En. Sec. 2, Ch. 157, L. 1921.

278. Lower rates permissible. The prices, rates and standards herein fixed and prescribed are, in each instance, and for every case covered by this act, the maximum prices, rates and standards, and their prescription and establishment herein shall in no case be taken as prohibiting a lesser or lower rate or price than herein fixed. Every department, institution, officer or agent of the state shall, whenever possible, obtain a lower rate or price than is fixed herein, the equivalent of the minimum rate mentioned in the following section.

History: En. Sec. 3, Ch. 157, L. 1921.

279. Affidavit of printer—Allowance of claims. The state board of examiners shall not allow or approve for payment any claim against the state of Montana by any publisher or printer, natural, corporate or quasi-corporate, nor shall the state auditor draw his warrant for the payment of any such claim against the state of Montana, for legal advertising or any of the publications covered by this act, in the event there is not attached to said claim the affidavit of the publisher or printer (in the case of corporations or quasi-corporations by the business or advertising manager thereof) properly executed, setting forth that the price or rate charged the state of Montana for the publication for which claim is made, is not in excess of the minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions. And it is hereby declared to be unlawful to make any claim against or to charge or attempt to charge, the state of Montana for any publication in excess of the minimum going rate charged any other advertiser for the same publication, set in the same sized type and published for the same number of insertions.

History: En. Sec. 4, Ch. 157, L. 1921.

280. Penalty for false affidavit or overcharge. Any person, or any corporation or any firm, or any quasi-corporation, who shall violate any provision of this act, or swear falsely hereunder, or charge or attempt to charge the state of Montana in excess of the prices and rates herein fixed, or in any manner circumvent or attempt to circumvent this act, or aid or abet any other person, firm, corporation or quasi-corporation in offense against this act, shall be guilty of a misdemeanor, and shall on conviction for the first offense be fined not more than one hundred dollars or be imprisoned in the county jail for not more than three months, or both such fine and imprisonment, in the discretion of the court, and shall on conviction for each subsequent offense be fined not more than three

hundred dollars or be imprisoned in the county jail for not more than six months, or both such fine and imprisonment in the discretion of the court.

History: En. Sec. 5, Ch. 157, L. 1921.

281. Size of type for state publications. Hereafter in the publication of reports, pamphlets, leaflets, bulletins and similar publications, save as hereinafter excepted, to be paid for from state funds, no larger body type shall be used than eight point upon an eight-point body or slug. When desirable to give emphasis a single two-point lead may be used between paragraphs, and where subheads are employed such subheads may be set off by not to exceed two two-point leads above and below. All tabular matter shall be set in six point upon a six-point body or slug. Running heads shall be set in not larger than twelve point. Drop folios, or folios at the bottom of pages, shall not be employed. Folios shall in all cases be placed in the same line with the running heads.

History: En. Sec. 1, Ch. 178, L. 1921.

282. Rule and figure work—Short pages. It shall be unlawful to compute as "rule and figure work," at an advanced price over ordinary composition, any tabular or statistical matter not requiring at least three justifications, if set by hand, or three slugs, if set upon linotype or other slug-casting machine.

Short pages shall be computed on the basis of the actual amount of composition on such pages, measured from the top of the running head to the bottom of the last type-set line. If tables of other matter be dropped down from the running head in making up a page, not to exceed three picas of the blank space thus created between the running head and the type matter shall be computed and charged for.

History: En. Sec. 2, Ch. 178, L. 1921.

283. Computation title pages and cuts—Exceptions. Title pages shall be computed as if set in solid eight point, measured from the top to the bottom of the type matter. Cuts of an area of five hundred six-point ems, appearing in the text, may be computed as type-set matter; if less than a full page and more than five hundred six-point ems in area, they shall be computed at five hundred ems.

The above restrictions shall not apply to the publication of codes, session laws, legislative printing, briefs or transcripts intended for use in the state or federal courts, blanks, posters or similar printed matter.

History: En. Sec. 3, Ch. 178, L. 1921.

CHAPTER 19.

THE STATE PURCHASING DEPARTMENT.

Section 284. Creation State Purchasing Department, and Agent—Bond and Salary.
285. Duties of State Purchasing Agent—Contingent Funds for State Departments.
286. Maintenance of Warehouse.
287. Authority for Contracts.
288. Payment for Purchases by State Agent.
289. Contracts for Printing and Supplies.
290. Compensation and Bond of Employees.
291. Agent May Require Tests.
292. Furnishing of Stationery, etc., for Legislative Assembly.
293. Supervision of Public Printing.

284. Creation state purchasing department, and agent—Bond and salary. There is hereby created, of and for the state of Montana, a department to be known as the state purchasing department. Said department shall be in charge of a state officer to be known as the state purchasing agent. He shall be appointed by the governor and shall hold office at the pleasure of the governor. He shall be a civil executive officer. He shall execute to the state of Montana a bond in the penal sum of ten thousand dollars for the faithful discharge of the duties of his office. He shall receive a salary of five thousand dollars per annum, and all necessary traveling expenses to be paid upon proper vouchers.

History: En. Sec. 1, Ch. 197, L. 1921.

285. Duties of state purchasing agent—Contingent funds for state departments. The state purchasing agent shall, under the restrictions of this act, have full and sole power and authority and it shall be his duty upon approval of the state board of examiners to contract for and purchase or direct and supervise the purchase and sale of all supplies of whatever nature necessary for the proper transaction of the business of each and every state department, commission, board, institution, or official. For the purpose of making such purchases and contracts the state purchasing agent shall be and is hereby made the purchasing agent of and for each and every state department, commission, board, institution and official. Provided, the state board of examiners may provide a contingent fund for each state department, commission, board, institution, or official, in a sum to be fixed by the state board of examiners, to be used in the payment of urgent contingent expenses that may be necessary for the conduct of the business of such department, commission, board, institution, or official, such expenditures to be thereafter examined and approved by the state board of examiners.

History: En. Sec. 2, Ch. 197, L. 1921.

286. Maintenance of warehouses. The state purchasing agent shall have the power and authority, subject to the approval of the state board of examiners, to maintain warehouses and to rent or lease, or construct the same, and to issue such rules and regulations as may be necessary for the proper and economical conduct of the business of the state purchasing agent; provided, such contract and such purchase shall have first met the approval of the state board of examiners before being made.

History: En. Sec. 3, Ch. 197, L. 1921.

287. Authority for contracts. An estimate or requisition approved by the department, commission, board or state official in control of the appropriation or fund against which such contract and purchase is to be charged, shall be full authority for any contract and any purchase made by the state purchasing department.

History: En. Sec. 4, 197, L. 1921.

288. Payment for purchases by state agent. All valid claims on account of such contract and purchases negotiated by the state purchasing agent shall be audited and paid from the sums severally set aside for the use of the state purchasing department by the contract and purchase

estimate or requisition upon the sworn statement of the executive officer of the department, commission, board, or institution, or the state official in control of the appropriation or fund, together with the sworn statements of the state purchasing department, and said sworn statements of said executive officer and state purchasing department, after approval by the state board of examiners shall be full and sufficient authority for the state auditor to draw his warrant and the treasurer to pay the same against any appropriation or fund in the treasury available for the purpose of any such contract and purchase.

History: En. Sec. 5, Ch. 197, L. 1921.

289. Contracts for printing and supplies. The state purchasing agent shall have exclusive power, subject to the consent and approval of the state board of examiners, to contract for all printing and to purchase, sell, or otherwise dispose of, or to authorize, regulate and control the purchase, sale or other disposition of, all materials and supplies, service, equipment, and other physical property of every kind, required by any state institution or by any department of the state government; and to purchase or cause to be purchased all needed commissary supplies, and all raw material and tools necessary for any manufacturing carried on at any of said institutions; and to sell all manufactured articles, and collect the money for the same, and generally to regulate and control all purchases by any department of the state government, or by any state institution; and also to furnish, repair, and maintain the executive residence for the governor. The state purchasing agent shall remit to the state treasurer all moneys received from the sale of property belonging to the state of Montana, said moneys to be by the treasurer credited to the general fund.

History: En. Sec. 6, Ch. 197, L. 1921.

Validity of statute requiring public printing to be done within state, see note in Ann. Cas. 1913A, 82; 41 L. R. A. (N. S.) 711.

290. Compensation and bond of employees. The state purchasing agent shall have the power, with the approval of the state board of examiners, to appoint and fix the compensation and amount of bonds of such additional employees as the proper and economical conduct of the business of the state purchasing department may demand.

History: En. Sec. 7, Ch. 197, L. 1921.

291. Agent may require tests. The state purchasing agent shall have the authority to require any department of the state of Montana or of any of the educational institutions of the state to perform any tests as may be required by the state purchasing department for the better information of the state purchasing agent in determining the character and quality of the articles and commodities to be purchased and used by the state.

History: En. Sec. 8, Ch. 197, L. 1921.

292. Furnishing of stationery, etc., for legislative assembly. All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, shall be furnished, and the printing, and bind-

ing and distribution of the laws, journals, and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislative assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder; and all such contracts shall be let by the state purchasing agent, but shall be subject to the approval of the board of examiners. Before any such contract is let the state purchasing agent must advertise in such manner and for such time as he deems proper for sealed proposals to furnish any and all supplies mentioned in this section. The state purchasing agent must specify in the advertisement the amount and kind of each article required. The proposals received must be directed to the state purchasing agent, who must, unless he rejects all bids, award the contract for furnishing such supplies, or any of them, to the lowest responsible bidder.

History: En. Sec. 9, Ch. 197, L. 1921.

293. Supervision of public printing. The state purchasing agent shall supervise and attend to all public printing and shall prevent duplication and unnecessary printing; all forms, blanks, and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his library; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

History: En. Sec. 10, Ch. 197, L. 1921.

CHAPTER 20.

THE BUDGET SYSTEM.

Section 294. Act to Be Cited, How.
295. Request for Annual Appropriation.
296. By Whom Request to Be Made.
297. Blank Forms for Requests.
298. Budget and Supplementary Appropriation Bills.
299. Submission of Budget to Legislative Assembly—Legislative Action.
300. Right of Officers to Appear on Consideration of Budget.
301. Requirements as to Supplementary Appropriations.
302. General Provisions Governing Budget—Action on Bills by Legislature.
303. Printing and Distribution of Budget.
304. Disposal Unexpended Appropriations.

294. Act to be cited, how. This act shall be known and may be cited as the "Budget Act."

History: En. Sec. 1, Ch. 205, L. 1919.

295. Request for annual appropriation. Each department of the state government, and all state institutions and agencies requiring an annual appropriation from the state, shall present a request therefor to the state board of examiners, on or before the 15th day of November of each year preceding a regular session of the legislative assembly.

History: En. Sec. 2, Ch. 205, L. 1919.

296. By whom request to be made. Such request shall be made by the head of such department, institution, or agency, and in the case of the judiciary, it shall be made by the clerk of the supreme court, under the direction of the chief justice of the supreme court.

History: En. Sec. 3, Ch. 205, L. 1919.

297. Blank form for requests. All requests for appropriations shall be made upon blank forms to be furnished by the auditor and approved by the state board of examiners. The blank forms shall be filled in according to the rules adopted by the state board of examiners. Upon the receipt of the requests for appropriations, the state board of examiners shall proceed to examine such requests and reports, for the purpose of determining the necessity of the appropriations so requested.

History: En. Sec. 4, Ch. 205, L. 1919.

298. Budget and supplementary appropriation bills. The legislative assembly shall not appropriate any money out of the state treasury except in accordance with the following provisions:

(a) Every appropriation bill shall be either a "Budget Bill," or a "Supplementary Appropriation Bill," as hereinafter mentioned.

(b) Budget.—Within ten days after the convening of the state legislative assembly, the state board of examiners shall submit to the house of representatives and to the senate, a budget which shall contain a statement showing:

1. The total revenues and expenditures of the state for the preceding biennial period, and the estimated revenues and expenditures for the succeeding biennial period.

2. The current assets and liabilities, reserves, and surplus or deficit of the state.

3. All debts, and the amount of all moneys in the state treasury to the credit of each fund.

4. The revenues, expenditures and balances for the preceding biennial period and the estimated revenues and expenditures for the succeeding biennial period; also the amounts which the board of examiners recommend, item for item, with columns showing whether the recommended allowances are equal to, above or below the amounts of the preceding biennial period, for each office or department, with explanatory statements from each office or department, showing their reasons for any requested increase, and statements from the board of examiners giving their reasons for recommending the allowances or disallowances. Such budget shall be printed with the recommendations and reasons for recommendations, and the record of the vote upon such recommendations, where such vote is not unanimous.

(c) The budget shall be divided into two parts, and the first part shall be designated "Governmental Appropriations" and shall embrace an itemized estimate of the appropriations for each of the two ensuing fiscal years: (1) For the legislative assembly showing the amounts necessary to pay the mileage and per diem of each member and officers and attaches, and the several items for necessary incidental expenses; (2) For the executive department, as provided by law; (3) For the judi-

ciary department, as certified to by the clerk of the supreme court, herein provided, and as provided by law; (4) To pay and discharge the principal and interest of any bonded indebtedness of the state of Montana; (5) For the salaries payable by the state under the constitution and laws of the state; (6) For the establishment and maintenance throughout the state of a thorough and efficient system of public schools, so far as the same may be necessary, in conformity with the constitution and laws of the state; (7) For such other purposes as are set forth in the constitution of the state.

(d) The second part of the budget shall be designated "General Appropriations," and shall include all other estimates and appropriations.

History: En. Sec. 5, Ch. 205, L. 1919; amd. Sec. 1, Ch. 163, L. 1921.

299. Submission of budget to legislative assembly—Legislative action. The state board of examiners shall deliver to the presiding officer of the house of representatives and of the senate the budgets for all the proposed appropriations, clearly itemized and classified, on or before the 10th day of each session; and the presiding officer of the house of representatives and of the senate shall promptly refer said budgets to the proper committee. The general appropriation bill for the maintenance of the several departments of the state government and the several state institutions shall be based upon the budget so submitted; and the legislative assembly may amend the budgets, by increasing or diminishing the items therein, except that the legislative assembly shall not amend the budgets so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

History: En. Sec. 6, Ch. 205, L. 1919.

300. Right of officers to appear on consideration of budget. The state board of examiners and representatives of the executive departments, boards, officers, commissions, and institutions of the state, and other state agencies expending or applying for state moneys, shall have the right, and when requested by either the house of representatives or the senate, it shall be their duty to appear and to be heard with respect to any budget bill during the consideration thereof, and to answer inquiries relative thereto.

History: En. Sec. 7, Ch. 205, L. 1919.

301. Requirements as to supplementary appropriations. Neither the house of representatives nor the senate shall consider any other appropriations until the budget bill has been finally acted upon by both houses, and no other appropriation shall be valid unless in accordance with the following provisions: (1) Every such appropriation bill shall be embodied in a separate bill, limited to some single work, object, or purpose, therein stated, and called a supplementary appropriation bill; (2) No supplementary appropriation bill shall become a law unless it is passed in each house by a two-thirds vote of all members and the ayes and nays recorded on its final passage.

History: En. Sec. 8, Ch. 205, L. 1919.

302. General provisions governing budget—Action on bills by legislature. (1) If the general appropriation bill based upon the budgets shall not have been finally acted upon by both the house of representatives and the senate on or before the 30th day of the session of the legislative assembly, then such general appropriation bill shall be considered to the exclusion of all other bills until the same shall have been finally acted upon by both the house of representatives and the senate; (2) The state board of examiners, for the purpose of making up the budget bill, shall have the power, and it shall be its duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions, and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized statements and other information, in such form and at such times as the board shall direct; (3) Each member of the legislative assembly, upon introducing a supplementary appropriation bill, shall present to the clerk an extra copy of such bill, which shall be transmitted to the state board of examiners which shall, within five days from the receipt thereof, return the same to the clerk, with recommendations and suggestions in connection with such appropriation to be transmitted to the committee to which the bill has been referred.

History: En. Sec. 9, Ch. 205, L. 1919.

303. Printing and distribution of budget. The state board of examiners shall have printed before the tenth day of each session of the legislative assembly, the budgets provided for herein, and shall distribute copies of the same to the members of the legislative assembly and to all the state departments, institutions, and agencies.

History: En. Sec. 10, Ch. 205, L. 1919.

304. Disposal unexpended appropriations. All moneys now or hereafter appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, be covered back into the several funds from which originally appropriated; provided, however, that any unexpended balance in any specific appropriation may be used for either of said years for which such appropriation has been made.

History: En. Sec. 2, H. B. 372, p. 16, L. 1895, not published in the codes.

CHAPTER 21.

THE STATE ACCOUNTANT.

Section 305. Appointment of State Accountant.
306. Powers and Duties.
307. Duty of Officers of Institutions to Facilitate Examinations.
308. Refusal to Comply With Methods of Accounting.
309. Salary, Oath and Bond.

305. Appointment of state accountant. The state board of examiners shall appoint a state accountant, who shall hold his office for the term of four years unless sooner removed by the board.

History: En. Sec. 1, Ch. 86, L. 1909.

306. Powers and duties. The state accountant shall have the power, and it shall be his duty:

1. To examine at least once every three months, the books and accounts of the treasurer and secretary of each of the following institutions, to-wit: University of Montana, Montana state normal school, agricultural college of Montana, state orphans' home, Montana state school of mines, Montana school for the deaf and blind, state reform school, soldiers' home, state prison, Montana state fair, and state insane asylum; also to examine into the general financial affairs and conditions of each of said institutions.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to any of said institutions, or managed or controlled by them, and to require of all officers, directors, and other persons connected with the financial affairs of such institutions an adherence to such general method and details as are required by law or said state accountant to be adopted and observed by such institutions; provided, that before any such general method and details of accounting, or any special rules are put into force in any of such institutions, they shall first be approved by the state board of examiners.

3. After the examination of the affairs, books, and accounts of said institutions, to make full report of such examinations to the state board of examiners within thirty days after such examination.

4. Said state accountant shall also perform such other duties or work of the state board of examiners as said board may order and direct.

History: En. Sec. 2, Ch. 86, L. 1909.

307. Duty of officers of institutions to facilitate examinations. All boards of directors, officers, employees, and other persons connected with the financial affairs of any of the institutions mentioned in the preceding section, must afford all reasonable facilities for the examination of accounts and investigations provided for in this act, and all boards of directors, officers, employees, and other persons connected with the financial affairs of any said institutions must make returns and exhibits to said accountant under oath, in such form and in such manner as he may prescribe, not conflicting with the law and the rules and regulations approved by the state board of examiners. Every director, officer, employee, or other person, wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars.

History: En. Sec. 3, Ch. 86, L. 1909.

308. Refusal to comply with methods of accounting. The refusal or neglect of any member of the executive board or other officer or employee of any of said institutions to comply with the general methods and details of accounting prescribed by the state accountant shall constitute a good and sufficient ground to summarily remove said person from said board, office, or position by the state board of examiners.

History: En. Sec. 4, Ch. 86, L. 1909.

309. Salary, oath, and bond. The salary of said state accountant shall be three thousand dollars per annum, and on entering upon the discharge of the duties of such position he shall take the constitutional

oath of office and file a bond in such sum as shall be fixed by the state board of examiners, to be approved by said board.

History: En. Sec. 5, Ch. 86, L. 1909.

Note.—The salary of the state accountant is given as fixed by chapter 107, Laws of 1919.

CHAPTER 22.

CUSTODIAN OF STATE CAPITOL.

Section 310. Custodian of State Capitol.
311. Duties of Custodian of State Capitol.
312. Employment or Dismissal of Help.
313. Same.
314. Term of Office.
315. Official Bond.
316. Head Janitor—Office Abolished.
317. National Flag to Be Displayed.
318. Duties of Secretary of State.
319. Appropriation.

310. Custodian of state capitol. The head janitor at the state capitol shall be custodian of all state property at the state capitol. Said head janitor and custodian shall be appointed by the governor and shall receive a salary of two thousand dollars per year.

History: En. Sec. 1, Ch. 46, L. 1917.

311. Duties of custodian of state capitol. It shall be the duty of the custodian of the state capitol to supervise and direct the work of caring for and maintaining the state capitol, its buildings, equipment, and grounds, under the direction of the state board of examiners.

History: En. Sec. 2, Ch. 46, L. 1917.

312. Employment or dismissal of help. It shall be the duty of the custodian of the state capitol to nominate and recommend for employment or dismissal, and he shall have charge of and supervision over, all engineers, firemen, assistants, janitors, watchmen, guards, and all other laborers and employees that may be necessary in maintaining, cleaning, and caring for the state capitol, its buildings, equipment, and grounds.

History: En. Sec. 3, Ch. 46, L. 1917.

313. Same. It shall be the duty of the custodian of the state capitol to have charge of, and keep clean and in good repair, all buildings, furniture, fixtures, equipment and all other property, of whatever kind and character, belonging to the state of Montana at the state capitol, and to recommend to the proper board such repairs, replacements, renewals, or additions to the said buildings, equipment, and other property as may seem necessary or desirable, and he shall permit the occupancy and use of such buildings, equipment, and other property, only as prescribed by law or as directed, upon requisition issued by the state board of examiners; to make on the thirty-first day of December of each year a report to the governor of the affairs of the custodian's office, which report, among other items, shall contain a full, complete, and true account of all persons employed by him or under his direction, the purposes for which employed, length of time served, and the compensation paid to each of such employees, a full, complete, and true statement of all fuel, water, and

electric current consumed in heating, watering, and lighting the capitol buildings and grounds, and the amount paid for each of such items; to make and keep a true, correct, complete, and continuing inventory of all property, equipment, or supplies belonging to the state at the state capitol, checking the same in or out, as the case may be, when receiving or surrendering such property, equipment, or supplies, and he shall be held liable for its safe keeping and return; and to do all such other acts and things, that to him may seem necessary or desirable, to properly conserve and protect the best interests of the state in carrying into effect the provisions of this act.

History: En. Sec. 4, Ch. 46, L. 1917.

314. Term of office. The custodian of the state capitol shall be appointed for a term of four years, unless such appointment be sooner revoked by the governor.

History: En. Sec. 5, Ch. 46, L. 1917.

315. Official bond. The custodian of the state capitol must execute an official bond in the sum of five thousand dollars, conditioned on the faithful performance of his duties and trust.

History: En. Sec. 6, Ch. 46, L. 1917. See Sec. 465.

316. Head janitor; office abolished. The office of head janitor of the state capitol building is hereby abolished, and the duties heretofore performed by said head janitor shall hereafter be performed by the custodian of the state capitol.

History: En. Sec. 7, Ch. 46, L. 1917.

317. National flag to be displayed. The national flag shall be kept unfurled, displayed, and floating from a suitable flagstaff to be erected upon the state capitol grounds from eight o'clock a. m. to five o'clock p. m. of each and every day of the year; provided, that the flag shall not be so unfurled or displayed or allowed to remain floating when by reason of violent wind or other inclemency of the weather there is danger of destruction of or material injury to such flag.

History: En. Sec. 1, Ch. 157, L. 1907; Sec. 265, Rev. C. 1907.

318. Duties of secretary of state. For the purposes of carrying out the provisions of this act the secretary of state is hereby authorized and directed to have erected on the state capitol grounds a suitable flagstaff of proper dimensions, and to provide the necessary flag or flags of proper dimensions and suitable material, and to cause the said flag to be unfurled, displayed, and kept floating as above provided.

History: En. Sec. 2, Ch. 157, L. 1907; Sec. 266, Rev. C. 1907.

319. Appropriation. The necessary expenses incident to the carrying out of this act shall be paid out of such moneys as shall be appropriated for the maintenance of the capitol building and grounds, and that the sum of fifteen hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to pay for the same and to carry this bill into effect.

History: En. Sec. 3, Ch. 157, L. 1907; Sec. 267, Rev. C. 1907.

CHAPTER 23.

CUSTODIAN OF RECORDS OF GRAND ARMY OF REPUBLIC.

Section 320. Custodian of Records of Grand Army of Republic.
321. Room for Storing and Safe-Keeping of Records.
322. Purposes for Which Room Shall Be Used.
323. Records to Become Property of State.
324. Expenses, How Paid.

320. Custodian of records of Grand Army of Republic. The governor of the state of Montana is hereby authorized and directed to appoint a custodian of the records, mementoes, relics, documents, and archives of the Grand Army of the Republic, and history of the residents of the state of Montana who served in the army, navy or marine corps of the United States during the civil war. The department commander, department of Montana of the Grand Army of the Republic, may recommend to the governor a suitable person to be appointed as such custodian, provided that the person appointed as such custodian must be a member of the Grand Army of the Republic of the department of Montana.

History: En. Sec. 1, Ch. 97, L. 1915.

321. Room for storing and safe-keeping of records. The governor and secretary of state are hereby authorized and directed to set apart a suitable room in the capitol building of the state of Montana for the storing and safe-keeping of such archives, records, etc., of the Grand Army of the Republic, and said room shall be suitably furnished, and shall be under the charge of the custodian so appointed.

History: En. Sec. 1, Ch. 32, L. 1913; amd. Sec. 2, Ch. 91, L. 1915.

322. Purposes for which room shall be used. Said room shall be used by such custodian for the purpose of storing and exhibiting relics, mementoes, archives, and documents of the civil war, and for arranging and preserving the history of the residents of Montana who served in the army, navy, or marine corps of the United States during the civil war, and any other literature which the department of Montana of the Grand Army of the Republic may collect and desire to preserve as a part of the history of the state. Such records and exhibits shall be accessible at all times, under suitable rules and regulations, to all residents of this state, and other persons desirous of viewing such exhibits.

History: En. Sec. 2, Ch. 32, L. 1913; amd. Sec. 3, Ch. 97, L. 1915.

323. Records to become property of state. All books, records, papers, relics, mementoes, and histories, and other effects of whatever nature applying to the department of the Grand Army of the Republic, and accorded space in this room, shall, whenever such department ceases to exist as a department of the Grand Army of the Republic, become the property of the state of Montana.

History: En. Sec. 3, Ch. 32, L. 1913; re-en. Sec. 4, Ch. 97, L. 1913.

324. Expenses, how paid. The expense of collecting and maintaining such exhibits, including the salary of the custodian herein provided, shall not exceed the sum of twelve hundred dollars in any one year,

which shall be paid by the state treasurer in the same manner as other expenses and salaries of the state departments and employees or officers are paid.

History: En. Sec. 5, Ch. 32, L. 1913; re-en. Sec. 5, Ch. 97, L. 1915.

CHAPTER 24.

STATE BOARD OF CHARITIES AND REFORM.

Section 325. Creation of Board.
326. Membership and Term of Office.
327. Meetings.
328. Officers—Election.
329. Duties.
330. Same.
331. Same.
332. Powers.
333. Report.
334. Members Must Not Be Interested in Certain Contracts.
335. Expenses.

325. Creation of board. To the end that the administration of public charity and correction may be conducted upon sound principles of economy, justice, and humanity, and that the relations between the state and its dependent and criminal classes may become better understood, there is hereby created a state board of charities and reform.

History: Secs. 325 to 335 were enacted as Secs. 1 to 11, p. 161 to 163, L. 1893; re-en. as Secs. 740 to 750, Pol. C. 1895; appearing as Secs. 271 to 281, Rev. C. 1907.

326. Membership and term of office. That the said board shall consist of three members, who shall be nominated by the governor and confirmed by the senate, and shall hold their offices for the term of six years and until their successors are appointed and qualified, except that at the first appointment, the term of one member shall be fixed for two years, of another for four years, and of another for six years. Where any vacancy shall occur in the board during the recess of the senate, by resignation, death, or otherwise, the governor shall appoint a new member to serve for the residue of the unexpired term.

History: Sec. 272, Rev. C. 1907. See also history of Sec. 325.

327. Meetings. The board shall meet in the office of the secretary of state, within sixty days after their appointment, to organize and transact such other business as may be necessary to carry into effect the provisions of this act. They shall afterwards meet in October, on or before the fifteenth day, and in January on or before the tenth day in each year; and they may hold such other meetings as they may decide upon.

History: Sec. 273, Rev. C. 1907. See also history of Sec. 325.

328. Officers—Election. The officers of the board shall consist of a president and secretary to perform the duties usually devolved upon such officers. The president and secretary shall be elected at the annual meeting to be held on or before the fifteenth day of January, and shall serve until their successors are elected.

History: Sec. 274, Rev. C. 1907. See also history of Sec. 325.

329. Duties. It shall be the duty of the board to investigate and supervise the whole system of the charitable and correctional institutions

supported by the state, or receiving aid from the state treasury, by personal visits to such, making themselves familiar with all matters necessary to be understood in judging of their usefulness, and of the honesty and economy of their management; and it shall be their duty to recommend such changes and additional provisions as they may deem necessary for their greater economy and efficiency.

History: Sec. 275, Rev. C. 1907. See also history of Sec. 325.

330. Same. It shall be the further duty of the board to commence and to conduct a course of investgation into the condition of poorhouses in the state, personally visiting and inspecting them from time to time, ascertaining how many persons of each sex are therein maintained, at what cost, and under what circumstances, as to health, comfort, and good morals; how many insane persons are therein confined, and whether such arrangements are made for their care as humanity demands; also how many idiotic persons are therein supported; also how many poor children the said poorhouses contain, and what provision is made for their suitable care and education. They shall also collect statistics as to the number of the poor who are supported or relieved by towns or otherwise at the public expense, outside of poorhouses, the cost at which support or relief is furnished, and any other important facts therewith connected. They shall also inquire to what extent the provisions of the law in regard to binding out poor children are complied with; and in general they shall seek to collect such facts as may throw light upon the adequacy and efficiency of existing provisions for the support and relief of the poor, and any causes operating to increase or diminish the amount of pauperism in the state, or to place the burden of relieving it where it does not properly belong.

History: Sec. 276, Rev. C. 1907. See also history of Sec. 325.

331. Same. It shall be the further duty of the board to commence and conduct a course of investigation in regard to jails, city prisons, houses of correction, and other places in the state in which persons convicted or suspected of crime, or any insane persons are confined, ascertaining by visits or otherwise their sanitary condition, their arrangement for the separation of hardened criminals from juvenile offenders, and from persons suspected of crime or detained as witnesses; also whether any useful employment is furnished for prisoners, whether the insane are treated with due regard to humanity, and what efforts are put forth for the reformation of criminals; and in general they shall endeavor to ascertain, for the information of the legislature, any important facts or considerations bearing upon the best treatment of criminals and the diminution of crime.

History: Sec. 277, Rev. C. 1907. See also history of Sec. 325.

332. Powers. The board shall have full power at all times to look into and examine the condition of the institutions and establishments referred to in this act, to inquire into and examine their methods of treatment, instruction, and government and management of their inmates, the official conduct of trustees, managers, directors, superintendents, and other officers and employes of the same, the condition of the buildings,

grounds, and other property connected therewith, and into all other matters pertaining to their usefulness and good management; and for these purposes they shall have free access to all parts of the grounds and buildings, and to all books and papers of said institutions and establishments; and all persons now or hereafter connected with the same are hereby directed and required to give, either verbally or in writing, as the board may direct, such information and to afford such facilities for inspection as the board may require.

History: Sec. 278, Rev. C. 1907. See also history of Sec. 325.

333. Report. On or before the fifteenth day of December in each year, the board shall present to the governor a report of their proceedings and of their expenses under the act. Said report shall contain a concise statement of the condition of each of the charitable and correctional institutions supported by the state, or receiving aid from the state treasury, together with their opinion of the appropriation proper to be made, for each, for the following year. It shall also embody the results of their investigations during the year in regard to the support of the poor and the treatment of criminals, and shall also contain any information, suggestions, or recommendations which they may choose to present upon the matters by this act assigned to their supervision and examination. One thousand copies of this report shall be printed by the state printer, in the same manner as those of state officers are printed for the use of the board and of the legislature.

History: Sec. 279, Rev. C. 1907. See also history of Sec. 325.

334. Members must not be interested in certain contracts. All members of the board, and the secretary of the board, are hereby prohibited from being interested, directly or indirectly, in any contract or arrangement for building, repairing, furnishing, or providing any supplies of either of the institutions placed under their supervision.

History: Sec. 280, Rev. C. 1907. See also history of Sec. 325.

335. Expenses. The members of the board shall receive no compensation for the services rendered under this act. Upon filing with the state board of examiners sworn statements of the amount of the expenses actually and necessarily incurred by them in carrying out the other provisions of this act, they shall have the amount of said expenses refunded to them from the state treasury, and the state auditor is hereby authorized and required to draw his warrant on the state treasurer for the amount of expenses so incurred and proven. And there is hereby appropriated out of any money in the treasury, not otherwise appropriated, a sum sufficient to comply with the provisions of this act. The board shall be supplied with all necessary stationery, blanks, printing, postage stamps, stamped envelopes for their own use, and for the use of their secretary, in the same manner in which state officers are now supplied with these articles. And there is hereby appropriated out of any money in the treasury, not otherwise appropriated, a sum sufficient to comply with the provisions of this act, not to exceed one thousand dollars in amount for any one year.

History: Sec. 281, Rev. C. 1907. See also history of Sec. 325.

CHAPTER 25.

STATE BUREAU OF CHILD AND ANIMAL PROTECTION.

Section 336. Bureau Created.
337. Secretary—Salary and Duties.
338. Office of Secretary.
339. Report of Secretary.
340. Appointment and Salary of Deputies—Powers and Duties.
341. Deputy Humane Officer—Appointment.
342. Same—Duties.
343. Same—Power and Authority.
344. Same—Salary.
345. Clerk to Secretary.
346. Secretary's Clerk.
347. Expenses of Secretary.
348. Duties of Secretary.
349. Authority of Secretary.

336. Bureau created. There is hereby created a state bureau of child and animal protection, for the purpose of enforcing the laws of the state of Montana pertaining to children and dumb animals, which may now or hereafter exist; and to promote the growth of education and sentiment favorable to the protection of children and dumb animals.

History: En. Sec. 1, Ch. 96, L. 1905; Sec. 1660, Rev. C. 1907.

Note.—By chapter 115, Laws of 1903, the state humane society was constituted the state board of child and animal protection.

337. Secretary—Salary and duties. The governor of the state is hereby authorized and empowered to appoint a secretary at a salary of twenty-four hundred dollars per annum, payable monthly, who shall be chief of the bureau, whose duty it shall be to carry out the purposes of said bureau as hereby established.

History: En. Sec. 2, Ch. 19, L. 1907; Sec. 1661, Rev. C. 1907; amd. Sec. 1, Ch. 36, L. 1909.

338. Office of secretary. The said secretary shall be provided with a suitable office at the capitol; the usual supply and necessary printed matter for the office shall be furnished on requisition by the secretary in the same manner as for other state officers.

History: En. Sec. 3, Ch. 96, L. 1905; re-en. Sec. 1662, Rev. C. 1907.

339. Report of secretary. The said secretary shall make a biennial report to the governor of the state, embracing the proceedings of the bureau and statistics showing the work of the bureau, together with such papers, facts, and recommendations as the secretary may deem useful to the interest of children and dumb animals in the state, said report to be fully prepared for publication. The secretary of state shall cause the same to be published in pamphlet or book form by the state under the supervision of said secretary; provided, that not to exceed one hundred dollars shall be expended for printing said report.

History: En. Sec. 4, Ch. 96, L. 1905; re-en. Sec. 1663, Rev. C. 1907.

340. Appointment and salary of deputies—Powers and duties. The secretary shall have the power to appoint six deputies, one of whom shall

have his office in the city of Butte, one in Great Falls, one in Havre, one in Billings, one in Missoula, and one in Kalispell. Such deputies shall take and subscribe the same oath required by the principal, and the same shall be of record in the secretary's office.

The deputies shall have the same power and authority as fixed by law in the principal, and shall have a salary of eighteen hundred dollars per annum, payable monthly out of the public treasury. They shall make full and complete reports every month to said principal showing all their official acts, with names of persons accused and against whom prosecutions may have been instituted, and the results thereof. Said deputies may be removed at any time by the secretary, and others appointed to fill the vacancies. All deputies shall have authority to investigate cases reported to said bureau from any section of the state of Montana when called or directed to so do by the secretary of said bureau.

History: En. Sec. 2, Ch. 19, L. 1907; Sec. 1664, Rev. C. 1907; amd. Sec. 2, Ch. 36, L. 1909; amd. Sec. 1, Ch. 127, L. 1911.

341. Deputy humane officer—Appointment. The secretary of the state bureau of child and animal protection is hereby authorized and empowered to appoint a special deputy humane officer, whose duties, powers, and compensation are herein provided for, and to remove said special deputy from office at any time for cause, and to appoint another person to fill said vacancy.

History: En. Sec. 1, Ch. 102, L. 1913.

342. Same—Duties. It shall be the duty of such officer to investigate into the welfare of all children who have heretofore been or may hereafter be adopted, or who have been placed in homes, from the orphans' home and other places, and to make written reports relative thereto to the secretary of the state bureau of child and animal protection at such times as may be by the secretary of the state bureau of child and animal protection required, and to make reports annually to the state bureau of child and animal protection, stating therein, in detail, the work and investigation performed by him.

History: En. Sec. 2, Ch. 102, L. 1913.

343. Same—Power and authority. Said officer shall have like powers and authority as that now possessed by deputies in the state bureau of child and animal protection, and it shall be his duty to assist said bureau, when not otherwise employed; but nothing herein contained shall be construed to mean that said special deputy humane officer may not be allowed to first perform his special duties required by this act, to the end that friendless, deserted, or destitute and abandoned children who are adopted or who have been placed in homes may, after such adopting or placing in homes, be cared for in a humane and proper manner.

History: En. Sec. 3, Ch. 102, L. 1913.

344. Same—Salary. That said special humane officer shall be paid the sum of eighteen hundred dollars per annum, payable monthly,

together with his necessary traveling expenses, which said traveling expenses shall be audited and allowed as those of other state officers.

History: En. Sec. 4, Ch. 102, L. 1913.

345. Clerk to secretary. The said secretary of the bureau of child and animal protection, provided for in said act, shall be, and is hereby authorized and empowered to appoint and have one clerk, who shall be paid out of the public treasury a monthly salary, not exceeding fifty dollars.

History: En. Sec. 3, Ch. 19, L. 1907; re-en. Sec. 1665, Rev. C. 1907.

346. Secretary's clerk. The said secretary shall have the power, at any time that he deems it best for the public interest, to dispense with the services of the said clerk for a limited space of time, or for all the time.

History: En. Sec. 7, Ch. 96, L. 1905; Sec. 1666, Rev. C. 1907.

347. Expenses of secretary. No warrant shall be issued by the auditor of the state for expenses or other costs incident to the execution of the duties of the said secretary or his deputy until itemized accounts, properly verified, shall be presented by the person to whom the warrant is to be issued, nor until the same is certified to as correct by the state board of examiners. Upon presentation of said account, duly verified and certified as above, the state auditor shall draw a warrant in favor of the party or parties entitled thereto for the amount so certified.

History: En. Sec. 8, Ch. 96, L. 1905; Sec. 1667, Rev. C. 1907.

348. Duties of secretary. The secretary of the bureau of child and animal protection, or the deputy so appointed by him, are hereby authorized and empowered when, in extreme cases of cruelty or neglect, in their judgment it is absolutely necessary to protect minor children under eighteen years of age, to seize the same and have them cared for at the expense of the county in which they reside, until a judicial inquiry can be made as to their condition by the courts of said county; and it is hereby made the duty of said secretary or deputy to institute proceedings for a judicial investigation into the condition of such child or children, and the same to be disposed of by said court, according to the state laws relating to minor children; and it is made the duty of the board of county commissioners, in the county in which such child or children reside, to pay for the care or maintenance of such child or children, upon presentation of vouchers properly verified, until final disposition of such child or children is made by order of the court.

History: En. Sec. 9, Ch. 96, L. 1905; Sec. 1668, Rev. C. 1907.

349. Authority of secretary. The secretary is hereby vested with authority to make arrests of any person or persons violating any provisions of the laws relating to wrongs to children and dumb animals, and is hereby further vested with the authority to enter workshops, factories, stores, mines, mills, and smelters, and all other places where children may be employed, and do what may be necessary in the way of investigation, or otherwise, to enforce the laws pertaining to minor children and animals.

History: En. Sec. 4, Ch. 19, L. 1907; Sec. 1668, Rev. C. 1907.

CHAPTER 26.

THE STATE BOARD OF HAIL INSURANCE.

Section 350. State Board of Hail Insurance—Creation and Powers—Application for Insurance.
351. Annual Tax Levy—Estimate—Rates.
352. Scope and Object of Levy—Reserve Fund.
353. Withdrawal of Crop in Case of Destruction.
354. Collection of Hail Insurance Tax.
355. State Hail Insurance Fund—Warrants.
356. Duty of County Assessor—Election of Benefits of Law.
357. What Crops Subject to Provisions of Law.
358. Reporting Losses to Crops.
359. Appraisers—Appointment—Qualifications and Duties.
360. Appointment of Appraisers in Case of Dissatisfaction with Official Adjustment.
361. Payment of Losses.
362. Who May Elect to Become Subject to Provisions of Law.
363. Compensation and Expense of Chairman and Officers.

350. State board of hail insurance — Creation and powers — Application for insurance. There is hereby created a state board of hail insurance of five members consisting of the state auditor and ex-officio commissioner of insurance, and the commissioner of agriculture and publicity who will be secretary of the state board, and three other members to be appointed by the governor from names submitted therefor by the duly organized farmers societies having a general membership throughout the state. The governor shall designate one of said appointive members to serve for three years to act as chairman of the board, one to serve for the term of two years and one to serve for the term of one year. After the first appointments each appointive member of the board shall be appointed for three years, subject to removal by the governor for cause. The said board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make such rules and regulations as it may from time to time find practicable, necessary and beneficial for the conduct of the department of hail insurance, subject to the provisions of this act. It shall have full charge of said department as herein provided for; it shall prepare blank forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act, and furnish such forms to all public officers respectively charged with the performance of any official duty in connection therewith; it shall prepare a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, such form to be submitted by the county assessor of each county at the time in which the regular assessments of property are by such assessors made, to each farmer in each county in the state engaged in the growing of crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not. Every such farmer taxpayer who signifies his desire to become subject to the provisions of this act, shall file in the office of the county assessor the blanks above referred to, properly filled out, not later than August fifteenth, and shall be chargeable with the tax on lands growing crops

subject to injury or destruction by hail, hereinafter provided for, and shall share in the protection and benefits under the hail insurance provisions of this act. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor.

No owner of land, who has more than one year's delinquent taxes on his land shall be allowed hail insurance under the provisions of this act, unless his application is accompanied with a cash payment for the amount that would be due on said application in the event of a maximum levy for that year.

History: En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921.

Construction of hail insurance policies, see notes in Ann. Cas. 1915A, 674; Ann. Cas. 1917D, 81; 4 A. L. R. 1298; 7 A. L. R. 373.

351. Annual tax levy—Estimate—Rates. A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate, as near as may be possible, the amount required to pay all losses, interest on warrants and costs of administration, and shall recommend the levy to be made on each kind of land respectively, subject to the provisions of this act, to the state board of equalization; provided, however, that such tax shall not exceed in any one year the sum of one dollar and twenty cents per acre on lands sown to grain crops, nor fifty cents per acre on lands sown to hay crops; and provided further, that if the tax required to pay the estimated losses, interest on warrants and costs of administration, be less than fifty cents per acre on lands sown to grain crops, and a proportionate amount on lands sown to hay crops, the said board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof; provided, further, that the state board of hail insurance may, when they deem it advisable, establish and maintain maximum rates in various parts of the state, which rates shall be commensurate with the risk incurred as nearly as they can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest shall not be less than eighty-five cents per acre on lands sown to grain crops, and a proportionate amount on lands sown to hay crops. In establishing these zones the board may lay out not more than three different districts. Notice of the various rates established for any year shall be plainly printed on the applications for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the state board of hail insurance for each of the various districts as established, in such proportion as will in their judgment be fair and equitable.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921.

352. Scope and object of levy—Reserve fund. In making the levy as provided in the preceding section, the state board of hail insurance shall provide for:

1. The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.

2. For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve fund.

3. For the maintenance of a reserve fund, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on warrants, and losses as the same shall be settled and adjusted by the said board.

Whenever the losses together with expense and costs of administration in any one year shall amount to a less amount than the sum of eighty-five cents per acre for every acre of grain insured, and a proportionate amount on hay crops, the state board of hail insurance may levy such amount as they may consider proper and just for the purpose of providing a reserve fund; provided, however, that such levy, when added to the amount necessary to pay costs of administration, interest, and losses for the current year, shall not exceed the sum of eighty-five cents per acre on lands sown to grain crops and a proportionate amount on hay crops; and provided, further, that in any one year there shall not be added to the reserve fund an amount greater than the sum of five per cent. of the total risk for that particular year; and provided, further, that the amount of said reserve fund shall not exceed the sum of one million dollars. The reserve fund hereby created shall be a continuous fund, and the state board of hail insurance is hereby granted the power to draw from said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest, and losses; and provided, further, that whenever in any one year the costs of administration, interest, and losses shall be less than the sum of fifty cents per acre on land sown to grain crops and a proportionate amount on hay crops, the state board of hail insurance shall not draw on the reserve fund for any purpose, unless the amount required for the payment of losses, interest on warrants, and cost of administration shall exceed the amount of the estimate made by the state board of hail insurance.

History: En. Sec. 2, Ch. 34, L. 1919.

353. Withdrawal of crop in case of destruction. When any crop insured under this act shall have been destroyed by any other cause than hail, the applicant may, by furnishing the proof required by the state board of hail insurance, cause the crop to be withdrawn from the regular levy of the state board for the current year. Such proof shall be submitted before the first day of July in case of winter wheat and winter rye, and before the twentieth day of July in the case of spring wheat or other spring grain, and if such proof is accepted the state board will cause a charge, proportionate to the time said crop has been insured per acre to be made against such claimant for all crops that are withdrawn; provided, however, that no withdrawal shall be made on any crop that has been harvested when such crop has been harvested for grain.

History: En. Sec. 3, Ch. 34, L. 1919; amd. Sec. 3, Ch. 141, L. 1921.

354. Collection of hail insurance tax. The county treasurer in each county in the state shall collect all levies made under this act, in the

same manner as other property taxes are collected, and shall keep all moneys collected by him for hail insurance in a separate fund to be known as the hail insurance fund, and remit same to the state treasurer in the same manner as provided by law for the remittance of other moneys due the state. The county treasurer of each county in which hail insurance taxes are levied shall issue a separate receipt covering the hail insurance tax only, said receipt to be separate from the receipt issued for general taxes. Whenever the hail insurance tax shall be paid by warrant from the state board of hail insurance, the county treasurer shall thereupon issue his receipt in quadruplicate, mailing the original receipt to the taxpayer and a duplicate to the state board of hail insurance.

History: En. Sec. 3, Ch. 169, L. 1917; amd. Sec. 4, Ch. 34, L. 1919.

355. State hail insurance fund—Warrants. The state treasurer shall receive all moneys paid to him under this act and shall place same to the credit of a fund to be known as the "State Hail Insurance Fund" and may from time to time transfer to the hail insurance administrative fund such sums as the state board deem necessary and proper to pay the expenses of administration for the next year's operation, together with such sums as may be needed to pay all warrants registered against the hail insurance administrative fund plus the accrued interest thereon, and shall pay out of such funds on warrants drawn by the state auditor by order of the state board of hail insurance. If such warrants be presented and there be no money in the said funds to pay the same, such warrants shall be registered and thereafter bear interest at the rate of four per cent. per annum until called for payment by the state treasurer. All interest and earnings obtained by the state treasurer for such moneys shall be credited to the respective funds. If at any time more funds are in the administrative fund than the board estimates are needed for the purposes mentioned above, the state treasurer may on the order of the state board of hail insurance transfer such funds back to the hail insurance fund as the state board may direct.

History: En. Sec. 4, Ch. 169, L. 1917; amd. Sec. 1, Ch. 183, L. 1921.

356. Duty of county assessor—Election of benefits of law. It shall be the duty of each county assessor in the state, at the time in which the annual assessment of property is made, to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail, the provisions of this act and the protection afforded thereby, and to request each such taxpayer to certify, on the forms provided for such purpose, if such taxpayer desires to become subject to this act and liable for the tax levies provided hereby, and thereby eligible to the benefits and protection of this act; and each such taxpayer who so elects to become subject to this act shall be liable for the taxes levied for hail insurance, and shall participate in the benefits and protection afforded by this act; provided, that the owners of lands worked by others under lease or contract shall elect if such lands shall be subject to the tax levies herein provided for, and the crops grown thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for hail insurance to protect his crops, in cash, to the officer authorized to receive

same, whereupon such crops shall become eligible to the benefits and protection afforded by this act for hail insurance.

History: En. Sec. 5, Ch. 169, L. 1917.

357. What crops subject to provisions of law. The crops grown on the lands of all taxpayers who shall elect to become subject to this act, shall be insured under the provisions of this act for the acreage and the kind of crop for which taxes for hail insurance will have been levied, which insurance shall be provided for, determined, and adjusted and paid for as provided by this act.

History: En. Sec. 6, Ch. 169, L. 1917.

358. Reporting losses to crops. All losses by hail to crops insured under this act shall be reported immediately by the owner of such crops, his agent or attorney, to the state board of hail insurance, who shall require the claimant to make a sworn statement of the losses sustained, the causes thereof, and such other information as the state board of hail insurance may require, on forms to be provided for such purpose.

History: En. Sec. 7, Ch. 169, L. 1917.

359. Appraisers—Appointment—Qualifications and duties. The state board of hail insurance shall, as soon as practicable, each year appoint three men in each county to appraise all losses by hail incurred under this act in the various counties. The men so appointed shall be actively engaged in farming or shall have had practical experience in farming and shall be selected from names submitted by regularly organized farmers societies in the various counties. If the recommendations are not made as provided above, then the state board shall select the appraisers from men actively engaged in farming or men who have had practical experience in farming as heretofore provided. Provided, further, that the state board of hail insurance may call on one or more of the duly appointed appraisers for the adjustment of each and every loss and the said appraisers shall promptly report their findings to the state board of hail insurance, according to the rules provided by the said state board. Provided, further, that no appraiser who shall be a relative, attorney, agent, employee or creditor or in any manner interested by lien, mortgage or otherwise in the crop injured or destroyed, shall assist in adjusting any such loss. The state board may in case of emergency appoint more than three appraisers in any county. Also it may send any duly appointed appraiser or appraisers into any county as the occasion may require.

History: En. Sec. 8, Ch. 169, L. 1917; amd. Sec. 5, Ch. 34, L. 1919; amd. Sec. 4, Ch. 141, L. 1921.

360. Appointment of appraisers in case of dissatisfaction with official adjustment. In case the party who has sustained the loss is dissatisfied with and refuses to accept the adjustments made by the official appraisers, then he shall have the right to appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person, and the three shall then proceed to adjust the loss in the same manner as specified in the preceding section and the judgment of the majority shall be the judgment of

said appraisers, and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum, then the same shall be paid by the state board of hail insurance out of the hail insurance fund.

If the insured shall be required to pay the expenses of such reappraisement as above provided, the state board of hail insurance is hereby authorized to deduct the amount of such expenses from the amount allowed said insured, before making settlement for said loss.

The state board of hail insurance shall examine all reports of appraisers and verify same, and adjust all losses, and for such purposes may order hearings, subpoena witnesses, and conduct examinations and do all things necessary to secure a fair and impartial appraisement of losses by hail.

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, 34, L. 1919.

361. Payment of losses. The state board of hail insurance shall, as soon as practicable after loss has been sustained, arrange for the payment of the losses as follows: From the amount of the loss as adjusted for each claimant the state board of hail insurance shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year, and shall make settlement within forty days from time loss is sustained in the following manner: By paying, either by registered warrant or otherwise if funds are immediately available, fifty per cent. of the total loss as agreed on, less, however, the maximum rate of assessment; balance to be paid at the expiration of the hail season. The state board of hail insurance shall, on or before November first, order the state auditor to draw a warrant for the amount so deducted on the state hail insurance fund which warrant shall be remitted to the county treasurer of the county in which the tax was assessed. The state board of hail insurance shall then order the state auditor to draw a warrant on the state hail insurance fund for the balance of the adjustment which warrant shall be sent to the claimant; provided, however, that in no case shall the payment for loss exceed twelve dollars per acre for grain crops and five dollars per acre for hay crops; provided, further, that no claimant shall receive payment for any loss incurred where said loss does not exceed five per cent. of the total value of the crop insured. In any year the state board of hail insurance may by resolution authorize its chairman and secretary to borrow as needed, from any person, bank or corporation such sum or sums of money as the state board may deem necessary to carry on the business of the department and for the purpose of paying all warrants as issued. For any moneys borrowed under the provisions of this act, the state board of hail insurance shall cause warrants to be drawn against the state hail insurance fund and said warrants shall bear interest at not to exceed six per cent. per annum, and said warrants and the interest thereon shall be paid out of funds from the state hail insurance department as they are collected from the various counties in the state. The state board of hail insurance shall not at any time borrow a total

sum greater than the amount of the levies as made for taxes for the current year, together with such delinquent taxes as remain unpaid on the books of the county treasurers. The state board of examiners is hereby empowered to invest surplus money belonging to any fund in warrants of the hail insurance fund.

History: En. Sec. 10, Ch. 169, L. 1917; amd. Sec. 7, Ch. 34, L. 1919; amd. Sec. 5, Ch. 141, L. 1921.

362. Who may elect to become subject to provisions of law. Any taxpayers or associations of taxpayers engaged in the growing of crops, other than specified herein, or other agricultural or horticultural products subject to injury or destruction by hail, by their individual or joint election filed with and approved by the state board of hail insurance, may accept the provisions of this act, and elect to become subject thereto, and in such event such risks may be classified by the said board and suitable levies imposed as may be agreed upon by the said board and such taxpayers, whereupon such taxpayers shall be entitled to the benefits and protection afforded by the insurance provisions of this act.

History: En. Sec. 11, Ch. 169, L. 1917.

363. Compensation and expenses of chairman and officers. It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a salary of two hundred dollars per month while actually engaged in service and actual traveling expenses, and all appointive officers under this act shall be paid their actual traveling expenses and shall be allowed such per diem as the state board of hail insurance may determine for each day of eight hours while actually engaged in service under this act, out of the hail insurance administrative fund.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921.

CHAPTER 27.

OTHER ADMINISTRATIVE DEPARTMENTS.

364. State boards, commissions and departments having to do with the protection of the public health and safety and the regulation of labor, professions, industries, occupations and trade are treated in sections 2444 to 4292 of this code, under the head of "General Police of the State."

Note.—New section recommended by code commissioner.

CHAPTER 28.

JUDICIAL OFFICERS.

Section 365. Number, Designation and Mode of Election.

365. Number, designation and mode of election. The number, designation, and mode of election of judicial officers are fixed in sections 8784 to 8843 of these codes.

History: En. Sec. 850, Pol. C. 1895; re-en. Sec. 290, Rev. C. 1907.

Note.—For constitutional provisions relating to judicial departments and officers, see constitution of Montana, article VIII.

CHAPTER 29.

THE MARSHAL OF THE SUPREME COURT.

Section 366. Marshal of Supreme Court.
367. Duties of Marshal.
368. Salary and Expenses of Marshal.
369. Accounts of Marshal.

366. Marshal of supreme court. The supreme court must appoint a marshal of the supreme court, who holds office at the pleasure of the court.

History: En. Sec. 862, Pol. C. 1895; re-en. Sec. 295, Rev. C. 1907.

367. Duties of marshal. It is the duty of the marshal to attend upon the supreme court and the justices thereof at each term of court. He shall be the executive officer of the court, and shall act as crier thereof. He must serve within the state all writs and process issuing from the supreme court, and shall have all the powers and exercise all the duties pertaining to sheriffs as to the district courts, so far as the same are applicable.

History: En. Sec. 863, Pol. C. 1895; re-en. Sec. 296, Rev. C. 1907.

368. Salary and expenses of marshal. The annual salary of the marshal of the supreme court for all services now required of, or which may hereafter be imposed upon him by law, is eighteen hundred dollars. When serving process of court beyond the place where the court is held, in cases in which the state, a county, or any subdivision thereof, or any officer when prosecuting or defending an action on behalf of the state, county, or subdivision thereof, is not a party, the marshal is entitled to receive the same mileage as provided by law for sheriffs in performing similar services, to be taxed as costs, as in other cases; in cases in which the state, a county, or any subdivision thereof, or any officer when prosecuting or defending an action on behalf of the state, a county, or any subdivision thereof, is the real party in interest, he shall be entitled to receive his actual expenses incurred in serving such process, to be paid from the fund appropriated for expenses of the supreme court not otherwise provided for.

History: Ap. p. Sec. 4, p. 210, L. 1891; Ch. 62, L. 1913; amd. Sec. 1, Ch. 52, L. re-en. Sec. 297, Rev. C. 1907; amd. Sec. 1, 1919.

369. Accounts of marshal. All accounts of the marshal must be filed in the supreme court in a bill of items under oath certified by the chief justice, and when properly chargeable against the state and approved by the state board of examiners, must be paid out of the state treasury upon the warrant of the state auditor.

History: En. Sec. 865, Pol. C. 1895; re-en. Sec. 298, Rev. C. 1907.

CHAPTER 30.

THE CLERK OF THE SUPREME COURT.

Section 370. Election and Term of Office.
371. General Duties.
372. Fees.
373. Duties.
374. Settlements, When and How Made.
375. Salary of Clerk of Supreme Court.
376. Official Bond.
377. Attendant to Act as Clerk, When.

370. Election and term of office. There must be a clerk of the supreme court, who must be elected by the electors at large of the state, and hold his office for the term of six years from the first Monday of January next succeeding his election, except that the clerk first elected under the constitution holds his office only until the general election in the year one thousand eight hundred and ninety-two, and until his successor is elected and qualified.

History: En. Sec. 870, Pol. C. 1895; re-en. Sec. 299, Rev. C. 1907. Cal. Pol. C. Secs. 749-758.

For text treatment of this subject, see article on Clerks of Courts in Cal. Jur.

371. General duties. The clerk of the supreme court must perform such duties as are prescribed by law and the rules and practice of the court.

History: En. Sec. 871, Pol. C. 1895; re-en. Sec. 300, Rev. C. 1907.

372. Fees. He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars payable by the appellant, and five dollars payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, ten dollars, in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five dollars; for making transcripts, copies of papers or record, fifteen cents per folio; for comparing any document requiring a certificate, five cents per folio; for each certificate under seal, one dollar.

All fees collected by him must be paid into the state treasury, eighty per cent. thereof to the credit of the general fund, and twenty per cent. thereof to the credit of the state library fund.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907.

The fee bill of the clerk of the supreme court is found in this section, and contains no provision authorizing him to collect an appearance fee from the defendant in special proceedings. State ex rel. Baker v. Second Judicial District Court, 24 Mont. 425, 427, 62 Pac. 689; State ex rel. King v. Second Judicial District Court, 25 Mont. 1, 2, 63 Pac. 402. See also State ex rel. Healy v. District Court, 26 Mont. 224, 226, 68 Pac. 470.

Cited or applied in Montana etc. Co. v. Boston etc. Min. Co., 33 Mont. 400, 405, 84 Pac. 706; Finley v. School Dist. No. 1, 51 Mont. 411, 417, 153 Pac. 1010.

373. Duties. It is the duty of the clerk to keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors at law; to adjourn the court from day to day at the beginning of any term, in the absence of any judge, and until the arrival of a majority of their number; to file all papers or transcripts required to be filed by law; to issue writs and certificates and approve bonds or undertakings when so required; to make out all transcripts to the supreme court of the United States; to make copies of papers or records when demanded by law, or the rules of the court, and to perform such other duties as may be required of him by the supreme court.

History: Ap. p. Sec. 3, p. 208, L. 1891; amd. Sec. 873, Pol. C. 1895; re-en. Sec. 302, Rev. C. 1907.

Cited or applied as section 873, Political Code, in Montana etc. Co. v. Boston etc. Min. Co., 33 Mont. 400, 405, 84 Pac. 706.

374. Settlements, when and how made. He is responsible and must account for, and in his settlement with the state auditor must be charged with, the full amount of all fees collected or chargeable, and accruing in causes brought into the court for services rendered therein up to the time of each settlement, which settlement must take place quarterly, and must immediately thereafter pay the amount found due into the treasury. He must also, at the end of each quarter, render to the state auditor, in such form as that officer prescribes, an account in detail, under oath, of all fees chargeable and accruing in causes brought into court and not included in his previous accounts rendered. His salary must not be allowed or paid until all fees so accruing, and for which he is chargeable, have been accounted for and paid over.

History: En. Sec. 874, Pol. C. 1895; re-en. Sec. 303, Rev. C. 1907.

375. Salary of clerk of supreme court. The annual salary of the clerk of the supreme court for all services now required or which may hereafter be devolved upon him by law, is three thousand dollars.

History: En. Sec. 1, Ch. 116, L. 1907; Sec. 304, Rev. C. 1907.

Note.—Salary is given as fixed by chapter 123, Laws of 1919.

376. Official bond. The clerk of the supreme court must execute an official bond in the sum of five thousand dollars.

History: En. Sec. 876, Pol. C. 1895; re-en. Sec. 305, Rev. C. 1907.

Liability of clerk of court or county clerk, or his surety for the defaults and misfeasances of his assistants or deputies, see note in 1 A. L. R. 234.

377. Attendant to act as clerk, when. Whenever the clerk of the supreme court is incapacitated or absent, the attendant of the supreme court is hereby authorized to perform all of the functions and duties of said clerk.

History: En. Sec. 1, Ch. 20, L. 1913.

CHAPTER 31.

THE REPORTERS OF THE DECISIONS OF THE SUPREME COURT.

Section 378. Justices of Supreme Court to Report Decision.
379. Duties of Reporters.
380. Reports of the Supreme Court.
381. Contract with Publisher.
382. Title of Reports.
383. Price—Bond of Publisher.
384. Distribution of Reports.

378. Justices of supreme court to report decisions. The persons who may be and are justices of the supreme court shall report the decisions of the supreme court. They shall each receive an annual salary of one thousand five hundred dollars, payable in the same manner as are salaries of other state officers, which said salaries shall be in full compensation for the performance of the duties of reporting the decisions of said court.

History: En. Sec. 2, p. 72, L. 1899; re-en. Sec. 314, Rev. C. 1907. Cal. Pol. C. Secs. 767-782.

379. Duties of reporters. The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of such cases shall contain syllabi of the points decided; a statement of the facts taken from the record, when the same are not fully given in the opinion of the court; the names of counsel; and a reference to such authorities as are cited in the briefs of counsel and have special bearing on the case. And it shall be the further duty of said reporters to prepare a full and comprehensive index and tables of cases reported and cited to each volume of reports.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907.

Note.—The above section rewritten by code commissioner to conform to later enactments.

380. Reports of the supreme court. The reports must be published in volumes of not less than six hundred pages each in the size and style of volume two, Montana reports, and equal in quality of paper and press work to said volume.

History: En. Sec. 892, Pol. C. 1895; re-en. Sec. 308, Rev. C. 1907.

381. Contract with publisher. The reporters shall have no pecuniary interest in the volumes of reports, but they must be published by contract to be entered into by the reporters and with the publishing house that will agree to publish the new volumes of Montana reports for a period of ten years, and also to furnish complete sets or odd volumes of Montana reports from volume one to the last volume published, at prices most advantageous to the state and the people, not exceeding three dollars per volume. Such contract shall require the publisher to print each volume in accordance with the specifications set forth in the preceding section. It shall also require the publisher to issue each new volume within ninety days after the manuscript for the same is delivered by the reporters to the said publisher. Such contract shall also require the publisher to make stereotype matrices of each volume so published by him, and to preserve these matrices in fire proof vaults, to the end that the volumes will never become out of print. The publisher receiving the contract as herein provided for shall, before commencing the publication of the volumes of such reports, advertise in two newspapers in Montana for ten days for proposals for such printing, stereotyping, and binding of such volumes, and such publisher shall, if the proposals for such work do not exceed by the sum of twenty per cent. the amount for which the same can be done outside of the state, cause such printing, stereotyping, and binding to be done within the state of Montana.

History: En. Sec. 893, Pol. C. 1895; re-en. Sec. 309, Rev. C. 1907.

Note.—The word "reporter" appearing in original act was changed to the plural by the code commissioner.

382. Title of reports. The title of each volume shall be "Montana Reports," which title, together with the name of the reporter and the number of the volume, shall be printed on the back of each book.

History: En. Sec. 894, Pol. C. 1895; re-en. Sec. 310, Rev. C. 1907.

383. Price—Bond of publisher. Said contract shall require the publisher to agree to sell three hundred copies of each new volume of said reports to the state of Montana at the price agreed upon in said contract,

not exceeding three dollars per volume, and to keep on hand and for sale at the contract price a sufficient number of copies of each volume to supply all demands for ten years from the date of publication thereof. And said publisher shall give bonds for the fulfillment of the terms of this contract in the sum of five thousand dollars, which bond shall be filed with the clerk of the supreme court and be approved by the justices of the supreme court, or a majority thereof.

History: En. Sec. 895, Pol. C. 1895; re-en. Sec. 311, Rev. C. 1907.

384. Distribution of reports. On the publication of each volume of said reports the secretary of state shall purchase of said publisher, for the use of the state, three hundred copies thereof, and shall distribute the same in the manner following: To the law libraries of each state and territory of the United States, one copy; to the library of congress, two copies; to each of the judges of the United States circuit and district courts of the states of Idaho, Nevada, California, Washington, Montana, Wyoming, and Oregon, one copy; to each state officer, justice of the supreme court, district judge, county attorney and clerk of the district court in this state, one copy; to the law library of the state of Montana, three copies. He shall also distribute said reports to literary and scientific institutions, publishers and authors and legislative reference libraries of other states with whom the state law librarian has established or may hereafter establish a system of exchange. He shall also distribute to the university of Montana not to exceed fifty copies to be used by the law librarian of the state university for the purpose of exchanges with universities and institutions of higher education in other states.. All reports distributed to state, district, and other officers in this state shall be for the use of their office, and shall be, by the person receiving the same, turned over to his successor in office, and the secretary of the state shall take proper receipts for such reports.

History: En. Sec. 896, Pol. C. 1895; re-en. Sec. 312, Rev. C. 1907; amd. Sec. 1, Ch. 203, L. 1921.

CHAPTER 32.

NOTARIES PUBLIC.

Section 385. Appointment and Jurisdiction.
386. Qualifications and Residence.
387. Term of Office.
388. Powers and Duties.
389. Jurisdiction of Notaries.
390. Authority of Notaries Who Are Stockholders or Officers of Corporations.
391. Protests, Evidence of Facts Stated.
392. Records of, on Death or Resignation.
393. Certified Copies of Records.
394. Bond and Commission of Notary Public.
395. Liabilities on Official Bond.
396. Certificates of Official Character.
397. Fees for Filing Certificates.
398. Revocation of Commission.
399. Certain Acts Made Valid.
400. Limitations.
401. Acts of Notaries Validated.

385. Appointment and jurisdiction. The governor may appoint and commission as many notaries public for the state of Montana as in his judgment may be deemed best, whose jurisdiction shall be co-extensive

with the boundaries of the state, irrespective of their place of residence within the state.

History: En. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909. Cal. Pol. C. Sec. 791.

386. Qualifications and residence. Every person appointed as notary public must, at the time of his appointment, be a citizen of the United States and of the state of Montana for at least one year preceding his appointment, and must continue to reside within the state of Montana. Removal from the state vacates his office and is equivalent to resignation.

History: En. Sec. 911, Pol. C. 1895; re-en. Sec. 318, Rev. C. 1907; amd. Sec. 2, Ch. 103, L. 1909. Cal. Pol. C. Sec. 792.

Right of woman to be notary, see notes in 6 Ann. Cas. 285; Ann. Cas. 1917D, 524; 38 L. R. A. 214; 5 L. R. A. (N. S.) 415; L. R. A. 1915F, 898.

387. Term of office. The term of office of a notary public is three years from and after the date of his commission.

History: En. Sec. 912, Pol. C. 1895; re-en. Sec. 319, Rev. C. 1907. Cal. Pol. C. Sec. 793.

388. Powers and duties. It is the duty of a notary public:

1. When requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for non-acceptance or non-payment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries, and keep a record of such acts.

2. To take the acknowledgment or proof of powers of attorneys, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment, indorsed or attached to the instrument.

3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this state.

4. When requested, and upon payment of his fees therefor, to make and give a certified copy of any record in his office.

5. To provide and keep an official seal, upon which must be engraved the name of the state of Montana, and the words, "Notarial Seal," with the surname of the notary, and at least the initials of his Christian name.

6. To authenticate with his official seal all official acts. In all cases when the notary public signs his name officially as a notary public, he must add to his signature the words, "Notary Public for the State of Montana, residing at ————" (stating the name of his postoffice), and must indorse upon the instrument the date of the expiration of his commission.

History: En. Sec. 913, Pol. C. 1895; re-en. Sec. 320, Rev. C. 1907; amd. Sec. 3, Ch. 103, L. 1909. Cal. Pol C. Sec. 794.

Power of notary to punish for contempt, see 36 L. R. A. 822; 8 A. L. R. 1574.

389. Jurisdiction of notaries. Every person receiving a commission as notary public shall have jurisdiction to perform his official duties and acts in every county of the state of Montana, and every notary now holding a commission from the governor of the state of Montana shall have like jurisdiction.

History: En. Sec. 4, Ch. 103, L. 1909.

Place at which official acts of notary may be performed, see 33 L. R. A. 92.

390. Authority of notaries who are stockholders or officers of corporations. It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation, to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for non-acceptance or non-payment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other corporation, where such notary is individually a party to such instrument.

History: En. Sec. 1, Ch. 77, L. 1909.

391. Protests, evidence of facts stated. The protest of a notary under his hand and official seal, of a bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the postoffice nearest thereto, is prima facie evidence of the facts contained therein.

History: En. Sec. 914, Pol. C. 1895; re-en. Sec. 321, Rev. C. 1907. Cal. Pol. C. Sec. 795.

392. Records of, on death or resignation. It is the duty of every notary public, on his resignation or removal from office, and in case of his death, of his legal representative, or at the expiration of his term, to forthwith deposit all the records kept by him in the office of the county clerk of the county in which he was resident, and on failure to do so, the person so offending is liable to damages to any person injured thereby.

History: En. Sec. 915, Pol. C. 1895; re-en. Sec. 322, Rev. C. 1907. Cal. Pol. C. Sec. 796.

393. Certified copies of records. It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named, and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

History: En. Sec. 916, Pol. C. 1895; re-en. Sec. 323, Rev. C. 1907. Cal. Pol. C. Sec. 797.

394. Bond and commission of notary public. Each notary public must give an official bond in the sum of one thousand dollars, which bond must be approved by the secretary of state. Upon the approval of said bond and the filing in the office of the secretary of state of the official oath of such notary public the governor shall issue a commission.

History: En. Secs. 324-325, Rev. C. 1907; amd. Sec. 5, Ch. 103, L. 1909; amd. Sec. 1, Ch. 7, L. 1921. Cal. Pol. C. Sec. 799.

395. Liabilities on official bond. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.

History: En. Sec. 919, Pol. C. 1895; re-en. Sec. 326, Rev. C. 1907. Cal. Pol. C. Sec. 801.

Sureties are liable for injury which results proximately from the official misconduct or neglect of the notary, but in order to constitute a cause of action someone must have parted with value in reliance upon the verity of the certificate of the notary, when a fraudulent acknowledgment is alleged. Ellis v. Hale, 58 Mont. 181, 186, 194 Pac. 155.

Liability of sureties on bond of notary public, see note in 82 A. S. R. 385.

Liability of notary or other officer certifying to acknowledgement or affidavit, see 49 L. R. A. (N. S.) 45.

396. Certificates of official character. The secretary of state may certify to the official character of such notary public, and any notary public may file a copy of his commission in the office of any county clerk of any county in the state, and thereafter said county clerk may certify to the official character of such notary public.

History: En. Sec. 2, p. 101, L. 1885; re-en. Sec. 1569, 5th Div. Comp. Stat. 1887; re-en. Sec. 920, Pol. C. 1895; re-en. Sec. 327, Rev. C. 1907; amd. Sec. 6, Ch. 103, L. 1909.

397 Fees for filing certificates. The secretary of state shall receive for each certificate of official character issued, with seal attached, the sum of one dollar. The county clerk of any county in this state, with whom a copy of notarial commission has been filed, shall receive for filing same the sum of fifty cents, and for each certificate of official character issued, with seal attached, the further sum of fifty cents.

History: En. Sec. 3, p. 101, L. 1885; re-en. Sec. 1570, 5th Div. Comp. Stat. 1887; re-en. Sec. 921, Pol. C. 1895; re-en. Sec. 328, Rev. C. 1907; amd. Sec. 7, Ch. 103, L. 1909.

398. Revocation of commission. Upon ten days' notice, the governor may revoke the commission of any notary public for any cause he may deem sufficient.

History: En. Sec. 922, Pol. C. 1895; re-en. Sec. 329, Rev. C. 1907.

399. Certain acts made valid. The official acts of every person acting as a notary public within the state of Montana, and heretofore commissioned as such, which acts have been performed since the eighth day of November, A. D. 1889, and up to and including the date of the passage of this act, so far as such acts might be affected, impaired, or questioned by reason of change of residence made after appointment, misnomer, or misspelling of name, or other error made in the appointment or commission of such notary public, neglect to take the prescribed oath of office, the minority of such person, or the expiration of his term of office, are hereby legalized and confirmed, and made effectual and valid.

History: En. Sec. 1, p. 65, L. 1893; re-en. Sec. 923, Pol. C. 1895; re-en. Sec. 330, Rev. C. 1907.

400. Limitations. Nothing in this act contained shall affect any legal action or proceeding now pending.

History: En. Sec. 924, Pol. C. 1895; re-en. Sec. 331, Rev. C. 1907.

401. Acts of notaries validated. The official acts of every person acting as a notary public within the state of Montana, heretofore commis-

sioned as such, which acts have been performed since the 15th day of February, 1895, and up to and including the date of the passage of this act, so far as such acts might be affected, impaired, or questioned by reason of change of residence made after appointment, misnomer, or misspelling of name, or other error made in the appointment or commission of such notary, neglect to take the prescribed oath of office, failure of the notary to place his seal upon any instrument, the minority of such person, or the expiration of his term of office, are hereby legalized and confirmed and made effectual and valid.

History: En. Sec. 1, Ch. 49, L. 1907; Sec. 332, Rev. C. 1907.

CHAPTER 33.

COMMISSIONERS OF DEEDS.

Section 402. Governor to Appoint.
403. General Duties of.
404. Effect of Acts Done by Commissioners.
405. Oaths, When to Be Filed.
406. Fees.
407. Copy of This Article to Be Transmitted to Appointee.
408. Fee to Be Paid Into State Treasury.

402. Governor to appoint. The governor may appoint in each state of the United States, or in any foreign state, one or more commissioners of deeds, to hold office for the term of five years from and after the date of their commission, but the governor may remove from office any commissioner during the term for which he was appointed.

History: En. Sec. 940, Pol. C. 1895; re-en. Sec. 333, Rev. C. 1907. Cal. Pol. C. Secs. 811-817.

403. General duties of. Every commissioner of deeds has power, within the state for which he was appointed:

1. To administer and certify oaths.
2. To take and certify depositions and affidavits.
3. To take and certify the acknowledgment of proof of powers of attorney, mortgages, transfers, grants, deeds, or other instruments for record.
4. To provide and keep an official seal, upon which must be engraved his name, the words "Commissioner of Deeds for the State of Montana," and the name of the state for which he is commissioned.
5. To authenticate with his official seal all his official acts.

History: En. Sec. 941, Pol. C. 1895; re-en. Sec. 334, Rev. C. 1907.

404. Effect of acts done by commissioners. All oaths administered, depositions and affidavits taken, and all acknowledgments and proofs certified by commissioners of deeds, have the same force and effect, to all intents and purposes, as if done and certified in this state by any officer authorized by law to perform such acts.

History: En. Sec. 942, Pol. C. 1895; re-en. Sec. 335, Rev. C. 1907.

405. Oaths, when to be filed. The official oaths of commissioners of deeds, together with the impressions of their official seals, must be filed in the office of the secretary of state within six months after they are taken.

History: En. Sec. 943, Pol. C. 1895; re-en. Sec. 336, Rev. C. 1907.

406. Fees. The fees of commissioners of deeds are the same as those prescribed for notaries public.

History: En. Sec. 944, Pol. C. 1895; re-en. Sec. 337, Rev. C. 1907.

407. Copy of this article to be transmitted to appointee. The secretary of state must transmit, with the commission to the appointee, a certified copy of this article, and of the section prescribing the fees of notaries public.

History: En. Sec. 945, Pol. S. 1895; re-en. Sec. 338, Rev. C. 1907.

408. Fee to be paid into state treasury. No commission must issue until the applicant pays into the state treasury the sum of five dollars.

History: En. Sec. 946, Pol. C. 1895; re-en. Sec. 339, Rev. C. 1907.

CHAPTER 34.

ATTORNEYS AT LAW.

Section 409. Attorneys and Counselors at Law.

409. Attorneys and counselors at law. The admission of attorneys and counselors at law is provided for and their duties fixed in sections 8936 to 8993 of these codes.

History: En. Sec. 951, Pol. C. 1895; re-en. Sec. 341, Rev. C. 1907.

CHAPTER 35.

DISQUALIFICATIONS AND RESTRICTIONS UPON RESIDENCE OF OFFICERS.

Section 410. Age and Citizenship.
411. Other Disqualifications.
412. County Officers Not to Act as Deputy.
413. Certain Officers Must Reside at the Seat of Government.
414. Absence From the State.
415. Restrictions Upon Judicial Officers.
416. Restrictions Upon County Officers.
417. Restrictions Upon Other Officers.

410. Age and citizenship. No person is capable of holding a civil office in this state, who at the time of his election or appointment is not of the age of twenty-one years and a citizen of this state.

History: En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907. Cal. Pol. C. Sec. 841.

Power of legislature to define qualifications of public officer, see note in 19 Ann. Cas. 743.

Requirement as to eligibility of public officer as relating to time of election or time of taking office, see 11 Ann. Cas. 950; 20 Ann. Cas. 992.

411. Other disqualifications. Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the codes concerning the various offices.

History: En. Sec. 961, Pol. C. 1895; re-en. Sec. 343, Rev. C. 1907. Cal. Pol. C. Sec. 842.

For constitutional provisions concerning disqualifications of legislator for other office, see constitution of Montana, article V, section 7; of officers of United States, id.; of lieutenant-governor, article VII, section 15.

412. County officers not to act as deputy. No county officer must be appointed or act as the deputy of another officer of the same county, except in cases where the pay of the officer so appointed amounts to a sum less than seventy-five dollars per month.

History: En. Sec. 962, Pol. C. 1895; re-en. Sec. 344, Rev. C. 1907. Cal. Pol. C. Sec. 843.

413. Certain officers must reside at the seat of government. The following officers must reside and keep their offices at the seat of government: The governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of public instruction, justices of the supreme court, and clerk of the supreme court.

History: En. Sec. 970, Pol. C. 1895; re-en. Sec. 345, Rev. C. 1907. Cal. Pol. C. Sec. 852.

414. Absence from the state. No officer mentioned in the preceding section, and no officer appointed by the governor and confirmed by the senate, must absent himself from the state for more than sixty consecutive days, unless upon business of the state or with the consent of the legislative assembly.

History: En. Sec. 971, Pol. C. 1895; re-en. Sec. 346, Rev. C. 1907. Cal. Pol. C. Sec. 853.

Meaning of "absent" or "absence" as applied to public officer, see Ann. Cas. 1912C, 351.

415. Restrictions upon judicial officers. Restrictions upon the residence of other judicial officers are contained in the constitution and the Code of Civil Procedure.

History: En. Sec. 972, Pol. C. 1895; re-en. Sec. 347, Rev. C. 1907. Cal. Pol. C. Sec. 854.

416. Restrictions upon county officers. Restrictions upon the residence of county officers are contained in part IV, of this code.

History: En. Sec. 973, Pol. C. 1895; re-en. Sec. 348, Rev. C. 1907. Cal. Pol. C. Sec. 855.

417. Restrictions upon other officers. Restrictions upon the residence of other officers are contained in the chapter relating to the respective officers.

History: En. Sec. 974, Pol. C. 1895; re-en. Sec. 349, Rev. C. 1907.

CHAPTER 36.

POWERS OF DEPUTIES.

418. Powers of deputies. In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

History: En. Sec. 980, Pol. C. 1895; re-en. Sec. 350, Rev. C. 1907. Cal. Pol. C. Sec. 865.

Daly v. Kelley, 57 Mont. 306, 187 Pac. 1022.

In view of this section and the maxim "Qui facit per alium facit per se," the fact that the appointment of the keeper of attached property was made by defendant sheriff's deputy, did not relieve defendant of liability for the keepers compensation.

Deputy as public officer, see note Ann. Cas. 1913C, 88.

In whose name acts by deputy officers to be performed, see notes in 106 A. S. R. 825; 19 L. R. A. 177; 42 L. R. A. (N. S.) 877.

CHAPTER 37.

APPOINTMENTS, NOMINATIONS AND OATH OF OFFICE.

Section 419. Appointments, When Not Otherwise Provided for.
420. Deputies and Subordinate Officers.
421. Number of Deputies.
422. Term of Office, When Not Prescribed.
423. Holding Over Until Successor is Qualified.
424. Nominations to Senate Must be in Writing.
425. Resolution of Concurrence.
426. Commissions by the Governor.
427. Form of Commissions.
428. Other Commissions.
429. Appointment of Deputies, etc., How Made.
430. Oath, Form of.
431. Oath of the Members of the Legislature.
432. Time of Filing Oath.
433. Oath, Before Whom Taken.
434. Oath of Office, Where Filed.
435. Oath of Deputies, etc.

419. Appointments, when not otherwise provided for. Every officer, the mode of whose appointment is not prescribed by the constitution or statutes, must be appointed by the governor by and with the advice and consent of the senate.

History: En. Sec. 990, Pol. C. 1895; re-en. Sec. 351, Rev. C. 1907. Cal. Pol. C. Sec. 875.

Power of governor to appoint to office in absence of constitutional or statutory authority, see 19 Ann. Cas. 823.

420. Deputies and subordinate officers. All assistants, deputies, and other subordinate officers, whose appointments are not otherwise provided for, must be appointed by the officer or body to whom they are respectively subordinate.

History: En. Sec. 991, Pol. C. 1895; re-en. Sec. 352, Rev. C. 1907. Cal. Pol. C. Sec. 876.

Cited as section 991, Political Code, with other sections, in Jobb v. County of Meagher, 20 Mont. 424, 51 Pac. 1034.

"Assistant" and "deputy" defined and distinguished, see Ann. Cas. 1912A, 1270.

421. Number of deputies. When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

History: En. Sec. 992, Pol. C. 1895; re-en. Sec. 353, Rev. C. 1907. Cal. Pol. C. Sec. 877.

Cited as section 992, Political Code, with other sections, in Jobb v. County of Meagher, 20 Mont. 424, 428, 51 Pac. 1034.

422. Term of office, when not prescribed. Every office of which the duration is not fixed by law is held at the pleasure of the appointing power.

History: En. Sec. 993, Pol. C. 1895; re-en. Sec. 354, Rev. C. 1907. Cal. Pol. C. Sec. 878.

Delegation of power to appoint officer as including power to fix term of officer, see 13 Ann. Cas. 806.

Term of office of person elected or appointed to fill vacancy, in absence of express statutory or constitutional provision, see 12 Ann. Cas. 572; Ann. Cas. 1913D, 619.

Attempted appointment for fixed term as restriction of power to remove at pleasure, see 35 L. R. A. (N. S.) 866.

Term of office of person entitled to hold office "during term" of appointing power, see note in Ann. Cas. 1914D, 102.

423. Holding over until successor is qualified. Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

History: En. Sec. 994, Pol. C. 1895; re-en. Sec. 355, Rev. C. 1907. Cal. Pol. C. Sec. 879.

This provision is one usually found in the codes of the states, being based upon the requirements of public policy, which demands that if, from any cause, the new incumbent of an office fails to qualify, or if there has not been an election of any person, there should not be a vacancy in the office, and a consequent suspension of the public business. State ex rel. Neill v. Page, 20 Mont. 238, 244, 50 Pac. 719.

This section is applicable only to a case where the term of office of an incumbent has expired; it does not refer to a case of vacancy caused by resignation. State ex rel. Neill v. Page, 20 Mont. 238, 248, 50 Pac. 719.

Where a vacancy occurs in a county office, the board of county commissioners has general power, and it is its duty, to exercise such power to prevent an interregnum in the office and the consequent suspension of the public business. Even though it may happen that the proper officer or authority may omit to call an election or cannot do so under the particular emergency, nevertheless the board need not by subsequent neglect or inaction permit the public business to be suspended, and upon the happening of either contingency the appointed incumbent, as temporary locum tenens, must perform the duties of the office until his successor has qualified, so that an interregnum can never happen in any public office. State ex rel. Rowe v. Kehoe, 49 Mont. 582, 590, 144 Pac. 162.

Cited or applied as section 355, Revised Codes, in State ex rel. Jones v. Foster, 39 Mont. 583, 586, 104 Pac. 860.

Purpose and effect of provision that incumbent shall hold office until his successor is elected and qualified, see note in 50 L. R. A. (N. S.) 365.

424. Nominations to senate must be in writing. Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

History: En. Sec. 1000, Pol. C. 1895; re-en. Sec. 356, Rev. C. 1907. Cal. Pol. C. Sec. 889.

425. Resolution of concurrence. Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the secretary of state, and another copy, certified by the secretary, to the governor.

History: En. Sec. 1001, Pol. C. 1895; re-en. Sec. 357, Rev. C. 1907. Cal. Pol. C. Sec. 890.

Necessity for confirmation where appointment of officer is authorized subject to confirmation by another officer or body, see note in 17 Ann. Cas. 1011.

Power to reconsider confirmation of appointment to office, see note in 2 A. L. R. 1657.

426. Commissions by the governor. The governor must commission:

1. All officers elected by the people whose commissions are not otherwise provided for.
2. All officers of the militia.
3. All officers appointed by the governor, or by the governor with consent of the senate.
4. United States senators.

History: En. Sec. 1002, Pol. C. 1895; re-en. Sec. 358, Rev. C. 1907. Cal. Pol. C. Sec. 891.

Under this section, the state land agent should properly be commissioned by the governor. He is a state official appointed by the governor, ordinarily with the consent of the state land board; and it is in accord with the spirit of the law that such an official should bear a commission signed by the governor, as evidence of his appointment. State ex rel. Neill v. Page, 20 Mont. 238, 245, 50 Pac. 719.

427. Form of commissions. The commissions of all officers commissioned by the governor must be issued in the name of the state, and must be signed by the governor and attested by the secretary of state, under the great seal.

History: En. Sec. 1003, Pol. C. 1895; re-en. Sec. 359, Rev. C. 1907. Cal. Pol. C. Sec. 892.

Cited or applied as section 1003, Political Code, in State ex rel. Neill v. Page, 20 Mont. 238, 243, 50 Pac. 719.

428. Other commissions. The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

History: En. Sec. 1004, Pol. C. 1895; re-en. Sec. 360, Rev. C. 1907. Cal. Pol. C. Sec. 893.

429. Appointment of deputies, etc., how made. The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing filed in the office of the appointing power or the office of its clerk.

History: En. Sec. 1005, Pol. C. 1895; re-en. Sec. 361, Rev. C. 1907. Cal. Pol. C. Sec. 894.

430. Oath, form of. Members of the legislative assembly and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid or contributed, or promised to pay or contribute either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law. So help me God." And no other oath, declaration, or test must be required as a qualification for any office or trust.

History: Ap. p. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907. Cal. Pol. C. Sec. 904.

State ex rel. Ryan v. Board of Aldermen, 45 Mont. 188, 193, 122 Pac. 569.

Cited or applied as section 362, Revised Codes, in State ex rel. McGrade v. District Court, 52 Mont. 371, 375, 157 Pac. 1157.

Before entering upon his duties an alderman must swear that he will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to his office other than the compensation allowed by law.

Failure to comply with exact form prescribed by law as affecting binding character of oath of public officer, see 5 Ann. Cas. 724.

Official oath of public officer as criterion whether position held is office or employment, see note in 17 Ann. Cas. 456.

431. Oath of the members of the legislature. Members of the legislative assembly may take the oath of office at any time during the term for which they were elected.

History: En. Sec. 1011, Pol. C. 1895; re-en. Sec. 363, Rev. C. 1907. Cal. Pol. C. Sec. 906.

432. Time of filing oath. Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed, and filed within thirty days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given.

History: En. Sec. 1, Ch. 1, L. 1907; Sec. 364, Rev. C. 1907. Cal. Pol. C. Sec. 907.

Statute prescribing time for public officer to qualify as directory or mandatory, see Ann. Cas. 1915D, 412.

433. Oath, before whom taken. Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

History: En. Sec. 1013, Pol. C. 1895; re-en. Sec. 365, Rev. C. 1907. Cal. Pol. C. Sec. 908.

434. Oath of office, where filed. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

1. The oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state.

2. The oath of all officers, elected or appointed for any county, and of all officers whose duties are local, or whose residence in any particular county is prescribed by law, and of the clerks of the district courts, in the offices of the clerks of the respective counties.

3. Each judge of a district court must, so soon as he has taken and subscribed his official oath, file a duplicate copy thereof, signed with his signature, in the office of the secretary of state.

History: En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907. Cal. Pol. C. Sec. 909.

435. Oath of deputies, etc. Deputies, clerks, and subordinate officers must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals.

History: En. Sec. 1015, Pol. C. 1895; re-en. Sec. 367, Rev. C. 1907. Cal. Pol. C. Sec. 910.

CHAPTER 38.

COMPENSATION OF STATE OFFICERS AND EMPLOYEES.

Section 436. Salary State Officers.
437. Salaries of Board of Examiners and Consolidated Boards.
438. Salaries of Office of State Examiner and Private Secretary to the Governor.
439. Salaries of Janitors, Watchmen and Engineers.
440. Salaries of Other Officers.
441. Compensation of Other Officers, Where Prescribed.
442. Salaries of Officers, How Paid.
443. Payment Traveling Expenses Public Officers Attendance at Conventions.

436. Salary state officers. That the annual salary of the secretary of state shall be four thousand two hundred dollars, and the salary of the state treasurer shall be four thousand two hundred dollars, and the clerk of the supreme court shall be three thousand dollars, and the salary of the state auditor shall be three thousand six hundred dollars, and the salary of the superintendent of public instruction shall be thirty-six hundred dollars, to include all services rendered ex-officio as a member of any board or committee as now required or which may hereafter by law devolve upon them.

History: En. Sec. 1, Ch. 123, L. 1919.

Note.—For complete list of salaries of state officers, see note to section 441.

Right of public officer to additional compensation for duties imposed after commencement of term in absence of statutory authority therefor, see note in Ann. Cas. 1918E, 1062.

437. Salaries of board of examiners and consolidated boards. The annual compensation allowed to the following-named state officer and clerks at the state capitol is as follows:

State Board of Examiners.

Clerk, three thousand dollars.

State accountant, three thousand dollars.

Consolidated Boards.

(Boards of prison commissioners, insane commissioners, pardons and equalization.)

Clerk, three thousand dollars.

History: En. Sec. 1, Ch. 107, L. 1919.

438. Salaries of office of state examiner, his assistant deputies and clerks, and of private secretary to governor. The salary of state examiner shall be five thousand dollars per year. First assistant to the state examiner shall receive three thousand dollars. Second assistant to the state examiner, twenty-seven hundred dollars. Deputy state examiner shall receive twenty-four hundred dollars. Clerks shall receive fifteen hundred dollars, and chief deputy superintendent of banks shall receive three thousand dollars. Each additional deputy allowed by law, twenty-four hundred dollars. Clerks per month, one hundred fifty dollars. And the salary of the private secretary to the governor shall be three thousand dollars.

History: En. Sec. 2, Ch. 107, L. 1919.

Note.—The salary of the state examiner is given as fixed by section 1, chapter 259, Laws of 1921, section 6070 of these codes; that section also empowers the board of examiners to fix the salaries of all deputies appointed by the state examiner and ex-officio superintendent of banks.

439. Salaries of janitors, watchmen, and engineers. From and after the passage of this act the salaries of janitors employed in the state capitol building at Helena, Montana, shall be the sum of three dollars and fifty cents per day. The salaries of watchmen and capitol guides shall be three dollars and fifty cents per day. The engineers employed at the power-house of the state capitol shall be paid the sum of four dollars and fifty cents per day, and the head engineer shall be paid the sum of five dollars per day.

History: En. Sec. 1, Ch. 71, L. 1919.

440. Salaries of other officers. The annual compensation allowed to the following named deputy state officers, clerks, stenographers, and employees at the state capitol is as follows:

Office of Governor.

Stenographer, fifteen hundred dollars.

Office of Secretary of State.

Deputy, twenty-one hundred dollars.

Stenographer and recorder, eighteen hundred dollars.

Office of State Treasurer.

Deputy, twenty-four hundred dollars.

Clerk, twenty-one hundred dollars.

(As amended by chapter 154, Laws of 1919.)

Office of State Auditor.

Deputy, twenty-four hundred dollars.

Stenographer, twelve hundred dollars.

Bookkeeper, twelve hundred dollars.

Chief clerk, twenty-one hundred dollars.

(As amended by chapter 154, Laws of 1919.)

Superintendent of Public Instruction.

Deputy, twenty-one hundred dollars.
Stenographer, twelve hundred dollars.
Clerk, twelve hundred dollars.

Railroad Commission.

Rate clerk, three thousand dollars.
Inspector, twenty-one hundred dollars.
Stenographer, fifteen hundred dollars.
(As amended by chapter 109, Laws of 1919.)

State Veterinarian.

(Salaries of veterinary surgeons, deputies, and employees fixed by livestock sanitary board under section 8, chapter 262, Laws of 1921, section 3267 of this code.)

Mine Inspector.

Deputy mine inspector, salary now fixed by Industrial Accident Board.

Adjutant-General.

Adjutant-general, three thousand dollars.
Stenographer (from Department Child and Animal Protection), three hundred dollars.
(As amended by chapter 154, Laws of 1919.)

State Law Library.

Librarian, twenty-five hundred dollars.

State Historical Library.

Librarian, twenty-one hundred dollars.
First assistant, twelve hundred dollars.
Second assistant, twelve hundred dollars.

State Board of Health.

Secretary, five thousand dollars.
Stenographer, twelve hundred dollars.
(As amended by section 3, chapter 157, Laws of 1919.)

Bureau of Child and Animal Protection.

Secretary, twenty-five hundred dollars.
First, second, third, fourth, fifth and sixth deputies, each, eighteen hundred dollars.
Stenographer, nine hundred dollars.

Supreme Court.

Stenographer, twenty-four hundred dollars.
Marshal, eighteen hundred dollars.
Attendant, twelve hundred dollars.

State Land Department.

Assistant secretary Carey land act board, eighteen hundred dollars.

History: En. Sec. 1, Ch. 40, L. 1915, with amendments as noted.

441. Compensation of other officers, where prescribed. The compensation of all other officers and employees not specified in this chapter will be found under the laws regulating the several officers, boards, commissions and departments of the state.

Note.—New section recommended by code commissioner. The several salary acts occur in connection with such a variety of other subject-matter that it is impossible to codify them under one chapter; the following are the salaries of state officers which have been fixed by the legislature, arranged alphabetically, not includ-

ing superintendents and employees of state institutions. Offices created in 1921 do not appear in this list:

Accountant, three thousand dollars.

Adjutant-general, three thousand dollars.

Adjutant-general, stenographer to, three hundred dollars.

Attorney-general, four thousand five hundred dollars.

Attorney-general, first assistant to, three thousand six hundred dollars.

Attorney-general, three other assistants to, each three thousand dollars.

Auditor, three thousand six hundred dollars.

Auditor, deputy commissioner of insurance to, two thousand four hundred dollars.

Auditor and commissioner of insurance, chief clerk to, two thousand one hundred dollars.

Auditor, bookkeeper to, one thousand two hundred dollars.

Auditor, stenographer to, one thousand two hundred dollars.

Bureau of child and animal protection, secretary to, two thousand five hundred dollars.

Bureau of child and animal protection, 1st, 2nd, 3d, 4th, 5th and 6th deputies to, each one thousand eight hundred dollars.

Bureau of child and animal protection, stenographer to, one thousand two hundred dollars. (Nine hundred dollars to be paid by the bureau of child and animal protection and three hundred dollars to be paid by the department of the adjutant-general.)

Carey Land Act board, assistant secretary to, one thousand eight hundred dollars.

Coal mine inspectors: Salary fixed by industrial accident board.

Consolidated boards (board of prison commissioners, insane commissioners, pardons, and equalization), clerk to, three thousand dollars.

Custodian of state capitol, two thousand dollars.

Capitol employees as follows:

Janitors, per day, three dollars and fifty cents.

Watchman and capitol guides, per day, three dollars and fifty cents.

Engineers employed at power house, per day, four dollars and fifty cents.

Head engineer, per day, five dollars.

Engineer, state, three thousand dollars.

Examiner, five thousand dollars.

Examiner, first assistant to, three thousand dollars.

Examiner, second assistant to, two thousand seven hundred dollars.

Examiner, deputy to, two thousand four hundred dollars.

Examiner, clerks to, each, one thousand five hundred dollars.

(Note.—Section 1, chapter 259, Laws of 1921 (6070) empowers board of examiners to fix salaries of all deputies of state examiner and ex-officio superintendent of banks.)

Examiners, clerk to state board of, three thousand dollars.

Fire marshal, state, two thousand four hundred dollars.

Fire marshal, assistant to, two thousand one hundred dollars.

Forester, state, two thousand five hundred dollars.

Game and fish warden, state (not to exceed) three thousand dollars.

Governor, seven thousand five hundred dollars.

Governor, private secretary to, three thousand dollars.

Governor, stenographer to, one thonsand five hundred dollars.

Health, secretary of state board of, five thousand dollars.

Health, state board of, stenographer to, one thousand two hundred dollars.

Historical library, librarian of, two thousand one hundred dollars.

Historical library, 1st and 2nd assistant librarians, each, one thousand two hundred dollars.

Horticulture, secretary to board of, one thousand dollars.

Industrial accident board, chairman, five thousand dollars.

Law library, librarian of, two thousand five hundred dollars.

Mine inspectors (salary fixed by industrial accident board).

Railroad and public service commission, secretary to, three thousand six hundred dollars.

Railroad commission, commissioners, each, four thousand dollars.

Railroad commission, rate clerk to, three thousand dollars.

Railroad commission, safety appliance inspectors, each, two thousand one hundred dollars.

Railroad commission, stenographer to, one thousand five hundred dollars.

Secretary of state, four thousand two hundred dollars.

Secretary of state, deputy to, two thousand one hundred dollars.

Secretary of state, stenographer and recorder to, one thousand eight hundred dollars.

State land agent, three thousand two hundred and fifty dollars.

State lands, register of, three thousand six hundred dollars.

State lands, deputy register of, two thousand four hundred dollars.

State lands, register of, clerk to, not to exceed one thousand five hundred dollars.

State lands, assistant secretary of Carey Land Act board, one thousand eight hundred dollars.

Superintendent of public instruction, three thousand six hundred dollars.

Superintendent of public instruction, deputy to, two thousand one hundred dollars.

Superintendent of public instruction, stenographer to, one thousand two hundred dollars.

Superintendent of public instruction, clerk to, one thousand two hundred dollars.

Supreme court, justices of, each, six thousand dollars.

Supreme court, justices of, for services as reporters of decisions, each, one thousand five hundred dollars.

Supreme court, stenographer to, two thousand four hundred dollars.

Supreme court, marshal to, one thousand eight hundred dollars.

Supreme court, attendant to, one thousand two hundred dollars.

Supreme court, clerk of, three thousand dollars.

Treasurer, four thousand two hundred dollars.

Treasurer, deputy to, two thousand four hundred dollars.

Treasurer, clerk to, two thousand one hundred dollars.

442. Salaries of officers, how paid. Unless otherwise provided by law the salaries of officers must be paid out of the general fund in the state treasury, monthly, on the last day of the month.

History: En. Sec. 1133, Pol. C. 1895; amd. Sec. 1, p. 114, L. 1901; re-en. Sec. 435, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1917.

443. Payment traveling expenses public officers attendance at conventions. Hereafter no state, county, city or school district officer or employee of the state, or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting or other gathering of public officers, save and except for attendance upon such conventions, meetings or other gatherings as said officer may by virtue of his office be required by law to attend, provided, that nothing herein shall prohibit the state board of examiners from authorizing the payment of the necessary traveling expenses of any state officer or employee, whenever in the judgment of said board public interest requires, and provided further that the board of trustees of any county high school or of any school district may by resolution adopted by a majority of entire board authorize any employee of such board to attend meetings called for the express purpose of considering educational matters.

History: En. Sec. 1, Ch. 241, L. 1921.

CHAPTER 39.

PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS.

Section 444. Certain Officers Not to Be Interested in Contracts.
445. Nor in Certain Sales.
446. Contracts in Violation Voidable.
447. Dealings in Warrants, Scrip, etc., Prohibited.
448. Auditing Officers, Duties of.
449. Treasurer, Duties of.
450. When Settlements Must Be Withheld.
451. Title Contested, Salary Must Not Be Paid.
452. Pendency of Suit Must Be Certified by the Clerk.
453. Office Hours.
454. Signature of Officer Acting Ex-Officio.
455. Records Open to Public Inspection.
456. Itemized Accounts.
457. Traveling Expenses.
458. Vouchers Presented to State Board of Examiners.
459. Penalty for Collecting Expenses Not Due.
460. Possession of Books and Papers.
461. Proceedings to Compel Delivery of.
462. Attachment and Warrant to Enforce.
463. Executive and Judicial Officers May Administer Oaths.

444. Certain officers not to be interested in contracts. Members of the legislative assembly, state, county, city, town, or township officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

History: En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907. Cal. Pol. C. Sec. 920.

Validity of contract with state in which member of legislature is interested, see note in Ann. Cas. 1916A, 237.

Power of an officer to contract with the public body or municipality which he represents, see note in 15 L. R. A. 520.

Provsion against officer being interested in contract with public as extending to corporation of which he is stockholder or officer, see notes in 21 Ann. Cas. 912; Ann. Cas. 1916A, 77; L. R. A. 1917C, 1099.

Effect of indirect interest of public officer in performance of contract for construction of public improvement, see note in 50 L. R. A. (N. S.) 1140.

Right of public officer to purchase tax certificates or tax titles, see note in 5 A. L. R. 969.

Liability of public officer for interest received on public funds, see notes in 8 Ann. Cas. 391; Ann. Cas. 1912C, 1137.

Right of government to recover from officer profits obtained by him by virtue of his office, see note in 19 Ann. Cas. 604.

Validity in absence of statute of contract by municipal council in which member of council is interested, see note in Ann. Cas. 1912D, 659.

Validity of contract made by public officer with himself individually, see note in Ann. Cas. 1912A, 867.

445. Nor in certain sales. State, county, town, township, and city officers must not be purchasers at any sale, nor vendors at any purchase made by them, in their official capacity.

History: En. Sec. 1021, Pol. C. 1895; re-en. Sec. 369, Rev. C. 1907. Cal. Pol. C. Sec. 921.

446. Contracts in violation, voidable. Every contract made in violation of any of the provisions of the two preceding sections may be avoided at the instance of any party except the officer interested therein.

History: En. Sec. 1022, Pol. C. 1895; re-en. Sec. 370, Rev. C. 1907. Cal. Pol. C. Sec. 922.

447. Dealings in warrants, scrip, etc., prohibited. The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use or benefit of any person or persons whatever, any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county, city, town, or township thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

History: En. Sec. 1023, Pol. C. 1895; re-en. Sec. 371, Rev. C. 1907. Cal. Pol. C. Sec. 923.

An information, which charges defendant with being accessory to a county official in purchasing evidences of indebtedness against a county, contrary to the provisions of this section and 10827, post, which fails to state that defendant knew that the person, whose accessory he was charged with being, was a county officer, was defective. State v. Danzer, 35 Mont. 269, 272, 88 Pac. 952.

A police captain is an "officer," within the meaning of this section and section 10827, post, making the purchase of a city warrant by city officers a crime punishable by disqualification from holding office, and the fact that the accused brought the warrant for a brother officer is unavailing as a defense. State ex rel. O'Brien v. City of Butte, 54 Mont. 533, 537, 172 Pac. 134.

448. Auditing officers, duties of. Every officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers, must, before allowing such accounts, require each of such

officers to make and file with him an affidavit that he has not violated any of the provisions of this chapter.

History: En. Sec. 1024, Pol. C. 1895; re-en. Sec. 372, Rev. C. 1907. Cal. Pol. C. Sec. 924.

449. Treasurer, duties of. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township, when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this chapter.

History: En. Sec. 1025, Pol. C. 1895; re-en. Sec. 373, Rev. C. 1907. Cal. Pol. C. Sec. 925

450. When settlements must be withheld. Every officer charged with the disbursement of public moneys, who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this chapter, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation by the county attorney of the county. In case there be judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

History: En. Sec. 1026, Pol. C. 1895; re-en. Sec. 374, Rev. C. 1907. Cal. Pol. C. Sec. 926.

451. Title contested, salary must not be paid. When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

History: En. Sec. 1040, Pol. C. 1895; re-en. Sec. 375, Rev. C. 1907. Cal. Pol. C. Sec. 936.

This section recognizes the principle that he who has the title to an office may receive the salary incident to it, whether he serves or not. Peterson v. City of Butte, 44 Mont. 401, 410, 120 Pac. 483, Ann. Cas. 1913B, 538.

Under this section, it was no defense to an action by a police officer for his salary during the time he was wrongfully deprived of his office, that it had been paid to a de facto officer, after the commencement of quo warranto proceedings by the plaintiff. Wynne v. City of Butte, 45 Mont. 417, 422, 123 Pac. 531.

If a police officer is wrongfully excluded from his office, his earnings in other employments during the time of his exclusion cannot be charged against his claim for salary. Wynne v. City of Butte, 45 Mont. 417, 423, 123 Pac. 531.

452. Pendency of suit must be certified by the clerk. As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary.

History: En. Sec. 1041, Pol. C. 1895; re-en. Sec. 376, Rev. C. 1907. Cal. Pol. C. Sec. 937.

The failure of the clerk of the court to comply with the above section, by certifying to the disbursing officer the fact that the title to an office was contested, did not prevent a police officer from recovering his salary for the time during which he was wrongfully ousted and the salary paid to a de facto officer. Wynne v. City of Butte, 45 Mont. 417, 422, 123 Pac. 531.

453. Office hours. Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from nine o'clock a. m. until five o'clock p. m. each day, and at other times when

the accommodation of the public or the proper transaction of business requires, except upon holidays.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907. Cal. Pol. C. Sec. 1030.

454. Signature of officer acting ex-officio. When an officer discharges ex-officio the duties of another office than that to which he is elected or appointed, his official signature and attestation, except as otherwise provided by law, must be in the name of the office the duties of which he discharges.

History: En. Sec. 1135, Pol. C. 1895; re-en. Sec. 437, Rev. C. 1907. Cal. Pol. C. Sec. 1031.

455. Records open to public inspection—Exceptions. The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person. In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint, or the issuing of such attachment, until after the filing of return of service of attachment.

History: En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907. Cal. Pol. C. Sec. 1032.

456. Itemized accounts. All state officers and appointees must produce itemized accounts for all moneys, other than salaries, expended by them, accompanied by affidavit that the money has been expended.

History: En. Sec. 1137, Pol. C. 1895; re-en. Sec. 439, Rev. C. 1907. Cal. Pol. C. Sec. 424.

457. Traveling expenses. Each state officer shall be allowed his necessary office and his actual and necessary traveling expenses when performing the duties pertaining to his office. No such officer shall be allowed as expenses a larger amount than has been actually and necessarily incurred or paid out by him. Each officer shall be required to travel by the shortest practicable route, and in cases when same can be done, shall be required to use mileage books or other means of reduced transportation.

History: En. Sec. 1, p. 102, L. 1897; Sec. 440, Rev. C. 1907.

Meaning of "necessary travel" or "necessarily traveled" as used with respect to mileage allowance, see note in Ann. Cas. 1918D, 934.

458. Vouchers presented to state board of examiners. Each officer shall be required to make out and file with the state board of examiners an itemized and verified account, with proper vouchers thereto attached, of his expenses, and same shall be passed upon and allowed by such board before being paid.

History: En. Sec. 2, p. 102, L. 1897; Sec. 441, Rev. C. 1907.

459. Penalty for collecting expenses not due. Any such officer who shall knowingly collect or receive as expenses a greater sum than has actually and necessarily been paid out or incurred by him shall be guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not less than two hundred and fifty dollars, nor more than one thousand dollars, and it is hereby made the duty of the attorney-general to prosecute any violation of the provisions of this act.

History: En. Sec. 3, p. 102, L. 1897; Sec. 442, Rev. C. 1907.

460. Possession of books and papers. Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent by virtue of his office.

History: En. Sec. 1120, Pol. C. 1895; re-en. Sec. 427, Rev. C. 1907. Cal. Pol. C. Sec. 1014.

461. Proceedings to compel delivery of. If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by complaint, to any district court, or judge of the county where the person so refusing or neglecting resides, and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties, and to order any such books and papers to be delivered to the petitioners.

History: En. Sec. 1121, Pol. C. 1895; re-en. Sec. 428, Rev. C. 1907. Cal. Pol. C. Sec. 1015.

462. Attachment and warrant to enforce. The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness, and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers, and to take and deliver them to the plaintiff.

History: En. Sec. 1122, Pol. C. 1895; re-en. Sec. 429, Rev. C. 1907. Cal. Pol. C. Sec. 1016.

463. Executive and judicial officers may administer oaths. Every executive, state, and judicial officer may administer and certify oaths.

History: En. Sec. 1132, Pol. C. 1895; re-en. Sec. 434, Rev. C. 1907. Cal. Pol. C. Sec. 1028.

Validity of oath administered by telephone, see notes in Ann. Cas. 1917B, 905; 30 L. R. A. (N. S.) 358.

CHAPTER 40.

OFFICIAL BONDS.

Section 464. Bonds of State Officers.
465. Bonds of Officers Not Designated.
466. Bonds of County Officers.
467. Bonds of County Officers Not Designated.
468. Time for Filing Bond.
469. Approval and Filing of Bonds of State Officers.
470. Bonds of Secretary of State, Where Filed.
471. Approval of Bonds of County and Township Officers.
472. Record of Official Bonds.
473. Approval Must Be Indorsed on Bond.
474. Bond Not to Be Filed Before Approval.
475. Conditions, Signatures, and Sureties.
476. Qualifications of Sureties.
477. When Sureties Liable for Less Than Full Amount.
478. Custody of Official Bonds.
479. Forms of Bonds.
480. Extent of Sureties' Liability.
481. Same—Duties Subsequently Imposed.
482. Suit on Bonds.
483. Same—Successive Suits.
484. Defects Not to Affect Liability.
485. Defective Official Bonds.
486. Insufficiency of Sureties.
487. Form of Additional Bond.
488. Force of Original Bond.

489. Liability of Officers and Sureties.
490. Separate Judgments on Bonds.
491. Contribution Between Sureties.
492. Discharge of Sureties.
493. Vacancies—Bond of Appointee.
494. Release of Sureties.
495. Same—Application for Release.
496. Same—Service of Statement.
497. Office Declared Vacant for Want of Official Bond.
498. Supplemental Bond.
499. Same—Effect of Release, Discharge, etc.
500. Same—Withdrawal of Surety and Filing of New Bond.
501. Same—Supplemental Bond Not Required When.
502. Effect of Discharge of Sureties.
503. Application of Chapter to What Bonds.
504. Bonds of Receivers, Assignees, etc.
505. Actions on Official Bonds, Effect of.
506. Same.
507. Bonds of Deputies, Clerks, etc.
508. Bond of County Clerk, Where Filed.
509. Actions to Compel Specific Performance, etc.

464. Bonds of state officers. The following named state officers shall give official bonds, conditioned as provided by law, in the following amounts, to-wit:

Adjutant general, one thousand dollars.
Chief grain inspector, one thousand dollars.
Attorney-general, twenty-five thousand dollars.
State auditor, ten thousand dollars.
Deputy state auditor, two thousand dollars.
Deputy insurance commissioner of state auditor, two thousand dollars.
State fire marshal, one thousand dollars.
Bank examiner, ten thousand dollars.
Assistant superintendent of banks, one thousand dollars.
Secretary of state board of health, one thousand dollars.
Clerk of supreme court, three thousand dollars.
State forester, two thousand dollars.
Game warden, two thousand dollars.
Chief engineer of highway commission, three thousand dollars.
Principal assistant of highway commission, three thousand dollars.
Chairman industrial accident board, five thousand dollars.
Chief accountant industrial accident board, two thousand dollars.
Resistrar of state land office, twenty-five thousand dollars.
Assistant registrar of state land office, five thousand dollars.
Deputy registrar of state lands, five thousand dollars.
Secretary and chief clerk live stock commission, ten thousand dollars.
Six market inspectors each, of the live stock commission, two thousand dollars.
Twelve inspectors each, of the live stock commission, one thousand dollars.
Railroad commissioners each, five thousand dollars.
Secretary of railroad commission, one thousand dollars.
Superintendent public instruction, three thousand dollars.
Secretary of state, ten thousand dollars.
Deputy secretary of state, two thousand dollars.
Chief clerk secretary of state, one thousand dollars.
All other clerks each, of secretary of state, one thousand dollars.

State veterinarian, one thousand dollars.
State treasurer, two hundred thousand dollars.
Deputy state treasurer, two thousand dollars.
Chief clerk of state treasurer, two thousand dollars.
Clerk of state treasurer, two thousand dollars.
Income tax auditor, two thousand dollars.

History: En. Sec. 1, Ch. 229, L. 1921.

465. Bonds of officers not designated. All other state officers not herein mentioned shall give bonds in such amounts as shall be fixed by the state board of examiners.

History: En. Sec. 2, Ch. 229, L. 1921.

466. Bonds of county officers. The following named county officers shall give official bonds conditioned as provided by law in the following amounts, to-wit:

Sheriffs in counties of the first and second class, fifteen thousand dollars.
Sheriffs in counties of the third class, ten thousand dollars.
Sheriffs in counties of the fourth class, eight thousand dollars.
Sheriffs in counties of fifth and sixth class, seven thousand dollars.
Sheriffs in counties of seventh class, six thousand dollars.
County clerks in counties of the first and second class, ten thousand dollars.
County clerks in counties of the third and fourth class, eight thousand dollars.
County clerks in counties of the fifth class, seven thousand dollars.
County clerks in counties of the sixth and seventh class, five thousand dollars.
County assessors in counties of the first and second class, ten thousand dollars.
County assessors in counties of the third class, seven thousand dollars.
County assessors in counties of the fourth and fifth class, five thousand dollars.
County assessors in counties of the sixth class, four thousand dollars.
County assessors in counties of the seventh class, four thousand dollars.
Clerks of district court in counties of the first, second and third class, ten thousand dollars.
Clerks of district court in counties of the fourth class, eight thousand dollars.
Clerks of district court in counties of the fifth class, seven thousand dollars.
Clerks of district court in counties of the sixth and seventh class, five thousand dollars.
County auditors in counties of the first and second class, ten thousand dollars.
County auditors in counties of the third and fourth class, eight thousand dollars.
County treasurers in counties of the first, second and third class, one hundred thousand dollars.
County treasurers in counties of the fourth class, eighty thousand dollars.

County treasurers in counties of the fifth class, seventy-five thousand dollars.

County treasurers in counties of the sixth and seventh class, twenty-five thousand dollars.

County attorneys in counties of the first, second and third class, two thousand five hundred dollars.

County attorneys in counties of the fourth and fifth class, two thousand dollars.

County attorneys in counties of the sixth and seventh class, one thousand dollars.

County surveyors in counties of the first, second, third, fourth, fifth, sixth and seventh class, one thousand dollars.

County superintendents of schools in counties of the first, second, third, fourth, fifth, sixth and seventh class, one thousand dollars.

County coroners in counties of the first, second, third and fourth class, five thousand dollars.

County coroners in counties of the fifth and sixth class, four thousand dollars.

County coroners in counties of the seventh class, two thousand dollars.

Public administrator in counties of the first, second and third class, ten thousand dollars.

Public administrator in counties of the fourth and fifth class, eight thousand dollars.

Public administrator in counties of the sixth and seventh class, five thousand dollars.

County commissioners in counties of the first, second, third and fourth class, five thousand dollars.

County commissioners in counties of the fifth and sixth class, three thousand dollars.

County commissioners in counties of the seventh class, two thousand dollars.

Drain commissioners in counties of the first and second class, five thousand dollars.

Deputy drain commissioners in counties of the first and second class, one thousand dollars.

Special drain commissioners in counties of the first and second class, one thousand dollars.

Meat and milk inspectors in counties of first and second class, one thousand dollars.

County librarians in counties of the first and second class, one thousand dollars.

History: En. Sec. 3, Ch. 229, L. 1921.

467. Bonds of county officers not designated. All county officers not herein enumerated shall give bonds in such amounts as shall be fixed by the board of county commissioners.

History: En. Sec. 4, Ch. 229, L. 1921.

468. Time for filing bond. Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute.

History: En. Sec. 1050, Pol. C. 1895; re-en. Sec. 377, Rev. C. 1907. Cal. Pol. C. Sec. 947.

This article was intended to include the bonds of city treasurers. City of Philipsburg v. Degenhart, 30 Mont. 299, 302, 76 Pac. 694.

469. Approval and filing of bonds of state officers. Unless otherwise prescribed by statute, the official bonds of state officers must be approved by the governor, and filed and recorded in the office of the secretary of state.

History: En. Sec. 1051, Pol. C. 1895; re-en. Sec. 378, Rev. C. 1907. Cal. Pol. C. Sec. 948.

470. Bonds of secretary of state, where filed. The official bond of the secretary of state must, after it is recorded, be filed in the office of the state treasurer.

History: En. Sec. 1052, Pol. C. 1895; re-en. Sec. 379, Rev. C. 1907. Cal. Pol. C. Sec. 949.

471. Approval of bonds of county and township officers. Unless otherwise prescribed by statute, the official bonds of county, township, and school district officers must be approved by the judge of the district court, and filed and recorded in the office of the county recorder.

History: En. Sec. 1053, Pol. C. 1895; amd. Sec. 1, p. 79, L. 1899; re-en. Sec. 380, Rev. C. 1907. Cal. Pol. C. Sec. 950.

472. Record of official bonds. Official bonds must be recorded in a book kept for the purpose, and entitled "Record of Official Bonds."

History: En. Sec. 1054, Pol. C. 1895; re-en. Sec. 381, Rev. C. 1907. Cal. Pol. C. Sec. 951.

473. Approval must be indorsed on bond. The approval of every official bond must be indorsed thereon and signed by the officer approving the same.

History: En. Sec. 1055, Pol. C. 1895; re-en. Sec. 382, Rev. C. 1907. Cal. Pol. C. Sec. 952.

474. Bond not to be filed before approval. No officer with whom any official bond is required to be filed must file such bond until approved.

History: En. Sec. 1056, Pol. C. 1895; re-en. Sec. 383, Rev. C. 1907. Cal. Pol. C. Sec. 953.

Official bonds take effect from date of delivery and acceptance, see note in 90 A. S. R. 189.

475. Conditions, signatures, and sureties. The condition of every official bond must be that the principal shall well, truly, and faithfully perform all official duties then required of him by law, and also such additional duties as may be imposed on him by any law of the state subsequently enacted, and that he will account for and pay over and deliver to the person or officer, entitled to receive the same, all moneys or other property that may come into his hands as such officer. The principal and sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee, appointed or employed by such principal.

All official bonds must be signed and executed by the principal and two or more sureties, or by the principal, and one or more surety com-

panies organized as such under the laws of this state, or licensed to do business herein.

History: Ap. p. Sec. 1057, Pol. C. 1895; amd. Sec. 2, p. 79, L. 1899; re-en. Sec. 384, Rev. C. 1907. Cal. Pol. C. Sec. 954.

The official bond of a city treasurer must be conditioned in accordance with this section. City of Philipsburg v. Degenhart, 30 Mont. 299, 302, 76 Pac. 694.

By the last sentence of the first paragraph of this section the illegal act or official misconduct of the deputy is expressly put in the same category as the illegal act or misconduct of the principal. County of Silver Bow v. Davies, 40 Mont. 418, 427, 107 Pac. 81.

Under this section, the liability of the sureties on the bond of a district court clerk for losses sustained by the county through the issuance of spurious jurors' and witnesses' certificates by the clerk's chief deputy depended, not on the fact that in executing and issuing the certificates the deputy was not technically guilty of forgery because he omitted to impress on the certificates the seal of the court as required by statute, but on the question whether their issuance in the form in which they were issued, and under color of office, operated as an effective cause of the county's loss. County of Silver Bow v. Davies, 40 Mont. 418, 427; 107 Pac. 81.

The surety on an official bond, joint and several in character, is not released from liability thereon because of the failure of the principal to sign the bond. Deer Lodge County v. United States F. & G. Co., 42 Mont. 315, 325, 112 Pac. 1060, Ann. Cas. 1912A, 1010.

A surety company, which had signed the bond of a clerk of the district court, was responsible for the official misconduct of his deputy to any party injured thereby by virtue of the above section. American Bonding Co. v. State Sav. Bank, 47 Mont. 332, 339; 133 Pac. 367, 46 L. R. A. (N. S.) 557.

The obligation to account for all moneys coming into his hands by virtue of his office is imposed upon a county treasurer by this section, as one of the conditions of his official bond. Gallatin County v. United States F. & G. Co., 50 Mont. 55, 62, 144 Pac. 1085.

Cited or applied as section 2, Laws of 1899, p. 79, in Russell v. Chicago, Burlington & Quincy Ry. Co., 37 Mont. 1, 10, 12, 94 Pac. 501.

Effect of delivery of official bond unsigned by principal obligor, see note in 2 Ann. Cas. 225; Ann. Cas. 1912A, 1014; 12 L. R. A. (N. S.) 1108.

Liability of surety on official bond as affected by the neglect or omission of an other officer, see notes in 91 A. S. R. 529; 2 Ann. Cas. 170.

Liability on bond of officer for defaults and misfeasances of his clerks, assistants, or deputies, see note in 1 A. L. R. 222.

476. Qualifications of sureties. The individual sureties on all official bonds must justify before an officer authorized to administer oaths by an affidavit, to the effect that they are residents and householders or freeholders within the state of Montana, and that each is worth the sum for which he becomes surety in said bond over and above his just debts and liabilities, exclusive of property exempt from execution. No surety company or corporation organized under or that has complied with the laws of this state, and has been duly licensed to do business as such herein, shall be required to justify as a surety, and no such company or corporation shall be accepted as a surety in any case when its liabilities exceed its assets, as ascertained in the manner provided by law.

No member of the board of county commissioners can be accepted as a surety upon the official bond of any county, township, or school district officer in his county; nor must any county officer become a surety upon the official bond of any other county officer.

History: Ap. p. Sec. 1058, Pol. C. 1895; amd. Sec. 3, p. 80, L. 1899; re-en. Sec. 385, Rev. C. 1907. Cal. Pol. C. Sec. 955.

Validity of statute authorizing surety company as surety on official bonds, see note in 2 Ann. Cas. 487.

477. When sureties liable for less than full amount. When the penal sum of any bond required to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions not less than

five hundred dollars thereof, making in the aggregate a liability of double the amount named as the penal sum of the bond. And if any such bond becomes forfeited, an action may be brought thereon against any or all of the obligors and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribute to his co-sureties in proportion to the amount for which he is liable.

History: Ap. p. Sec. 1059, Pol. C. 1895; amd. Sec. 1, p. 112, L. 1897; amd. Sec. 4, p. 80, L. 1899; re-en. Sec. 386, Rev. C. 1907. Cal. Pol. C. Sec. 956.

478. Custody of official bonds. Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowable by law for certified copies of papers in other cases.

History: En. Sec. 1060, Pol. C. 1895; re-en. Sec. 387, Rev. C. 1907. Cal. Pol. C. Sec. 957.

479. Form of bonds. All official bonds must be in form joint and several, and made payable to the state of Montana in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

History: En. Sec. 1061, Pol. C. 1895; re-en. Sec. 388, Rev. C. 1907. Cal. Pol. C. Sec. 958.

Cited or applied as section 388, Revised Codes, in Deer Lodge County v. United States F. & G. Co., 42 Mont. 315, 321, 112 Pac. 1060, Ann. Cas. 1912A, 1010.

480. Extent of sureties' liability—Construction of bonds. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

History: En. Sec. 1062, Pol. C. 1895; re-en. Sec. 389, Rev. C. 1907. Cal. Pol. C. Sec. 959.

Cited or applied as section 389, Revised Codes, in Deer Lodge County v. United States F. & G. Co., 42 Mont. 315, 321, 112 Pac. 1060, Ann. Cas. 1912A, 1010.

Duration of liability of surety on bond of officer appointed for definite term but for whom law fixes no definite term, see note in 5 Ann. Cas. 949.

Duration of liability of surety on official bond where term of office is extended after bond is executed, see note in 13 Ann. Cas. 1066.

Holding over by officer after expiration of regular term as extending liability of sureties on official bond, see note in 35 L. R. A. 88.

Sureties on official bonds liable for official acts only, see note in 91 A. S. R. 510; 6 Ann. Cas. 919; Ann. Cas. 1912C, 581; Ann. Cas. 1918C, 1020.

Liability of sureties for loss of funds without fault, see notes in 91 A. S. R. 516; 22 L. R. A. 449.

Liability on bond of public officer for interest received by him on public money, see 91 A. S. R. 527; L. R. A. 1918B, 811.

Liability of sureties on official bond after expiration of term of office, see note in 103 A. S. R. 933.

Liability of sureties on bond of public officer for default of principal during prior term, see note in 23 L. R. A. (N. S.) 131.

Liability upon bond given by public officer from whom no bond is required, see note in 50 L. R. A. (N. S.) 1060.

Liability on official bond after resignation of officer, see note in 35 L. R. A. 93.

481. Same—Duties subsequently imposed. Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

History: En. Sec. 1063, Pol. C. 1895; re-en. Sec. 390, Rev. C. 1907. Cal. Pol. C. Sec. 960.

Liability of sureties for performance of duties imposed after execution of bond, see note in 91 A. S. R. 503.

482. Suit on bonds. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Montana, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity; and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

History: En. Sec. 1064, Pol. C. 1895; re-en. Sec. 391, Rev. C. 1907. Cal. Pol. C. Sec. 961.

483. Same—Successive suits. No such bond is void on the first recovery of a judgment thereon; but suit may be afterwards brought, from time to time, and judgment recovered thereon by the state of Montana, or by any person to whom a right of action has accrued against such officer and his sureties, until the whole penalty of the bond is exhausted.

History: En. Sec. 1065, Pol. C. 1895; re-en. Sec. 392, Rev. C. 1907. Cal. Pol. C. Sec. 962.

484. Defects not to affect liability. Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and sureties; but they are equitably bound to the state or party interested; and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

History: En. Sec. 1066, Pol. C. 1895; re-en. Sec. 393, Rev. C. 1907. Cal. Pol. C. Sec. 963.

The language of this section was borrowed from the California Political Code. Adopting the construction placed upon it by the courts of that state, the failure of the district judge to approve the bond of a county treasurer will not be held to invalidate it or to release the surety thereon. Deer Lodge County v. United States F. & G. Co., 42 Mont. 315, 328, 112 Pac. 1060, Ann. Cas. 1912A, 1010.

Defects in official bonds which do not relieve sureties, see note in 90 A. S. R. 191.

485. Defective official bonds. No official bond entered into by any officer, nor any bond, recognizance, or written undertaking taken by any officer in the discharge of the duties of his office, shall be void for want of form or substance or recital or condition, nor the principal or surety be discharged, but the principal and surety shall be bound by such bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the same, and the sureties to the amount specified in the bond or recognizance or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in his complaint and recover to the same extent as if

such bond, recognizance, or written undertaking were perfect in all respects.

History: En. Sec. 1, Ch. 193, L. 1907; Sec. 394, Rev. C. 1907.

Right of action on official bond naming obligee other than one designated by statute, see note in 3 Ann. Cas. 456.

486. Insufficiency of sureties. Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the court, judge, board, person or body whose duty it is to approve the official bond of any officer, that the sureties on any bond given pursuant to the provisions of this chapter as amended by this act, or any one of them have since such bond was approved died, removed from the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the court, judge, board, officer or other person may issue a citation to such officer, requiring him on a day therein named, not less than five nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the court, judge, board, officer, or other person must make an order vacating the office, and the same must be filled as provided by law.

History: Ap. p. Sec. 1067, Pol. C. 1895; amd. Sec. 5, p. 81, L. 1899; re-en. Sec. 395, Rev. C. 1907. Cal. Pol. C. Sec. 964.

487. Form of additional bond. The additional bond must be in such penalty as directed by the court, judge, board, officer, or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

History: En. Sec. 1068, Pol. C. 1895; re-en. Sec. 396, Rev. C. 1907. Cal. Pol. C. Sec. 965.

488. Force of original bond. In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

History: En. Sec. 1069, Pol. C. 1895; re-en. Sec. 397, Rev. C. 1907. Cal. Pol. C. Sec. 966.

489. Liability of officers and sureties. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action and recover judgment therefor in each suit.

History: En. Sec. 1070, Pol. C. 1895; re-en. Sec. 398, Rev. C. 1907. Cal. Pol. C. Sec. 967.

Any party injured by the breach of conditions of an official bond can maintain an action for his damages thereby. American Bonding Co. v. State Sav. Bank, 47 Mont. 332, 339, 133 Pac. 367, 46 L. R. A. (N. S.) 557.

Liability on general bond of public officer for acts covered by a special bond, see notes in 91 A. S. R. 507; 4 A. L. R. 1441.

490. Separate judgments on bonds. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively; but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

History: En. Sec. 1071, Pol. C. 1895; re-en. Sec. 399, Rev. C. 1907. Cal. Pol. C. Sec. 968.

491. Contribution between sureties. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

History: En. Sec. 1072, Pol. C. 1895; re-en. Sec. 400, Rev. C. 1907. Cal. Pol. C. Sec. 969.

Measure of contribution when sureties are bound in different amounts, see note in 18 Ann. Cas. 853.

Running of statute of limitations against action between sureties for contribution, see notes in 15 Ann. Cas. 1030; Ann. Cas. 1918E, 518.

492. Discharge of sureties. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done, if such officer will execute a new bond in accordance with the provisions of this chapter in like form, penalty and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability; but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the principal and surety or sureties in such new bond is in all respects the same and may be enforced in like manner as the liability of the principal and sureties of the original bond.

History: Ap. p. Sec. 1073, Pol. C. 1895; amd. Sec. 6, p. 81, L. 1899; re-en. Sec. 401, Rev. C. 1907. Cal. Pol. C. Sec. 970.

Since, under the provisions of this section, a surety on an official bond may withdraw therefrom at any time, a complaint against a surety company to recover on the bond of a constable, in failing to state that the relationship of principal and surety existed between him and the company at the time of his alleged wrongful seizure and detention of plaintiff's chattels, did not state a cause of action, the allegation that such relationship existed at the time of filing the complaint being insufficient. Ferrat v. Adamson, 53 Mont. 172, 178, 163 Pac. 112.

Cited or applied as section 401, Revised Codes, in Murphy v. Johns, 56 Mont. 134, 138, 182 Pac. 115.

Substituted bond as release of surety on original bond, see note in 19 Ann. Cas. 418.

493. Vacancies—Bond of appointee—Persons appointed to fill vacancies—Bonds of. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

History: En. Sec. 1074, Pol. C. 1895; re-en. Sec. 402, Rev. C. 1907. Cal. Pol. C. Sec. 971.

494. Release of sureties. Any surety on the official bond of a city, town, township, county, or state officer, may be relieved from liabilities thereon afterwards accruing, by complying with the provisions of the three sections following.

History: En. Sec. 1075, Pol. C. 1895; re-en. Sec. 403, Rev. C. 1907. Cal. Pol. C. Sec. 972.

It is apparent from this section that the article of the code in which it is found includes the bonds of city treasurers. City of Philipsburg v. Degenhart, 30 Mont. 299, 302, 76 Pac. 694.

Cited or applied as section 403, Montana Codes, in National Surety Co. v. Lincoln County, 238 Fed. 705, 711, 151 C. C. A. 555.

Validity of statute providing for release of surety on official bond from liability, see notes in Ann. Cas. 1912A, 73; 41 L. R. A. (N. S.) 97.

495. Same—Application for release. Such surety must file with the judge, court, board, officer, or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterward arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same.

History: En. Sec. 1076, Pol. C. 1895; re-en. Sec. 404, Rev. C. 1907. Cal. Pol. C. Sec. 973.

Cited or applied as section 404, Montana Codes, in National Surety Co. v. Lincoln County, 238 Fed. 705, 711, 151 C. C. A. 555.

496. Same—Service of statement. A copy of the statement must be served on the officer named in such official bond, and due return or affidavit of service made thereon as in other cases.

History: En. Sec. 1077, Pol. C. 1895; re-en. Sec. 405, Rev. C. 1907. Cal. Pol. C. Sec. 974.

497. Office declared vacant for want of official bond. In ten days after the service of such notice, the judge, court, board, officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law as in other cases of vacancy of such office, unless such officer has before that time given good and ample surety for the discharge of all his official duties as required originally.

History: En. Sec. 1078, Pol. C. 1895; re-en. Sec. 406, Rev. C. 1907. Cal. Pol. C. Sec. 975.

498. Supplemental bond. Whenever, from any cause, a surety on the official bond of any officer elected or appointed under the laws of this state withdraws from his bond or becomes insolvent, or from other cause becomes incompetent to remain as surety thereon, such officer may file a supplemental bond, executed and approved in the same manner as the original bond, for the amount for which the surety so withdrawing or incompetent was bound by the original bond.

History: En. Sec. 1079, Pol. C. 1895; re-en. Sec. 407, Rev. C. 1907. Cal. Pol. C. Sec. 976.

499. Effect of release, discharge, etc. The release, discharge, voluntary withdrawal, or incompetency of a surety on any official bond does

not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

History: En. Sec. 1080, Pol. C. 1895; re-en. Sec. 408, Rev. C. 1907. Cal. Pol. C. Sec. 977.

Principal's discharge in bankruptcy as discharge of surety on official bond, see notes in 15 Ann. Cas. 953; Ann. Cas. 1912B, 781.

Bankruptcy discharge of surety as affecting his liability on official bond, see note in 3 Ann. Cas. 65.

500. Same—Withdrawal of surety and filing of new bond. Whenever a surety on any official bond gives notice of an intention to withdraw therefrom, or is removed, or becomes otherwise incompetent, the principal on the bond must, within ten days after such notice or disqualification, execute and file, subject to the same conditions as the original, a supplemental bond, wherein must be recited the names of the remaining original sureties and of the new surety or sureties, and the respective amounts for which he, or they, become bound, who are substituted in lieu of the surety, or sureties, released or disqualified.

History: En. Sec. 1081, Pol. C. 1895; re-en. Sec. 409, Rev. C. 1907. Cal. Pol. C. Sec. 978.

501. Same—Supplemental bond not required when. Whenever the original bond is given for an amount in excess of the sum required by law, if the withdrawal or removal of any surety does not reduce the bond below the amount required by law to be secured by sureties, then no supplemental or additional bond is required or necessary; and whenever any supplemental bond is so filed and approved, the officer with whom the bond is filed, or in whose office the same is recorded, must give ten days' notice by publication in some paper published in the county, or if there is no paper in the county, then in the county nearest thereto in which a newspaper is published, and in case of a bond of a state officer, in some paper at the seat of government, of the fact of the filing of the bond and the name of the party withdrawing from the former and the substitute on the new bond; and until the filing and approval of the supplemental bond the sureties on the former bond are liable for all the acts of their principal.

History: En. Sec. 1082, Pol. C. 1895; re-en. Sec. 410, Rev. C. 1907. Cal. Pol. C. Sec. 979.

502. Effect of discharge of sureties. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order mentioned in section 497, but such legal proceedings may be had therefor in all respects as though no such order had been made.

History: En. Sec. 1083, Pol. C. 1895; re-en. Sec. 411, Rev. C. 1907. Cal. Pol. C. Sec. 980.

503. Application of chapter to what bonds. The provisions of this chapter as the same shall be in force after amendment by this act, shall apply to all official bonds, and to the bonds and undertakings of receivers, executors, administrators, and guardians, and to bonds and undertakings given in injunction proceedings, and to all bonds and undertakings required by law to be given and approved by any court, judge, board, person, or body; and, except as to requirements of such approval, the provisions shall apply to all bonds given or required by law to be given in attachment proceedings, criminal actions or proceedings, bail bonds,

appeal bond, and all bonds given or required to be given in any legal proceedings or action in any court of this state.

History: Ap. p. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907. Cal. Pol. C. Sec. 981.

Note.—The foregoing section is unconstitutional in so far as it attempts to regulate undertakings on appeal and other similar undertakings provided for by the Code of Civil Procedure. See Russell v. Chicago, Burlington & Quincy Ry. Co., 37 Mont. 10, 13, 94 Pac. 501.

Cited or applied as section 7, Laws of 1899, p. 79, in Russell v. Chicago, Burlington & Quincy Ry. Co., 37 Mont. 1, 10, 12, 94 Pac. 501.

504. Bonds of receivers, assignees, etc. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the state of Montana, and, upon the order of the court where such action or proceeding is pending, may be prosecuted for the benefit of any and all interested therein.

History: En. Sec. 1085, Pol. C. 1895; re-en. Sec. 413, Rev. C. 1907. Cal. Pol. C. Sec. 982.

505. Actions on official bonds, effect of. When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation, or any bond or obligation executed in favor of the state of Montana, or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit, stating either positively or on information and belief that such bond or obligation was executed by the defendant, or one or more of the defendants (designating whom), and made payable to the people of the state, or to the state of Montana, and that the defendant or defendants have real estate or some interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state; and thereupon the clerk of the court receiving such affidavit must certify to the county clerk in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit.

History: En. Sec. 1086, Pol. C. 1895; re-en. Sec. 414, Rev. C. 1907. Cal. Pol. C. Sec. 983.

Leave of court as prerequisite to action on official bond, see note in 2 A. L. R. 563.

Judgment against principal as evidence in action against surety on official bond, see notes in Ann. Cas. 1915D, 401; 52 L. R. A. 165; 40 L. R. A. (N. S.) 704; L. R. A. 1918E, 816.

506. Same. Upon receiving such certificate, the county clerk must indorse upon it the time of its reception, and such certificate must be filed in the same manner as notices of the pendency of action affecting real estate; and any judgment recovered in such action is a lien upon all real estate situated in any county in which such certificate is so filed, belonging to the defendant, or to one or more of such defendants, for the amount the owner thereof is or may be liable upon the judgment, from the filing of this certificate.

History: En. Sec. 1087, Pol. C. 1895; re-en. Sec. 415, Rev. C. 1907. Cal. Pol. C. Sec. 984.

507. Bonds of deputies, clerks, etc. Every officer or body appointing a deputy, clerk, or subordinate officer, may require an official bond to be given by the person appointed, and may fix the amount thereof.

History: En. Sec. 1088, Pol. C. 1895; re-en. Sec. 416, Rev. C. 1907. Cal. Pol. C. Sec. 985.

Under this section, an officer may indemnify himself by requiring a bond of his deputy; failing to do this, neither the officer nor his surety may complain that they have suffered loss. County of Silver Bow v. Davies, 40 Mont. 418, 433, 107 Pac. 81.

508. Bond of county clerk, where filed. The official bond of the county clerk must, after being recorded, be filed in the office of the county treasurer, and the safe-keeping of the same is hereby made the duty of the county treasurer.

History: En. Sec. 1089, Pol. C. 1895; re-en. Sec. 417, Rev. C. 1907. Cal. Pol. C. Sec. 986.

509. Actions to compel specific performance, etc. In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate mentioned in section 506, which agreement was made prior to the filing of such certificate, but the purchase price thereof is not due until after the filing of said certificate, the judge of the district court in which said action for specific performance is tried, must, if the purchaser is otherwise entitled to specific performance of such agreement, order the said purchaser to pay the purchase price, or so much thereof as may be due, to the state treasurer, taking his receipt therefor. Upon such payment the purchaser is entitled to enforce the specific performance of the agreement, and take said real estate free from the liens created by the filing of said certificate. The moneys so paid to the state treasurer must be held by him, pending the litigation mentioned in said certificate, and subject to the lien created by the filing of said certificate. If judgment is recovered against the defendant, the state treasurer in his settlement must pay to the county treasurer entitled to the same the amount due the county.

History: En. Sec. 1090, Pol. C. 1895; re-en. Sec. 418, Rev. C. 1907. Cal. Pol. C. Sec. 987.

CHAPTER 41.

RESIGNATIONS AND VACANCIES.

Section 510. Resignations, How Made.
511. Vacancies, How They Occur.
512. Notice of Removal, by and to Whom Given.
513. Vacancies in Legislative Assembly, How Filled.
514. Vacancies, How Filled When Not Otherwise Provided for.
515. Vacancies Occurring During Recess of the Legislative Assembly.
516. Vacancies in Certain State Offices, How Filled.
517. Powers and Duties of Officer Filling Unexpired Term.

510. Resignations, how made. Resignations must be in writing and made as follows:

1. By the governor and lieutenant-governor, to the legislative assembly, if it is in session; and if not, then to the secretary of state.

2. By all officers commissioned by the governor, to the governor.

3. By senators and members of the house of representatives, if the legislative assembly is not in session, to the governor; if it is in session,

to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the governor.

4. By all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties.

5. By all other appointed officers, to the body or officer that appointed them.

6. In all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

History: Ap. p. Sec. 41, p. 468, Cod. Stat. 1871; re-en. Sec. 553, 5th Div. Rev. Stat. 1879; re-en. Sec. 1045, 5th Div. Comp. Stat. 1887; amd. Sec. 1100, Pol. C. 1895; re-en. Sec. 419, Rev. C. 1907; amd. Sec. 1, Ch. 8, L. 1921. Cal. Pol. C. Sec. 995.

Where the state land agent sent his resignation in writing to the governor, and the latter accepted it, there was a vacancy in the office, though the board did not consent to the acceptance. State ex rel. Neill v. Page, 20 Mont. 238, 244, 50 Pac. 719.

Person or body to whom resignation from public office should be tendered, see notes in 6 Ann. Cas. 688; Ann. Cas. 1913C, 604.

Necessity of acceptance of resignation from public office, see note in 36 A. S. R. 525; 13 Ann. Cas. 873.

Resignation from one office as affecting eligibility to another office during term of former office, see note in 5 A. L. R. 117.

Right of public officer to withdraw resignation from office, see notes in 36 A. S. R. 527; 5 Ann. Cas. 689; 15 Ann. Cas. 139; 16 L. R. A. (N. S.) 1058; L. R. A. 1917F, 547.

511. Vacancies, how they occur. An office becomes vacant on the happening of either of the following events before the expiration of the term of the incumbent:

1. The death of the incumbent.

2. His insanity, found upon a commission of lunacy issued to determine the fact.

3. His resignation.

4. His removal from office.

5. His ceasing to be a resident of the state, or, if the office be local, of the district, city, county, town, or township, for which he was chosen or appointed, or within which the duties of his office are required to be discharged.

6. His absence from the state, without the permission of the legislative assembly, beyond the period allowed by law.

7. His ceasing to discharge the duty of his office for the period of three consecutive months, except when prevented by sickness, or when absent from the state by permission of the legislative assembly.

8. His conviction of a felony, or of any offense involving moral turpitude, or a violation of his official duties.

9. His refusal or neglect to file his official oath or bond within the time prescribed.

10. The decision of a competent tribunal declaring void his election or appointment.

History: Ap. p. Sec. 42, p. 385, Bannacks Stat.; re-en. Sec. 42, p. 468, Cod. Stat. 1871; amd. Sec. 554, 5th Div. Rev. Stat. 1879; re-en. Sec. 1046, 5th Div. Comp. Stat. 1887; amd. Sec. 1101, Pol. C. 1895; re-en. Sec. 420, Rev. C. 1907. Cal. Pol. C. Sec. 996.

Where the state land agent tendered his resignation to the governor, to be effective at the discretion of the governor, and the governor in writing accepted the resignation, to take effect on a certain date, the incumbent, on that date, ceased to be state land agent with-

out any action by the state board of land commissioners. State ex rel Neill v. Page, 20 Mont. 238, 245, 50 Pac. 719.

By a resignation before the expiration of a term, as provided in this section, is meant a resignation before the end of a fixed time, or before the expiration of the time during which an official has a right to serve. State ex rel. Neill v. Page, 20 Mont. 238, 246, 50 Pac. 719.

An office becomes vacant on the happening of certain events enumerated in this section, which enumeration is exclusive. The contingency of a tie vote not being provided for, when the two candidates for the office of county superintendent of schools received an equal number of votes, there was no vacancy, and the previous incumbent was entitled to hold the office, until a successor was regularly elected. State ex rel. Chenoweth v. Acton, 31 Mont. 37, 39, 77 Pac. 299. See, however, State ex rel. Jones v. Foster, 39 Mont. 583, 587, 590, 591, 592, 104 Pac. 860; State ex rel. Klick v. Wittmer, 50 Mont. 22, 26, 144 Pac. 648.

Though it may be granted that a vacancy is not created by any circumstance not mentioned in this section, it does not follow that a resignation, which is mentioned therein as a cause of vacancy, may not impliedly arise upon the acceptance of an incompatible office. On the contrary, the authorities are practically unanimous that, as to an office which the incumbent may vacate by his own act, a resignation does occur upon his acceptance of another office incompatible therewith. The office of city purchasing agent being incompatible with that of alderman of a city, the acceptance of the former by such officer was equivalent to his resignation as alderman, and a vacancy was thereby created which the city council was authorized to fill by a majority vote of the members then composing the council. State ex rel. Klick v. Wittmer, 50 Mont. 22, 26, 144 Pac. 648.

Upon the approval of an act creating an additional judgeship for a designated county, there is ipso facto a vacancy in the office until it is filled by the governor by appointment. State ex rel. Patterson v. Lentz, 50 Mont. 322, 335, 146 Pac. 932.

Upon the creation of an additional judgeship in a judicial district, a vacancy existed until filled by appointment by the governor, this section, enumerating the instances when vacancies occur, not being exclusive. State ex rel. Patterson v. Lentz, 50 Mont. 322, 336, 146 Pac. 932.

Cited or applied as section 1101, Political Code, in In re Craigie's Estate, 24 Mont. 37, 42, 60 Pac. 495; as section 420, Revised Codes, in State ex rel. Cutts v. Hart, 56 Mont. 571, 573, 185 Pac. 769, 7 A. L. R. 1678.

Effect of death of person elected before taking office, or of his failure to qualify, see notes in 17 Ann. Cas. 86; 50 L. R. A. (N. S.) 374.

Vacancy in office by failure to file bond within the time prescribed, see note in 16 L. R. A. 140.

512. Notice of removal, by and to whom given. Whenever an officer is removed, declared insane, or convicted of a felony or offense involving moral turpitude, or a violation of his official duty, or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had must give notice thereof to the officer authorized to fill the vacancy.

History: En. Sec. 1102, Pol. C. 1895; re-en. Sec. 421, Rev. C. 1907. Cal. Pol. C. Sec. 997.

Removal of officers for cause, see note in 135 A. S. R. 250.

Necessity of notice to officer to effect his summary removal, see note in 19 Ann. Cas. 920.

Right of officer holding for fixed term to notice and hearing before removal for cause, see notes in 12 Ann. Cas. 995; Ann. Cas. 1913D, 1209.

Right of appointing power to remove officer in cases where term of office is fixed and not fixed, see notes in Ann. Cas. 1912C, 374; Ann. Cas. 1914B, 524.

Right to jury trial in proceeding for removal of public officer, see notes in in 3a A. L. R. 232; 8 A. L. R. 1476.

Personal liability of public officer for removing another officer, see note in 4 A. L. R. 1371.

513. Vacancies in legislative assembly, how filled. Whenever a vacancy, or failure to elect by reason of a tie vote occurs in either house of the legislative assembly, the governor must at once issue a writ of election to fill such vacancy.

History: En. Sec. 1103, Pol. C. 1895; re-en. Sec. 422, Rev. C. 1907. Cal. Pol. C. Sec. 998.

Cited or applied as section 422, Revised Codes, in State ex rel. Cutts v. Hart, 56 Mont. 571, 573, 185 Pac. 769, 7 A. L. R., 1678.

Appointment or election of officers in case of tie on vote to fill vacancy, see note in 47 L. R. A. 563.

514. Vacancies, how filled when not otherwise provided for. When any office becomes vacant, and no mode is provided by law for filling such vacancy, the governor must fill such vacancy by granting a commission, to expire at the end of the next legislative assembly or at the next election by the people.

History: En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907. Cal. Pol. C. Sec. 999.

This section applies to all cases of vacancies where no mode is provided by law for filling the same. While the consent of the state board of land commissioners to an appointment by the governor is necessary where a person is appointed to succeed one whose term has expired, where a vacancy is to be filled in the office of state land agent the special provision relating to vacancies obtains, and the governor alone must appoint, by granting a commission until the end of the next session of the legislature. State ex rel. Neill v. Page, 20 Mont. 238, 247, 50 Pac. 719.

In view of section 45, article V, and section 29, article III, of the constitution, the method provided by this section for filling vacancies in office where no other filling is provided by law has no application to a legislative vacancy. State ex rel. Cutts v. Hart, 56 Mont. 571, 574, 185 Pac. 769, 7 A. L. R. 1678.

This section does not, in view of article V, section 45, and article III, section 29, of the constitution, authorize an appointment by the governor to fill a legislative vacancy, even though such vacancy occurred during a session of the legislature, and an appointment made by the governor to fill such a vacancy is contrary to the constitutional provisions above cited; the appointee was, in such case, at most, only a de facto officer. State ex rel. Cutts v. Hart, 56 Mont. 571, 574, 185 Pac. 769, 7 A. L. R. 1678.

515. Vacancies occurring during recess of the legislative assembly. Vacancies occurring in office during the recess of the legislative assembly, the appointment to which is vested in the governor and senate, or in the legislative assembly, must be filled by appointment made by the governor; but the person so appointed can only hold the office until the adjournment of the next session of the legislative assembly.

History: En. Sec. 1105, Pol. C. 1895; re-en. Sec. 424, Rev. C. 1907. Cal. Pol. C. Sec. 1000.

Cited or applied as section 1105, Political Code, in State ex rel. Neill v. Page, 20 Mont. 238, 245, 50 Pac. 719.

Right of governor to make an ad interim appointment to an office whose fixed term expires before the senate's adjournment, where the incumbent is authorized to hold over until his successor is appointed, see note in 46 L. R. A. (N. S.) 1202.

516. Vacancies in certain state offices, how filled. A vacancy in the office of either the secretary of state, state auditor, state treasurer, attorney-general, clerk of the supreme court, or superintendent of public instruction, must be filled by a person appointed by the governor, who holds his office until the first Monday in January next after a general election. At such election the office must be filled by election for the unexpired term.

History: En. Sec. 1106, Pol. C. 1895; re-en. Sec. 425, Rev. C. 1907. Cal. Pol. C. Sec. 1001.

517. Powers and duties of officer filling unexpired term. Any person elected or appointed to fill a vacancy, after filing his official oath and

bond, possesses all the rights and powers, and is subject to all the liabilities, duties, and obligations, as if he had been elected to the office for a full term.

History: En. Sec. 1107, Pol. C. 1895; re-en. Sec. 426, Rev. C. 1907. Cal. Pol. C. Sec. 1004.

CHAPTER 42.

THE FISCAL YEAR AND GENERAL REPORTS OF OFFICERS.

Section 518. Fiscal Year.
519. Reports of State Officers, When Made.
520. Publication Reports State Officers.
521. Distribution of Public Reports.
522. Semi-annual Reports.
523. Semi-annual Reports of Property on Hand.
524. Secretary of State to Provide Blanks.
525. Penalty.

518. Fiscal year. The fiscal year for state purposes commences on the first day of July of each year, and ends on the last day of June of each year. The fiscal year for county purposes commences on the first day of July of each year and ends on the last day of June of each year.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921.

519. Reports of state officers, when made. All officers, boards of officers, commissioners, trustees and directors required by law to make reports to the governor or legislative assembly, must send such reports to the governor annually on or before the tenth day of December of each year which report shall include the transactions of such board or officers for the fiscal year.

History: En. Sec. 310, Pol. C. 1895; re-en. Sec. 443, Rev. C. 1907; amd. Sec. 1, Ch. 9, L. 1921.

520. Publication reports state officers. No reports of state officers, boards, commissions or departments shall hereafter be printed or published until the same has been submitted to the state board of examiners, who shall authorize printing and publishing thereof, either in separate volumes or published together in one volume, and the state board of examiners shall specify number of volumes which shall be issued.

History: En. Sec. 1, p. 94, L. 1899; re-en. Sec. 444, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1921.

521. Distribution of public reports. The reports must be delivered by the secretary of state as follows: To the governor, twenty-five copies of each report; to the librarian of the historical and miscellaneous department of the state library, at least one hundred and fifty copies of each report; to the secretary of state, twenty-five copies of each report; to the superintendent of public instruction, two hundred and fifty copies of his report for distribution to school trustees and teachers, and for exchange with other states; to the state board of land commissioners, two hundred copies of their report for distribution to the county surveyors, assessors, county clerks for several counties, and for exchange with other states; to the state auditor, one hundred and fifty copies of his report; to the secretary of state, one hundred copies of his report; to the librarian of the his-

torical and miscellaneous department of the state library, four hundred copies of his report; to the librarian of the law department of the state library, fifty copies of his report; to the officers of the state board of commissioners for the insane, deaf, dumb, and blind asylum, fifty copies of their report; to the state board of education, one hundred copies of their report; and the remaining copies of such reports, one-third to the order of the sergeant-at-arms of the senate, and two-thirds to the order of the sergeant-at-arms of the house, to be by them distributed pro rata to the members of the senate and house next to convene.

History: Ap. p. Sec. 313, Pol. C. 1895; amd. Sec. 1, Ch. 12, L. 1907; Sec. 445, Rev. C. 1907.

522. Semi-annual reports. An account must be kept by the officers of the executive department and of all public institutions of the state of all moneys received severally from all sources, and for every service performed and of all moneys disbursed, and a semi-annual report must be made to the governor under oath.

History: En. Sec. 314, Pol. C. 1895; re-en. Sec. 446, Rev. C. 1907.

523. Semi-annual reports of property on hand. It shall be the duty of every state officer or official, and the person in charge of every state institution, other than educational, to make out and file with the secretary of state semi-annual reports of all property belonging to the state, in his possession, the first report showing the amount of all kinds of property on hand, and each subsequent report showing balance on hand last report, amount received or purchased, amount used, broken or destroyed, and balance on hand.

History: En. Sec. 1, Ch. 56, L. 1905; re-en. Sec. 447, Rev. C. 1907.

524. Secretary of state to provide blanks. It shall be the duty of the secretary of state to provide blanks for property reports by state officers or officials, and for boards of trustees or managers to provide blanks for property reports of the institutions of which they have charge.

History: En. Sec. 2, Ch. 56, L. 1905; re-en. Sec. 448, Rev. C. 1907.

525. Penalty. Failure to comply with the provisions of the two preceding sections shall constitute a misdemeanor, and shall be punished by a fine of not less than five nor more than twenty-five dollars.

History: En. Sec. 3, Ch. 56, L. 1905; re-en. Sec. 449, Rev. C. 1907.

CHAPTER 43.

THE STATE SEAL, FLAG AND FLOWER AND OFFICIAL SEAL.

Section 526. Great Seal.
527. Seals of Executive Officers.
528. State Flag.
529. Design of State Flag.
530. Bitter Root State Emblem.

526. Great seal. The great seal of the state is as follows: A central group representing a plow, a miner's pick and shovel; upon the right representation of the great falls of the Missouri river; upon the left mountain scenery, and underneath the words "Oro y Plata." The seal must be two

and one-half inches in diameter, and surrounded by these words: "The Great Seal of the State of Montana."

History: En. Sec. 1, p. 42, L. 1893; re-en. Sec. 1130, Pol. C. 1895; re-en. Sec. 430, Rev. C. 1907.

527. Seals of executive officers. Each of the executive and state officers of the state must have a seal. Such seal must contain the same representations and motto as is found on the great seal, and must be two inches in diameter, surrounded by the words "State of Montana" (giving the title of the office, "Secretary of State," "State Treasurer," etc.). An impression of the seal of executive and state officers must be filed in the office of the secretary of state.

History: En. Sec. 1131, Pol. C. 1895; re-en. Sec. 431, Rev. C. 1907.

528. State flag. There is hereby established a "State Flag of Montana."

History: En. Sec. 1, Ch. 42, L. 1905; re-en. Sec. 432, Rev. C. 1907.

529. Design of state flag. The "State Flag of Montana" shall be a flag having a blue field, with a representation of the great seal of the state in the center, and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the First Montana Infantry, U. S. V., in the Spanish-American war, with the exception of the device, "1st Montana Infantry, U. S. V."

History: En. Sec. 2, Ch. 42, L. 1905; re-en. Sec. 433, Rev. C. 1907.

530. Bitter root state emblem. The flower known as lewisia rediviva (bitter root) shall be the floral emblem of the state of Montana.

History: En. Sec. 3282, Pol. C. 1895; re-en. Sec. 2097, Rev. C. 1907.

ELECTIONS. CHAPTERS 44 TO 64.

Chapter 44. Time of Holding and Election Proclamations.
45. Publication of Questions Submitted to Popular Vote.
46. Qualifications and Privileges of Electors.
47. Election Precincts.
48. Registration of Electors.
49. Judges and Clerks of Election.
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51. Nomination of Candidates for Special Elections by Convention or Primary Meeting or by Electors.
52. Party Nominations by Direct Vote—The Direct Primary.
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54. Ballots, Preparation and Form.
55. Conducting Elections: The Polls, Voting and Challenges.
56. Voting by Absent Electors.
57. Voting by Absent Electors in Military or Naval Service.
58. Voting Machines—Conduct of Elections When Used.
59. Election Returns.
60. Canvass of Election Returns—Results and Certificates.
61. Failure of Elections—Proceedings on Tie Vote.
62. Presidential Electors, How Chosen.
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64. Contesting Elections.

CHAPTER 44.

TIME OF HOLDING AND ELECTION PROCLAMATIONS.

Section 531. General Elections, When to Be Held.
532. Special Elections; Purpose and Calling.
533. Election Proclamations by the Governor.
534. Governor's Proclamation, Contents.
535. Publication and Posting by County Commissioners.
536. Election Proclamation by County Commissioners.

531. General elections, when to be held. There must be held throughout the state, on the first Tuesday after the first Monday of November, in the year eighteen hundred and ninety-four, and in every second year thereafter, an election to be known as the general election.

History: En. Sec. 1150, Pol. C. 1895; re-en. Sec. 450, Rev. C. 1907. Cal. Pol. C. Sec. 1041.

A general election is one held for the election of officers throughout the state. State ex rel. Rowe v. Kehoe, 49 Mont. 582, 591, 144 Pac. 162.

Cited or applied as section 450, Revised Codes, in State ex rel. Patterson v. Lentz, 50 Mont. 322, 338, 146 Pac. 932.

Notice or proclamation of general or special election, see note in 120 A. S. R. 794.

Statutory provision for time of holding election as directory or mandatory, see note in Ann. Cas. 1913E, 371.

First and last days in computing time of elections, see notes in 49 L. R. A. 244; 15 L. R. A. (N. S.) 691.

Exclusion or inclusion of Sunday or holiday in computation of time for notice of election, see note in Ann. Cas. 1917E, 942.

532. Special elections; purpose and calling. Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper officer or authority. The board of county commissioners shall be authorized to call a special election at any time for the purpose of submitting to the qualified electors of the county a proposition to raise money for any public improvement desired to be made in the county.

History: En. Sec. 1151, Pol. C. 1895; amd. Sec. 451, Rev. C. 1907. Cal. Pol. C. Sec. 1043.

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. State ex rel Rowe v. Kehoe, 49 Mont. 582, 591, 144 Pac. 162.

Cited or applied as section 451, Revised Codes, in State ex rel. Patterson v. Lentz, 50 Mont. 322, 338, 146 Pac. 932.

Necessity of compliance with statutory requirements as to notice of election for issuance of bonds, see note in 18 Ann. Cas. 1137.

533. Election proclamations by the governor. At least sixty days before a general election, and whenever he orders a special election to fill a vacancy in the office of state senator or member of the house of representatives, at least ten days before such special election, the governor must issue an election proclamation, under his hand and the great seal of the state, and transmit copies thereof to the boards of commissioners of the counties in which such elections are to be held.

History: En. Sec. 1160, Pol. C. 1895; re-en. Sec. 452, Rev. C. 1907. Cal. Pol. C. Sec. 1053.

The governor issued his proclamation giving notice of a general election to be held November 8, 1904, under this and the following section, and omitted therefrom the mention of an election of three judges for the second judicial district, and called for the election of two judges. Upon mandamus proceedings against the governor the relator claimed that three judges should have been mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. As it failed to appear that the electors voted for more

than two candidates for judgeships, the petition was dismissed. State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403.

As this section does not impose upon the governor the duty to call an election to fill vacancies other than those in the offices of state senator and member of the house of representatives, and he is not presumed to know what, if any, vacancy exists in any local county office, apparently proclamation by the governor is necessary only when an election is to be held to fill offices for the next regular term, except to fill vacancies in the two offices mentioned. State ex rel. Rowe v. Kehoe, 49 Mont. 582, 591, 592; 144 Pac. 162.

While the provisions of the codes relating to the manner of calling special elections are crude and not in the most appropriate terms to confer the necessary powers upon boards of county commissioners, they are nevertheless sufficient for this purpose. State ex rel. Patterson v. Lentz, 50 Mont. 322, 343, 146 Pac. 932.

The governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes. State ex rel. Patterson v. Lentz, 50 Mont. 322, 343, 146 Pac. 932.

A statement in the proclamation of the governor giving notice of a general election, that among other officers there was to be elected "also a district judge in any judicial district where a vacancy may exist," was not such a notice of the necessity of filling a vacancy by election as required by this section. State ex rel. Patterson v. Lentz, 50 Mont. 322, 343, 146 Pac. 932.

534. Governor's proclamation, contents. Such proclamation must contain:

1. A statement of the time of election, and the offices to be filled.

2. An offer of rewards, in the following form: "And I do hereby offer a reward of one hundred dollars for the arrest and conviction of any person violating any of the provisions of sections 10747 to 10772, of the Penal Code. Such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of five thousand dollars."

History: En. Sec. 1161, Pol. C. 1895; re-en. Sec. 453, Rev. C. 1907. Cal. Pol. C. Sec. 1054.

Cited or applied as section 1161, Political Code, in State ex rel. Breen v. Toole, 32 Mont. 4, 8, 79 Pac. 403; as section 453, subdivision 1, Revised Codes, with other sections, in State ex rel. Rowe v. Kehoe, 49 Mont. 582, 591, 144 Pac. 162; as section 453, Revised Codes, in State ex rel. Patterson v. Lentz, 50 Mont. 322, 343, 146 Pac. 932.

535. Publication and posting by county commissioners. The board of county commissioners, upon the receipt of such proclamation, may, in the case of general or special elections, cause a copy of the same to be published in some newspaper printed in the county, if any, and to be posted at each place of election at least ten days before the election; and in case of special elections to fill a vacancy in the office of state senator or member of the house of representatives, the board of county commissioners, upon receipt of such proclamation, may in their discretion, cause a copy of the same to be published or posted as hereinbefore provided, except that such publication or posting need not be made for a longer period than five days before such election.

History: En. Sec. 1162, Pol. C. 1895; re-en. Sec. 454, Rev. C. 1907. Cal. Pol. C. Sec. 1055.

Cited or applied as section 454, Revised Codes, in State ex rel. Rowe v. Kehoe, 49 Mont. 582, 591, 144 Pac. 162; in State ex rel. Cryderman v. Wienrick, 54 Mont. 390, 170 Pac. 942.

536. Election proclamation by county commissioners. Whenever a special election is ordered by the board of county commissioners, they

must issue an election proclamation, containing the statement provided for in subdivision one of section 534, and must publish and post it in the same manner as proclamations issued by the governor.

History: En. Sec. 1163, Pol. C. 1895; re-en. Sec. 455, Rev. C. 1907. Cal. Pol. C. Sec. 1056.

The notice of election does not take the place of the election proclamation. Evers v. Hudson, 36 Mont. 135, 154, 92 Pac. 462.

This section has no reference to elections held for raising money for public improvements. The power conferred in this behalf is exercised under special provisions on the subject, found in that part of the codes relating to county government. State ex rel. Rowe v. Kehoe, 49 Mont. 582, 592, 144 Pac. 162.

In case of vacancies in county offices, boards of county commissioners have the power, and it is their duty to call and provide for the holding of special elections to fill them. State ex rel. Rowe v. Kehoe, 49 Mont. 582, 592, 144 Pac. 162.

Cited or applied as section 455, Revised Codes, in State ex rel. Patterson v. Lentz, 50 Mont. 322, 343, 146 Pac. 932; State ex rel. Cryderman v. Wienrick, 54 Mont. 390, 399, 170 Pac. 942.

CHAPTER 45.

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE.

Section 537. Manner of Publication.
538. Same.

537. Manner of publication. Whenever a proposed constitution, or constitutional amendment, or other question, is submitted to the people of the state for popular vote, the secretary of state must duly, and not less than thirty days before the election, certify the same to the clerk of each county in the state, and the clerk of each county must cause to be published in one newspaper in the county a copy of the proposed question to be submitted to the people of the state, once a week for three successive weeks. One of such publications in each of said newspapers must be made upon the last day upon which such newspaper is issued before election.

History: En. Sec. 14, p. 138, L. 1889; re-en. Sec. 1321, Pol. C. 1895; re-en. Sec. 531, Rev. C. 1907; amd. Sec. 1, Ch. 130, L. 1919.

Where the electors had actual notice of and participated generally in a special election held to determine the advisability of issuing bonds for high school purposes, failure of the county clerk to publish in a newspaper the notice required by this section did not avoid the election. Wright v. Flynn et al., 55 Mont. 61, 173 Pac. 421; Leary v. Young et al., 55 Mont. 275, 176 Pac. 36.

Publication of notice for bond issue election, see note in 18 Ann. Cas. 1141.

Necessity of stating singly propositions submitted to voters of municipality, see notes in 2 Ann. Cas. 369; 12 Ann. Cas. 851; Ann. Cas. 1912D, 319.

What objects or purposes may be combined in a single question submitted to the voters of a municipality, see note in 26 L. R. A. (N. S.) 665.

538. Same. Questions to be submitted to the people of the county or municipality must be advertised by publication in at least one newspaper within the county or municipality, once a week for two successive weeks, and one of such publications in such newspaper must be upon the last day upon which such newspaper is issued before the election.

History: En. Sec. 1, Ch. 130, L. 1919.

CHAPTER 46.

QUALIFICATIONS AND PRIVILEGES OF ELECTORS.

Section 539. Elections to Be by Ballot.
540. Qualifications of Voter.
541. Privilege From Arrest.
542. Exempt From Military Duty on Election Day.
543. Idiot or Insane.
544. Who Are Taxpayers.

539. Elections to be by ballot. All elections by the people shall be by ballot.

History: En. Sec. 1180, Pol. C. 1895; re-en. Sec. 461, Rev. C. 1907.

540. Qualifications of voter. Every person of the age of twenty-one years or over, possessing the following qualifications, if his name is registered as required by law, is entitled to vote at all general and special elections and for all officers that now are, or hereafter may be, elective by the people, and upon all questions which may be submitted to the vote of the people: First, he must be a citizen of the United States; second, he must have resided in the state one year and in the county thirty days immediately preceding the election at which he offers to vote. No person convicted of felony has the right to vote unless he has been pardoned. Nothing in this section contained shall be construed to deprive any person of the right to vote who had such right at the time of the adoption of the state constitution. After the expiration of five years from the time of the adoption of the state constitution, no persons except citizens of the United States have a right to vote.

History: En. Sec. 1181, Pol. C. 1895; re-en. Sec. 462, Rev. C. 1907. Cal. Pol. C. Sec. 1083.

Note.—The word "male" appearing in the first line of the preceding section as enacted in 1895 is omitted from this code to conform to the constitutional amendment.

Referred to as section 1181 of the Political Code of 1895 in State ex rel. Kennedy v. Martin, 24 Mont. 403, 408, 62 Pac. 588; cited or applied as section 462, Revised Codes, in Sommers v. Gould, 53 Mont. 538, 544, 165 Pac. 599.

Power of legislature to define qualifications of voters, see note in 7 Ann. Cas. 665.

Tax or property qualifications on right to vote, see note in 25 L. R. A. 482.

Disqualification from right to vote for crime, see notes in 15 Ann. Cas. 103; 25 L. R. A. 483.

541. Privilege from arrest. Electors must in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

History: En. Sec. 1183, Pol. C. 1895; re-en. Sec. 464, Rev. C. 1907. Cal. Pol. C. Sec. 1069.

Immunity of election officers from criminal arrest, see note in 1 A. L. R. 1160.

542. Exempt from military duty on election day. No elector is required to perform military duty on the days of election, except in times of war or public danger.

History: En. Sec. 1184, Pol. C. 1895; re-en. Sec. 465, Rev. C. 1907. Cal. Pol. C. Sec. 1070.

543. Idiot or insane. No idiot or insane person is entitled to vote at any election in this state.

History: En. Sec. 1185, Pol. C. 1895; re-en. Sec. 466, Rev. C. 1907. Cal. Pol. C. Sec. 1084.

544. Who are taxpayers. The payment of a tax upon property by any person assessed therefor on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers of the state, or to the vote of the taxpayers of such county

or city, or any subdivision thereof, constitutes such person a taxpayer at such election.

History: En. Sec. 1188, Pol. C. 1895; re-en. Sec. 469, Rev. C. 1907.

Note.—Since the constitutional amendment granting equal rights of suffrage to women section 468 of the Revised Codes of Montana, 1907, has been omitted from this codification and the last line of section 544 as enacted has also been omitted.

Legal meaning of taxpayer, see note in Ann. Cas. 1914C, 1057.

CHAPTER 47.

ELECTION PRECINCTS.

Section 545. Establishment of Election Precincts.
546. Change in Boundaries of Precinct.
547. City Council to Certify Ward Boundaries.
548. County Surveyor to Make Map of Precincts.
549. City Council to Prepare Map of Wards.
550. Board to Designate Place in Precinct for Holding Elections.
551. Proceedings Where Place Not Designated, etc.
552. Voting Precinct, Establishment at Indian Agency.

545. Establishment of election precincts. The territorial unit for the conduct of elections shall be the election precinct. The board of county commissioners of each county shall establish a convenient number of election precincts therein, having reference to equalizing the number of electors in the several precincts as nearly as possible. Precinct boundaries shall conform to the boundaries of the wards of incorporated cities or towns and to the boundaries of school districts of the first class only, provided that any ward or school district may be divided into two or more precincts.

History: En. Sec. 2, Ch. 113, L. 1911; amd. Sec. 2, Ch. 74, L. 1913; amd. Sec. 2, Ch. 122, L. 1915. Cal. Pol. C. Secs. 1127-1132.

546. Change in boundaries of precinct. The board of county commissioners may change the boundaries of precincts and create new or consolidate established precincts, but no precinct shall be changed or created between the first day of January and the first day of December in any year during which a general election is to be held within the state of Montana. All changes, alterations, or modifications in precinct boundaries must be certified to the county clerk within three days after the order making same shall have been made. All election precincts shall be designated by numbers but may also be designated by distinctive names in addition to such numbers.

History: En. Sec. 3, Ch. 113, L. 1911; amd. Sec. 3, Ch. 74, L. 1913; amd. Sec. 3, Ch. 122, L. 1915.

547. City council to certify ward boundaries. The city council of all incorporated cities and towns within the state of Montana shall certify to the county clerk and ex-officio registrar of the county within which such city or town is situated, a description of the boundaries of the several wards within such city or town, and in like manner shall certify any changes or alterations in such boundaries that may from time to time be made, within ten days after the same are made.

History: En. Sec. 4, Ch. 113, L. 1911; amd. Sec. 4, Ch. 74, L. 1913; amd. Sec. 4, Ch. 122, L. 1915.

548. County surveyor to make map of precincts. The county surveyor of each county must, within ten days after the board of county commissioners shall have established or changed the boundaries of any election precincts within such county, deliver to the county clerk of the county a map correctly showing the boundaries of all precincts and school districts within the county as then existing.

History: En. Sec. 5, Ch. 113, L. 1911; amd. Sec. 5, Ch. 74, L. 1913; amd. Sec. 5, Ch. 122, L. 1915.

549. City council to prepare map of wards. The city council of any incorporated city or town shall, within ten days after the ward lines of such city or town shall have been established or changed, deliver or cause to be delivered to the county clerk of said county a map correctly showing the boundaries of the wards within such city or town as then existing; such map shall also show all streets, avenues, and alleys by name, and the respective wards by numbers, with the ward boundaries clearly defined thereon.

History: En. Sec. 6, Ch. 113, L. 1911; amd. Sec. 6, Ch. 74, L. 1913; amd. Sec. 6, Ch. 122, L. 1915.

550. Board to designate place in precinct for holding elections. The board must, at the session at which judges of election are appointed, make an order designating the house or place within the precinct where the election must be held.

History: En. Sec. 1243, Pol. C. 1895; re-en. Sec. 497, Rev. C. 1907.

Effect of holding election at other than regularly appointed place, see notes in 17 Ann. Cas. 1090; Ann. Cas. 1914D, 550.

Validity of election held at one voting place for whole municipality instead of by wards and precincts, see notes in Ann. Cas. 1915C, 648; Ann. Cas. 1916C, 598.

Right of municipal corporation to place polling booth in street, see note in 4 L. R. A. (N. S.) 571.

Use of public school building for voting place, see note in 31 L. R. A. (N. S.) 592.

551. Proceedings where place not designated, etc. If the board fails to designate the house or place for holding the election, or if it cannot be held at the house or place designated, the judges of election, or a majority of those acting as such in the precinct must, two days before the election and by order, under their hand (copies of which they must at once post in three public places in the precinct), designate the house or place.

History: En. Sec. 1244, Pol. C. 1895; re-en. Sec. 498, Rev. C. 1907.

552. Voting precinct, establishment at Indian agency. No officer of this state, nor of any county shall establish a voting precinct within or at the premises of any Indian agency or trading post.

History: En. Sec. 52, p. 471, Cod. Stat. 1871; re-en. Sec. 49, p. 87, L. 1876; re-en. Sec. 563, 5th Div. Rev. Stat. 1879; re-en. Sec. 1055, 5th Div. Comp. Stat. 1887; re-en. Sec. 1245, Pol. C. 1895; re-en. Sec. 499, Rev. C. 1907; amd. Sec. 1, Ch. 115, L. 1919.

A voting precinct cannot be lawfully established upon an Indian reservation. Stephens v. Nacey, 49 Mont. 230, 237, 141 Pac. 649.

The townsite of Poplar is not upon an Indian reservation, and it is not unlawful for the county commissioners to establish a voting precinct at that place. Stephens v. Nacey, 49 Mont. 230, 244, 141 Pac. 649.

Cited or applied in Coleman v. Kerr, 33 Mont. 198, 202, 83 Pac. 393.

CHAPTER 48.

REGISTRATION OF ELECTORS.

Section 553. County Clerk as County Registrar.
554. Registry Book and Card Index—Affidavit of Voter—Lost Naturalization Papers.
555. Who May Register.
556. Elector Infirm or Residing at a Distance.
557. Notaries and Justices of the Peace as Deputy Registrars.
558. Hours of Registration—Registry Cards—Duty of Clerk.
559. Procedure When Applicant Not Qualified at Time of Registration.
560. Transfer of Registration Within County.
561. Procedure Upon Change of Residence to Another County.
562. Cancellation of Registry for Failure to Vote—Re-registration.
563. Electoral Rights of Citizens of State Who Served in Late War Preserved.
564. Duty of County Clerk to Restore Names to Registration Rolls.
565. Service Men May Obtain Right to Vote by Filing Affidavit.
566. Close of Registration—Procedure.
567. Printing and Posting List of Registered Electors.
568. Poll-Book—Precincts Including More Than One County.
569. Registration During Period Closed for One Election.
570. Cancellation of Registry Cards.
571. Compensation of County Clerks.
572. Copies of Precinct Registers.
573. Challenges and Action to Be Taken Thereon.
574. Residence, Rules for Determining.
575. Certificate of Naturalization, Presentation to Registrar.
576. Voter to Sign Precinct Register Books.
577. Compelling Entry of Names in Great Register.
578. Name of Voter Must Appear in Copy of Register—Identification of Voter.
579. Omission of Name From Poll-Book—Remedy.
580. Authority of Deputy County Clerk.
581. "Elector" Defined.
582. "Election" Defined.
583. Violation of Act a Felony.
584. Challenging of Elector and Administration of Oath.
585. Acts Constituting Violation of Law—Penalty.
586. County Commissioners to Supply Clerk With Help.

553. County clerk as county registrar. The county clerk of each county of the state of Montana is hereby declared to be ex-officio county registrar of such county, and shall perform all acts and duties in this act provided without extra pay or compensation therefor. He shall have the custody of all registration books, cards, and papers herein provided for, and the register hereinafter provided for to be kept by said county clerk is hereby declared to be an official record of the office of the county clerk of each county.

History: En. Sec. 1, Ch. 113, L. 1911; amd. Sec. 1, Ch. 74, L. 1913; amd. Sec. 1, Ch. 122, L. 1915. Cal. Pol. C. Secs. 1094-1119.

Cited or applied in State ex rel. Kehoe v. Stromme, 49 Mont. 25, 139 Pac. 1002; State ex rel. Eagye v. Bawden, 51 Mont. 357, 361, 152 Pac. 761.

Validity of statute providing for registration of voters, see note in Ann. Cas. 1913B, 17.

Registration as condition of right to vote, see note in 25 L. R. A. 480.

Irregularities in registration of voters which will avoid election, see note in 90 A. S. R. 57.

Effect of loss or destruction of registry lists, see note in 28 L. R A. (N. S.) 989.

554. Registry book and card index—Affidavit of voter—Lost naturalization papers. The official register of electors in each county shall be contained in a book designated "register," which book shall be so arranged in precincts and alphabetical divisions suitable to record the full and complete information given by each elector, and a card index of

which the county clerk of such county shall at all times have the custody. The cards shall be four by six inches in size, of white calendar stock, and shall be so perforated that all cards in any drawer may be fastened in by a rod passing through such perforations, which rod shall be kept locked except when the clerk shall be making necessary changes in the register. The registry book herein provided shall be in such form as shall be designated by the secretary of state of the state of Montana. The registry card shall be substantially in the following form:

State of Montana, }
County of.....} ss.

(Face.)

.....

Number Date Name Sex

.....

Where born Age Height Ft.-In. Occupation

.....

Naturalized when Where

.....

Residence Postoffice Sec. Twp. Rg.

.....

Length of time in Precinct Ward School Dist.

.....

State County City

.....

Date canceled Date registered Disability, if any

.....

Place where last registered

.....

State of Montana, }
County of.....} ss.

....., being duly sworn says: I am the elector whose name appears on the face of this card; the several statements thereon contained affecting my qualifications as an elector are true; I am able to mark my ballot (or I am unable to mark my ballot by reason of the physical disabilities on this card specified), and I am not registered elsewhere within the State of Montana and claim no right to vote elsewhere than in the precinct on this card specified, so help me God.

.....

Subscribed and sworn to before me this.....day of....., 19....

.....

County Clerk and Ex-officio Registrar.
By.....Deputy.

(Back.)

Affidavit of Lost Naturalization Papers.

State of Montana, }
County of.....} ss.

....., being duly sworn on oath, says: I am the elector named on the face of this card; I am a naturalized

citizen of the United States; my certificate of naturalization is lost or destroyed, or beyond my present reach, and I have no certified copy thereof; I came to the United States in the year.....; I was admitted to citizenship in the state (or territory) of..... county of....., by the.....court during the year.....; I last saw my certificate of naturalization, or a certified copy thereof, at.....

.....

Subscribed and sworn to before me this.....day of....., 19....

.....

County Clerk and Ex-officio Registrar.

By.....Deputy.

History: En. Sec. 7, Ch. 113, L. 1911; amd. Sec. 7, Ch. 74, L. 1913; amd. Sec. 7, Ch. 122, L. 1915.

555. Who may register. Any elector residing within the county may register by appearing before the county clerk and ex-officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for by such registry card, and by signing and verifying the affidavit or affidavits on the back of such card.

History: En. Sec. 8, Ch. 122, L. 1915.

556. Elector infirm or residing at a distance. If any elector resides more than ten miles distant from the office of the county clerk, he may register before the deputy registrar within the precinct where such elector resides. If by reason of physical infirmity the elector is unable to appear before the county clerk or any deputy registrar, he may send written notice to the county clerk or to the deputy registrar of such disability, with the request that his registration be made at his residence. Upon receipt of such notice and request it shall be the duty of the county clerk or deputy registrar, as the case may be, to make the registration of such elector at his residence; provided, that no greater sum than twenty-five cents may be charged or received by any officer or person for taking the registration of the elector herein provided for; and provided further, that no officer or person shall be entitled to receive from any county in the state of Montana any charge for expenses incurred by reason of the provisions of this section.

History: En. Sec. 15, Ch. 74, L. 1913; amd. Sec. 9, Ch. 122, L. 1915.

557. Notaries and justices of the peace as deputy registrars. All notaries public and justices of the peace are designated as deputy registrars in the county in which they reside, and may register electors residing more than ten miles from the county courthouse in any precinct within the county. The county commissioners shall appoint a deputy registrar, other than notaries public and justices of the peace, for each precinct in the county. Such deputy registrar shall be a resident elector in the precinct for which he is appointed and shall register electors in that precinct, and shall receive as compensation for his services the sum of twenty-five cents for each elector registered by him. Each deputy

registrar shall forward by mail, within two days, all registration cards filled out by him to the county clerk and recorder.

History: En. Sec. 10, Ch. 122, L. 1915; amd. Sec. 1, Ch. 38, L. 1917.

558. Hours of registration—Registry cards—Duty of clerk. The office of the county clerk shall be open for registration of voters between the hours of nine a. m. and five p. m. on all days except legal holidays. Registry cards shall be numbered consecutively in the order of their receipt at the office of the county clerk; provided, however, that electors who are registered upon the registry books in use in any county prior to the passage and approval of this law shall retain upon their registry cards the same number as they have severally had upon such books; and provided also that such electors need not again appear at the office of the county clerk to register, but the county clerk is hereby authorized to fill out from such registry books registry cards for all electors entitled to vote at the time of the passage and approval of this law, transcribing from such books the data called for by such cards. The cards so filled out from the registry books shall be marked "transcribed" by the county clerk, and shall constitute part of the official register, and shall entitle the elector represented by each such card to vote in the same manner as if the card had been filled out, signed and verified by such elector. The county clerk shall classify registry cards according to the precincts in which the several electors reside, and shall arrange the cards in each precinct in alphabetical order. The cards for each precinct shall be kept in a separate filing case or drawer which shall be marked with the number of the precinct. The county clerk shall, immediately after filling out the card index or registry cards as herein provided, enter upon the official register of the county in the proper precinct the full information given by said elector.

History: En. Sec. 11, Ch. 122, L. 1915.

559. Procedure when applicant not qualified at time of registration. If any applicant for registration applies to be registered who has not resided within the state of Montana, or the county or city, for the required length of time, and who shall be entitled to and is qualified to register on or before the day of election, provided he answers the question of the county clerk in a satisfactory manner, and it is made to appear to the county clerk that he will be entitled to become a qualified elector by the date upon which the election is to be held, the county clerk shall accept such registration. If any person applies to be registered who is not a citizen of the United States, but states that he will be qualified to be registered as a citizen of the United States before the date upon which the election is to be held, the county clerk shall accept such registration, but shall place opposite the name of such person the words, "to be challenged for want of naturalization papers," and such person shall not be entitled to vote unless he exhibits to the judges of election his final naturalization papers.

History: En. Sec. 12, Ch. 113, L. 1911; amd. Sec. 12, Ch. 74, L. 1913; amd. Sec. 12, Ch. 122, L. 1915.

560. Transfer of registration within county. Every elector, on changing his residence from one precinct to another within the same

county, may cause his registry card to be transferred to the register of the precinct of his new residence, by a request in writing to the county clerk of such county, in the following form:

I, the undersigned, elector, having changed my residence from Precinct No..... to Precinct No..... in the county of....., State of Montana, herewith make application to have my registry card transferred to the precinct register of the precinct of my present residence. My registration number is.....

Dated at....., on the.....day of....., 19.....

Whenever it shall be more convenient for any elector residing outside of an incorporated city or town to vote in another precinct in the same political township in the county, such elector may cause his registry card to be transferred from the precinct of his residence to such other precinct, by filing in the office of the county clerk of such county, at least thirty days prior to any election, a request in writing in the following form:

I, the undersigned elector, herewith make application to have my registry card transferred from Precinct No..... to the register of Precinct No....., in the county of....., State of Montana. The reason why it is more convenient for me to vote in said Precinct No..... is that.....

.....

Dated at....., on the.....day of....., 19.....

The county clerk shall compare the signature of the elector upon such request in either case, with the signature upon the registry card of the elector as indicated, and may question the elector as to any of the information contained upon such registry card, and if the county clerk is satisfied concerning the identity of the elector and his right to have such transfer made, he shall endorse upon the registry card of such elector the date of the transfer and the precinct to which transferred, and shall file said card in the register of the precinct of the elector's present residence, or of the precinct to which he has requested that his registry card be transferred, and the county clerk shall in each case make a transfer of the elector's name, together with all data connected therewith, to the proper precinct in the register.

History: En. Sec. 17, Ch. 113, L. 1911; amd. Sec. 17, Ch. 74, L. 1913; amd. Sec. 13, Ch. 122, L. 1915; amd. Sec. 1, Ch. 29, L. 1919.

Change of registration by voter, see note in Ann. Cas. 1917A, 1278.

561. Procedure upon change of residence to another county. If any elector registered as such in any county shall change his residence to another county in the state of Montana, he shall make and file with the county clerk of the latter county the following affidavit in duplicate, to-wit:

State of Montana. }
County of.....} ss.

I, the undersigned elector, being duly sworn on oath say:

I have heretofore registered as an elector in the State of Montana, county of....., Precinct No..... but on the..... day of .....19.... I moved my residence to the county of ..... in said State, and now reside at.....Section ..... Township..... Range..... Precinct No. .....; I occupy room No..... of the..... Building, ... floor; I was born in.....and was naturalized as a citizen of the United States in....,..... My height is .....ft. .....in. I request that I be registered to conform to my present address.

.....

Elector.

Subscribed and sworn to before me this.....day of ....., 19.....

.....

Said affidavit may be sworn to before any officer authorized to administer oaths within the state of Montana. Upon filing such affidavit in duplicate with the county clerk, such elector shall fill out a registry card as herein provided for the original registration of voters, and he shall thereupon be entitled to all of the rights of an elector in the precinct of his present residence, and such registry card shall be filed in the official registry of such precinct in the same manner as an original registry card.

Upon receiving the duplicate affidavits above referred to the county clerk shall file one in his own office, and shall within two days thereafter transmit the other to the county clerk of the county wherein said elector was previously registered. Upon the receipt of such duplicate affidavit by the county clerk of such other county, he shall transfer the registry card of the elector named in such affidavit to the canceled file of said county. Upon receiving the duplicate affidavit referred to in this section, the county clerk shall cancel the name of such elector in the register herein provided for, by drawing a line through said entry in red ink and by indorsing thereon the cause of said cancellation.

History: En. Sec. 14, Ch. 122, L. 1915.

562. Cancellation of registry for failure to vote—Re-registration. Immediately after every general election, the county clerk of each county shall compare the list of electors who have voted at such election in each precinct, as shown by the official poll-book, with the official register of said precinct, and he shall remove from the official register herein provided for the registry cards of all electors who have failed to vote at such election, and shall mark each of said cards with the word "canceled," and shall place such canceled cards for the entire county in alphabetical order in a separate drawer to be known as the "canceled file;" but any elector whose card is thus removed from the official register may re-register in the same manner as his original registration was made, and the registration card of any elector who thus re-registers shall be filed by the county clerk in the official register in the same manner as original registration cards are filed. The county clerk shall at the same time cancel, by drawing a red line through the entry thereof, the name of all such electors who have failed to vote at such election.

History: En. Sec. 15, Ch. 122, L. 1915.

563. Electoral rights of citizens of state who served in the late war preserved. Every citizen of the state of Montana who was engaged in the active military or naval services of the United States during the late war, and was duly registered and entitled to vote at the last general election, and by reason of such service was unable to vote at such election, shall not be considered to have lost any rights by reason thereof, and the provisions of the preceding section shall not apply.

History: En. Sec. 1, Ch. 19, Ex. L. 1919.

564. Duty of county clerk to restore names to registration rolls. The county clerk shall, within ten days after the passage and approval of this act, withdraw from the "canceled file" the registration cards of all persons subject to the provisions of this act, and place such cards in the active precinct registration files, and enter the names of such person upon the proper registration rolls.

History: En. Sec. 2, Ch. 19, Ex. L. 1919.

565. Service men may obtain right to vote by filing affidavit. Any person subject to the provisions of this act, whose name does not appear upon the register of voters for the precinct in which such person resides, shall be entitled to vote at any election upon filing with the judges of election an affidavit, showing that he is a citizen of the state of Montana and was duly registered as an elector for the general election in 1918, and that by reason of service in the military or naval service of the United States he was unable to vote at such election. Upon the filing of such affidavit, said judges shall enter the name of such person upon the register of voters for such precinct and forward to the county clerk the affidavit so made. The county clerk shall immediately withdraw the registration card of such person from the "canceled file," and place the same in the proper precinct file.

History: En. Sec. 3, Ch. 19, Ex. L. 1919.

566. Close of registration—Procedure. The county clerk shall close all registration for the full period of forty-five days prior to and before any election. He shall immediately transmit to the secretary of state a certificate showing the number of voters registered in each precinct in said county. The county clerk of each county must cause to be published in a newspaper within his county, having a general circulation therein, for thirty days before which time when such registration shall be closed for any election, a notice signed by him to the effect that such registration will be closed on the day provided by law, and which day shall be specified in such notice; and must also state that electors may register for the ensuing election by appearing before the county clerk at his office, or by appearing before a deputy registrar or before any notary public or justice of the peace in the manner provided by law. The publication of such notice must continue for the full period of thirty days. At least thirty days before the time when the official register is closed for any election, the county clerk shall cause to be posted, in at least five conspicuous places in each voting precinct at such election, notice of the time when the official register will close for such election.

History: En. Sec. 18, Ch. 113, L. 1911; 16, Ch. 122, L. 1915; amd. Sec. 1, Ch. 97, amd. Sec. 18, Ch. 74, L. 1913; amd. Sec. L. 1919.

Under this section a period of not less than sixty days must elapse between the time an election is called and the time it is held. State ex rel. Eagye v. Bawden, 51 Mont. 357, 361, 152 Pac. 761.

Cited or applied in State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 399, 170 Pac. 942.

567. Printing and posting list of registered electors. The county clerk shall, at least thirty days preceding any election, cause to be printed and posted a list of all electors entitled to be registered, as shown by the official register of the county, and who are on the precinct registers as entitled to vote in the several precincts of such county, city or town, or school district of the first class. Such printed list of registered electors shall contain the name of the elector in full, together with his residence, giving the number and street, or the name of the house, or the section, township and range, as shown by the official register card of the elector, and the registry number. The expense of printing said list shall be paid by said county, city or town, or school district in which the election is to be held. The county clerk shall cause to be posted, not less than thirty days before any such election, as in this act provided for, at least five copies of such printed registry list in at least five conspicuous places within the said precinct, a copy of the list of registered voters herein provided for, and shall retain sufficient number of said printed lists of registered voters in his office as may be necessary for the convenience of the public. He shall furnish to any qualified elector of any county, city or town or school district applying therefor a copy of the same provided that where the list herein provided for has been printed and posted for any primary election, the same may be used for the election proper following by posting in connection therewith at the time provided for in this section a supplemental list giving the names of electors who may have registered after the first list was prepared.

History: Ap. p. Sec. 24, Ch. 113, L. 1911; amd. Sec. 24, Ch. 74, L. 1913; amd. Sec. 17, Ch. 122, L. 1915; amd. Sec. 2, Ch. 97, L. 1919; amd. Sec. 1, Ch. 235, L. 1921.

Cited or applied in State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 399, 170 Pac. 942.

568. Poll-book—Precincts including more than one county. During the time intervening between the closing of the official register and the day of the ensuing election, the county clerk shall prepare for each precinct a book to be known as the "poll-book," which shall be for the use of the clerks and judges of election in each such precinct. Such books shall be arranged for the listing of the names of the electors in alphabetical divisions, each division to be composed of ruled columns with appropriate headings, under which the information contained upon the registry card of each elector shall be transcribed, excepting the oath of the elector, and the certified copy of the poll-books so prepared shall be delivered to the judges of the election at or prior to the opening of the polls in each precinct. Where the precincts in municipal elections, or in elections in school districts of the first class, include more than one county precinct, the county clerk shall combine into one poll-book the names of all electors in the several precinct registers of the precincts of which such municipal or school district precinct is composed. The county clerk shall omit from the list of names of all certified voters so inserted in the poll-book herein provided for, the names and registry of all electors which it

is the duty of the county clerk to cancel under the provisions of section 570, provided that the requirements contained in the provisions of said section shall have been brought to the attention of the county clerk not less than twenty days preceding the election.

History: En. Sec. 23, Ch. 113, L. 1911; 18, Ch. 122, L. 1915; amd. Sec. 3, Ch. 97, amd. Sec. 23, Ch. 74, L. 1913; amd. Sec. L. 1919.

569. Registration during period closed for one election. Whenever the period during which the official registry is closed preceding any election shall occur during the time within which any elector is entitled to register for another election, such elector shall be permitted to register for such other election, but the county clerk shall retain his registry card in a separate file until the official register is again open for filing of cards, at which time all cards in such temporary file shall be placed in their proper position in the official register.

History: En. Sec. 19, Ch. 122, L. 1915.

570. Cancellation of registry cards. The county clerk must cancel any registry card in the following cases:

1. At the request of the party registered.
2. When he has personal knowledge of the death or removal from the county of the person registered, or when duly authenticated certificate of the death of any elector is filed in his office.
3. When there is presented and filed with the county clerk the separate affidavit of three qualified registered electors residing within the precinct, which affidavit shall give the name of such elector, his registry number, and his residence, and which affidavit shall show that of the personal knowledge of the affiant, that any person registered does not reside or has removed from the place designated as the residence of such elector.
4. When the insanity of the elector is legally established.
5. Upon the production of a certified copy of a final judgment of conviction of any elector of felony.
6. Upon the production of a certified copy of the judgment of any court directing the cancellation to be made.

History: En. Sec. 19, Ch. 113, L. 1911; 20, Ch. 122, L. 1915; amd. Sec. 4, Ch. 97, amd. Sec. 19, Ch. 74, L. 1913; amd. Sec. L. 1919.

571. Compensation of county clerks. The county clerks shall receive, for the use and benefit of the county, from every city or town, or from every school district of the first class, to which the poll-books referred to in the last section have been furnished, the sum of five cents for each and every name entered in such poll-books, and in addition he shall receive in like manner the amount of the actual expense incurred in printing and posting the lists of electors, and in publishing the notices required by this law, and any other expense incurred on account of any such municipal or school district election. It shall be the duty of the city or town council, or board of school trustees, to order a warrant drawn for such sum as may be due to the county clerk under the provisions of this section, within thirty days after the presentation of the account to them by said county clerk.

History: En. Sec. 29, Ch. 113, L. 1911; amd. Sec. 29, Ch. 74, L. 1913; amd. Sec. 21, Ch. 122, L. 1915.

572. Copies of precinct registers. The county clerk shall furnish to any person or persons who in writing may so request, a copy of the official precinct registers of any county, city or school district precinct, and upon delivery thereof shall charge and collect for the use and benefit of the county the sum of five cents for each and every name entered in such official precinct register.

History: En. Sec. 30, Ch. 113, L. 1911; amd. Sec. 30, Ch. 74, L. 1913; amd. Sec. 22, Ch. 122, L. 1915.

Whether former section 491 of the Revised Codes is unconstitutional or not, an election in pursuance thereof should be held valid, unless it appears that a sufficient number of legal voters to have changed the result were prevented by such law from casting their ballots. Reid v. Lincoln County, 46 Mont. 31, 59, 125 Pac. 429.

573. Challenges and action to be taken thereon. At any time not later than the tenth day prior to any election, a challenge may be filed with the county clerk, signed by a qualified elector in writing, and duly verified by the affidavit of the elector, that the elector designated therein is not entitled to register. Such affidavit shall state the grounds of challenge, objection and disqualification. The county clerk shall file the affidavit of challenge in his office as a record thereof. The county clerk must deliver a true and correct copy of any and all of such affidavits so filed, challenging the right of any elector to vote who has been so registered at the same time, and together with the copy of the precinct registers and check lists, and other papers required by this act to be delivered to the judges of election, as in this act provided, and he must write distinctly opposite to the name of any person to whose qualification as an elector objections may be thus made, the words, "To be challenged." It shall be the duty of the judges of election, if on election day such person who has been objected to and challenged applies to vote, to test, under oath, his qualifications. Notwithstanding the elector is registered, his right to vote may be challenged on the day of election by any qualified registered elector, orally stating, to the judges of election, the grounds of such objection or challenge to the right of any registered elector to vote.

It is the duty of the judges of election, when it appears that any elector offers to vote and is either challenged by a duly qualified registered elector, on election day, or if an affidavit of objection to the right of such elector to vote has been filed with the county clerk and the copy of the precinct registers furnished to the judges of election have indorsed thereon, opposite to the name of such elector, "to be challenged," to test the qualifications of the elector and ask any questions that such judges may deem proper, and shall compare the answers of the elector to such questions with the entries in the precinct register books, and if it be found that said elector is disqualified, or that the answers given by such elector to the questions propounded by the judges do not correspond to the entry in the precinct registers, or that said elector is disqualified from any cause under the law, or if he refuses to take an oath as to his qualifications, he shall not be permitted to vote. The judges of election, in their discretion, may require such elector to produce before them one or more freeholders of the county, as they may deem necessary, and have them examined under oath as to the qualifications of the elector.

History: En. Sec. 20, Ch. 113, L. 1911; amd. Sec. 20, Ch. 74, L. 1913; amd. Sec. 23, Ch. 122, L. 1915.

574. Residence, rules for determining. For the purpose of registration or voting, the place of residence of any person must be governed by the following rules as far as they are applicable:

1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person must not be held to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of this state, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public prison, nor while residing on any military reservation.

3. No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.

4. A person must not be considered to have lost his residence who leaves his home to go into another state, or other district of this state, for temporary purposes merely with the intention of returning, provided he has not exercised the right of the election franchise in said state or district.

5. A person must not be considered to have gained a residence in any county into which he comes for temporary purposes merely without the intention of making such county his home.

6. If a person removes to another state with the intention of making it his residence, he loses his residence in this state.

7. If a person removes to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this state, notwithstanding he entertains an intention of returning at some future period.

8. The place where a man's family resides is presumed his place of residence, but any man who takes up or continues his abode with the intention of remaining, or a place other than where his family resides, must be regarded as a resident of the place where he so abides.

9. A change of residence can only be made by the act of removal joined with the intent to remain in another place. There can only be one residence. A residence cannot be lost until another is gained.

10. The term of residence must be computed by including the day of the election.

History: En. Sec. 21, Ch. 113, L. 1911; amd. Sec. 21, Ch. 74, L. 1913; amd. Sec. 24, Ch. 122, L. 1915; amd. Sec. 1, Ch. 58, L. 1919. Cal. Pol. C. Sec. 1239.

Subdivision 8 of this section is in reality a rule of evidence. Carwile v. Jones, 38 Mont. 590, 602, 101 Pac. 153.

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declarations of the voter touching the subject, if a part of the res gestae, or any declarations in disparagement of his right to vote, if made at or before the election, may be received in evidence. Sommers v. Gould, 53 Mont. 538, 544, 165 Pac. 599.

Cited or applied as section 21, chapter 113, Laws of 1911, before amendment, in Stephens v. Nacey, 49 Mont. 230, 237, 141 Pac. 649.

Nature of occupancy of premises as affecting elective franchise, see note in L. R. A. (N. S.) 698, 704, 711.

Residence at school or public institution as affecting domicile of student with-

in election laws, see notes in Ann. Cas. 1917C, 403; 23 L. R. A. 215; 40 L. R. A. (N. S.) 168.

Does "residence" as a qualification of voters mean "domicile," see note in 19 L. R. A. (N. S.) 759.

575. Certificates of naturalization, presentation to registrar. When a naturalized citizen applies for registration his certificate of naturalization, or a certified copy thereof, must be produced and stamped, or written in ink by the registry agent, with such registry agent's name and the year and day and county where presented; but if it satisfactorily appears to the registry agent, by the affidavit of the applicant (and the affidavit of one or more credible electors as to the credibility of such applicant when deemed necessary), that his certificate of naturalization, or a certified copy thereof, is lost or destroyed, or beyond the reach of the applicant for the time being, said registry agent must register the name of said applicant, unless he is by law otherwise disqualified; but in case of failure to produce the certificate of naturalization, or a certified copy thereof, the registry agent must propound the following questions:

1. In what year did you come to the United States?

2. In what state or territory, county, court, and year were you finally admitted to citizenship?

3. Where did you last see your certificate of naturalization, or a certified copy thereof?

History: En. Sec. 22, Ch. 113, L. 1911; amd. Sec. 22, Ch. 74, L. 1913; amd. Sec. 25, Ch. 122, L. 1915.

576. Voter to sign precinct register books. The judges of election in each precinct, at every general or special election, shall, in the precinct register book, which shall be certified to them by the county clerk, mark a cross (X) upon the line opposite to the name of the elector, before any elector is permitted to vote the judges of election shall require the elector to sign his name upon one of the precinct register books, designated by the county clerk for that purpose, and in a column reserved in the said precinct books for the signature of electors. If the elector is not able to sign his name he shall be required by the judges to produce two freeholders who shall make an affidavit before the judges of election, or one of them, in substantially the following form:

State of Montana,)
County of.....) ss.

We, the undersigned witnesses, do swear that our names and signatures are genuine, and that we are each personally acquainted with ....., (the name of the elector) and that we know that he is residing at ....., and that we believe that he is entitled to vote at this election, and that we are each freeholders in the county, which affidavit shall be filed by the judges, and returned by them to the county clerk, with the return of the election; one of the judges shall thereupon write the elector's name, and note the fact of his inability to sign, and the names of the two freeholders who made the affidavit herein provided for. If the elector fails or refuses to sign his name and if unable to write fails to procure two freeholders who will take the oath herein provided, he shall not be allowed to vote. Immediately after the election and canvass of the returns, the judges of election shall deliver to

the county clerk the copy of said official precinct register sealed, with the election returns and poll-book, which have been used at said election.

History: En. Sec. 26, Ch. 113, L. 1911; amd. Sec. 26, Ch. 74, L. 1913; amd. Sec. 26, Ch. 122, L. 1915.

577. Compelling entry of names in great register. In any action or proceeding instituted in a district court to compel the county clerk to make and enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action against may be joined as defendants.

History: En. Sec. 32, Ch. 113, L. 1911; re-en. Sec. 32, Ch. 74, L. 1913; re-en. Sec. 27, Ch. 122, L. 1915.

578. Name of voter must appear in copy of register—Identification of voter. No person shall be entitled to vote at any election mentioned in this act unless his name shall, on the day of election, except at school election in school districts of the second and third class, appear in the copy of the official precinct register furnished by the county clerk to the judges of election, and the fact that his name so appears in the copy of the precinct register shall be prima facie evidence of his right to vote; provided, that when the judges shall have good reason to believe, or when they shall be informed by a qualified elector that the person offering to vote is not the person who was so registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name by the oath of two reputable freeholders within the precinct in which such elector is registered.

History: En. Sec. 35, Ch. 113, L. 1911; amd. Sec. 35, Ch. 74, L. 1913; amd. Sec. 28, Ch. 122, L. 1915.

579. Omission of name from poll-books—Remedy. Any elector whose name is erroneously omitted from any precinct poll-book may apply for and secure from the county clerk a certificate of such error, and stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct, the said elector shall be entitled to vote in the same manner as if his name had appeared upon the precinct poll-book. Such certificate shall be marked "voted" by the judges, and shall be returned by them with the poll-book.

History: En. Sec. 29, Ch. 122, L. 1915.

580. Authority of deputy county clerk. Wherever in this act the word "county clerk" appears, it shall be construed as extending and giving authority to any regularly appointed deputy county clerk.

History: En. Sec. 36, Ch. 113, L. 1911; re-en. Sec. 36, Ch. 74, L. 1913; re-en. Sec. 30, Ch. 122, L. 1915.

581. "Elector" defined. The word "elector" as used in this law, whether used with or without the masculine pronoun, shall apply equally to male and female electors.

History: En. Sec. 31, Ch. 122, L. 1915. Meaning of term "elector," see note in 43 L. R. A. (N. S.) 294.

582. "Election" defined. The word "election," as used in this law where not otherwise qualified, shall be taken to apply to general, special,

primary nominating, and municipal elections, and to elections in school districts of the first class.

History: En. Sec. 32, Ch. 122, L. 1915.

Cited or applied in State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 399, 170 Pac. 942.

Legal meaning of term "any election," see note in Ann. Cas. 1916E, 38.

583. Violation of act a felony. Any person or persons, or any officer of any county, city or town, or school district, who, under the provisions of this act, are required to perform any duty, who shall wilfully or knowingly fail, refuse, or neglect to perform such duty, or to comply with the provisions of this act, shall, upon conviction, be fined in the sum of not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than three months and no more than one year. Upon the conviction of any officer of the violation of the provisions of this act, the judge of the district court hearing such proceeding shall, at the time of rendering judgment of conviction, include in such order of conviction an order of the court that such officer be removed from office.

History: En. Sec. 37, Ch. 113, L. 1911; re-en. Sec. 37, Ch. 74, L. 1913; re-en. Sec. 33, Ch. 122, L. 1915.

"Knowingly" voting or registering illegally, see note in Ann. Cas. 1912A, 436.

584. Challenging of elector and administration of oath. If any person offering to vote at any primary election be challenged by a judge or any qualified elector at said election, as to his right to vote thereat, an oath shall be administered to him by one of the judges that he will truly answer all questions touching his right to vote at such election, and if it appear that he is not a qualified voter under the provisions of this act, his vote shall be rejected; and if any person whose vote shall be so rejected shall offer to vote at the same election, at any other polling place, he shall be deemed guilty of a misdemeanor.

History: En. Sec. 38, Ch. 113, L. 1911; re-en. Sec. 38, Ch. 74, L. 1913; re-en. Sec. 34, Ch. 122, L. 1915.

585. Acts constituting violation of law—Penalty. Any person who shall make false answers, either for himself or another, or shall violate or attempt to violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers, or other persons upon whom any duty is imposed by this act, or any of its provisions, who shall wilfully neglect such duty, or shall wilfully perform it in such way as to hinder the objects and purposes of this act, shall, excepting where some penalty is provided by the terms of this act, be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a period of not less than one year or more than fourteen years, and if such person be a public officer, shall also forfeit his office.

History: En. Sec. 39, Ch. 113, L. 1911; re-en. Sec. 39, Ch. 74, L. 1913; re-en. Sec. 35, Ch. 122, L. 1915.

586. County commissioners to supply clerk with help. It shall be the duty of the board of county commissioners of each county to provide the county clerk thereof with sufficient help to enable him to properly perform the duties imposed upon him by this act, and the cost of the stationery, printing, publishing, and posting to be furnished or procured by

the county clerk by the provisions of this law shall be a proper charge upon the county.

History: En. Sec. 40, Ch. 74, L. 1913; amd. Sec. 36, Ch. 122, L. 1915.

CHAPTER 49.

JUDGES AND CLERKS OF ELECTION.

Section 587. Judges of Election, How Appointed.
588. Number of Judges to Be Appointed.
589. Number Appointed in New Precincts.
590. Not More Than a Majority to Be From Any One Political Party.
591. Compensation of Election Officers.
592. Clerk to Give Notice to Judges of Appointment—Electors to Elect Judges in Case of Vacancy.
593. Judges to Choose Clerks and to Serve Until Others Appointed.
594. Clerks to Mail to Judges Notices of Election—Form of Notice.
595. Notices to Be Posted by the Judges.
596. Oath of Judges and Clerk.
597. Judges and Clerks May Administer Oaths.

587. Judges of election, how appointed. The board of county commissioners of the several counties, at the regular session next preceding a general or special election, must appoint five judges of election for each precinct in which the voters therein, by the last registration, were one hundred or more, and three judges of election for each precinct in which such registration was less than one hundred.

History: En. Sec. 1260, Pol. C. 1895; re-en. Sec. 500, Rev. C. 1907.

588. Number of judges to be appointed. The board of county commissioners, notwithstanding the registration, may appoint five judges of election for each precinct in which, upon information obtained by them, they have reason to believe contains one hundred voters or more, and three judges of election in precincts which, upon information obtained by them, they have reason to believe contains less than one hundred voters.

History: En. Sec. 1261, Pol. C. 1895; re-en. Sec. 501, Rev. C. 1907.

Validity of election in case of less officers than number required to conduct election, see note in Ann. Cas. 1912D, 149.

589. Number appointed in new precincts. In any new precinct established, the board of county commissioners must, in like manner, appoint five or three judges of election, according to the estimated number of voters therein, as required by the two next preceding sections.

History: En. Sec. 1262, Pol. C. 1895; re-en. Sec. 502, Rev. C. 1907.

590. Not more than a majority to be from any one political party. In making the appointment of judges of election, not more than a majority of such judges must be appointed from any one political party for each precinct.

History: En. Sec. 1263, Pol. C. 1895; re-en. Sec. 503, Rev. C. 1907. Cal. Pol. C. Sec. 1143.

591. Compensation of election officers. The compensation of members of boards of election, including judges and clerks, is hereby fixed at forty

cents per hour for the time actually on duty, and must be audited by the board of county commissioners and paid out of the county treasury.

History: En. Sec. 1173, Pol. C. 1895; re-en. Sec. 459, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1917. Cal. Pol. C. Sec. 1072.

592. Clerk to give notice to judges of appointment—Electors to elect judges in case of vacancy. The clerk of the board must make out and forward by mail, immediately after the appointment of the judges, a notice thereof in writing, directed to each of them. In case there is no postoffice in any one or more of the precincts in any county, the clerk must forward notices of such appointment by registered mail to the postoffice nearest such precinct, directed to the judges aforesaid. If, in any of the precincts, any of the judges refuse or neglect to serve, the electors of such precinct may elect a judge or judges to fill vacancies on the morning of the election, to serve at such election.

History: En. Sec. 1264, Pol. C. 1895; re-en. Sec. 504, Rev. C. 1907.

593. Judges to choose clerks and to serve until others appointed. The judges must elect two persons having the same qualifications as themselves to act as clerks of the election. The judges continue judges of all elections to be held in their respective precincts until other judges are appointed; and the clerks of election continue to act as such during the pleasure of the judges of election, and the board of county commissioners must from time to time fill vacancies which may occur in the offices of judges of election in any precinct within their respective counties.

History: En. Sec. 6, p. 461, Cod. Stat. 1871; re-en. Sec. 6, p. 71, L. 1876; re-en. Sec. 520, 5th Div. Rev. Stat. 1879; re-en. Sec. 1012, 5th Div. Comp. Stat. 1887; re-en. Sec. 1265, Pol. C. 1895; re-en. Sec. 505, Rev. C. 1907.

594. Clerks to mail to judges notices of election—Form of notice. The clerks of the several boards of county commissioners must, at least thirty days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be substantially as follows:

Notice is hereby given that on the first Tuesday after the first Monday of November, 19...., at the house ....., in the county of ....., an election will be held for..... (naming the offices to be filled, including electors of president and vice-president, a representative in congress, state, county and township officers), and for the determination of the following questions (naming them), the polls of which election will be open at eight o'clock in the morning and continue open until six o'clock in the afternoon of the same day.

Dated this .... day of ....., A. D. 19...

Signed A. B., clerk of the board of county commissioners.

History: Ap. p. Sec. 7, p. 461, Cod. Stat. 1871; re-en. Sec. 7, p. 71, L. 1876; re-en. Sec. 521, 5th Div. Rev. Stat. 1879; re-en. Sec. 1013, 5th Div. Comp. Stat. 1887; amd. Sec. 1266, Pol. C. 1895; re-en. Sec. 506, Rev. C. 1907.

595. Notices to be posted by the judges. The judges to whom such notice is directed, as provided in the next preceding section, must cause

to be put up in three of the most public places in each precinct the notices of election in such precinct, at least ten days previous to the time of holding any general election, which notices must be posted as follows: One at the house where the election is authorized to be held, and the others at the two most public and suitable places in the precinct.

History: Ap. p. Sec. 8, p. 72, L. 1876; amd. Sec. 1267, Pol. C. 1895; re-en. Sec. 507, Rev. C. 1907. re-en. Sec. 522, 5th Div. Rev. Stat. 1879; re-en. Sec. 1014, 5th Div. Comp. Stat. 1887;

596. Oath of judges and clerk. Previous to votes being taken, the judges and clerks of election must take and subscribe the official oath prescribed by the constitution. It is lawful for the judges of election, and they are hereby empowered, to administer the oath to each other, and to the clerks of the election.

History: En. Sec. 1268, Pol. C. 1895; re-en. Sec. 508, Rev. C. 1907. Cal. Pol. C. Sec. 1148.

597. Judges and clerks may administer oaths. Any member of the board, or either clerk thereof, may administer and certify oaths required to be administered during the progress of an election.

History: En. Sec. 1269, Pol. C. 1895; re-en. Sec. 509, Rev. C. 1907.

CHAPTER 50.

ELECTION SUPPLIES.

Section 598. County Commission to Furnish Poll-Books.
599. Clerk to Forward Poll-Books to Judges.
600. Form of Poll-Book.
601. Want of Form Not to Vitiate.
602. County Commissioners to Have Blanks Prepared.
603. Clerk to Deliver Ballots and Stamps to Judges of Election.
604. Ballot-Boxes.
605. Size of the Opening of the Ballot-Box.
606. Ballot Box to Be Exhibited.
607. County Clerk to Have Printed Instructions to the Electors.
608. Forms for Transmission of Election Returns.
609. Copying Total Vote Cast for Each Candidate.
610. Posting and Mailing Blanks.
611. Penalty for Failure to Comply With Law.

598. County commissioners to furnish poll-books. The board of county commissioners of each county must furnish for the several election precincts in each county poll-books after the forms hereinafter prescribed.

History: En. Sec. 1300, Pol. C. 1895; re-en. Sec. 517, Rev. C. 1907.

599. Clerk to forward poll-books to judges. The clerk of the board must forward by mail, as a registered package, to one of the judges of election so appointed, in each precinct, at least ten days prior to any general election and five days prior to any special election, two of such blank poll-books for the use of the judges of such precinct.

History: En. Sec. 1301, Pol. C. 1895; re-en. Sec. 518, Rev. C. 1907.

600. Form of poll-book. The following is the form of poll-books to be kept in duplicate by the judges and clerks of election:

Poll-Book of Precinct No. .....

Number and names of electors voting.

No.	Name.	No.	Name.	No.	Name.

Total number of votes cast at precinct No. .....

We, the undersigned, judges and clerks of an election held at precinct No. ....., in the county of ....., in the state of Montana, on the ..... day of ....., 19.., having first been severally sworn according to law, hereby certify that the foregoing is a true statement of the number and names of the persons voting at said precinct at said election, and that the following named persons received the number of votes annexed to their respective names for the following described offices to-wit:

Governor.	Members of Legislative Assembly.	
	Senate.	House of Representatives.
A. B., ... Votes		
C. D., ... Votes	E. F., ...Votes.	G. H., ...Votes

Certified and signed by us.

.....
.....
} Clerks.

.....
.....
.....
.....
.....
} Judges.

History: En. Sec. 1302, Pol. C. 1895; re-en. Sec. 519, Rev. C. 1907. Cal. Pol. C. Sec. 1174.

Cited or applied in Stephens v. Nacey, 47 Mont. 479, 485, 133 Pac. 361.

601. Want of form not to vitiate. No poll-book or certificate returned from any election precinct must be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions of this chapter, if it can be satisfactorily understood.

History: En. Sec. 1303, Pol. C. 1895; re-en. Sec. 520, Rev. C. 1907. Cal. Pol. C. Sec. 1175.

Cited or applied in Stephens v. Nacey, 47 Mont. 479, 485, 133 Pac. 361.

602. County commissioners to have blanks prepared. The necessary printed blanks for poll-lists, tally lists, lists of electors, tickets, and returns, together with envelopes in which to inclose the returns, must be furnished by the boards of county commissioners to the officers of each election precinct at the expense of the county.

History: En. Sec. 1174, Pol. C. 1895; re-en. Sec. 460, Rev. C. 1907.

603. Clerk to deliver ballots and stamps to judges of election—Stamp, what to contain. Before the opening of the polls, the county clerk, or the city clerk in the case of municipal elections, must deliver to the

judges of election of each election precinct which is within the county (or within the municipality in case of municipal election) and in which the election is to be held, at the polling place of the precinct, the proper number of election ballots as provided for in section 687 of this code. He must also deliver to said judges a rubber or other stamp, with ink pad, for the purpose of stamping or designating the official ballots as hereinafter provided. Said stamp must contain the words "Official Ballot," the name or number of the election precinct, the name of the county, the date of the election, and name and official designation of the clerk who furnishes the ballots. The judge of election to whom the stamps and ballots are given pursuant to this section must be the same person who may be designated by the commissioners to post the notices required by section 594 of this code. But in case it be impracticable to deliver such stamps and ballots to such judge then they may be delivered to some other one of the judges of election.

History: Ap. p. Sec. 20, p. 140, L. 1889; amd. Sec. 1356, Pol. C. 1895; re-en. Sec. 547, Rev. C. 1907.

Cited in connection with related sections in Harrington v. Crichton, 53 Mont. 388, 391, 164 Pac. 537.

Cited or applied as section 1356, Political Code, in State ex rel. Brooks v. Farnsham, 19 Mont. 273, 286, 48 Pac. 1.

604. Ballot-boxes. There shall be provided at the expense of the county, for each polling precinct, a substantial ballot-box or canvas pouch with a secure lock and key for the ballots and detached stubs as hereinafter provided for. There shall be one opening, and no more in such box or canvas pouch, of sufficient size to admit a single folded ballot. The adoption of the canvas pouch to be used instead of the ballot-box, in any precinct, shall be optional with the commissioners of each county, but in such precincts where pouches are so adopted, the pouches shall be returned to the county clerk together with the other election returns, as by law provided.

History: Ap. p. Sec. 1270, Pol. C. 1895; amd. Sec. 1, Ch. 88, L. 1907; Sec. 510, Rev. C. 1907.

605. Size of the opening of the ballot-box. There must be an opening in the lid of such box of no larger size than shall be sufficient to admit a single folded ballot.

History: En. Sec. 18, p. 463, Cod. Stat. 1871; re-en. Sec. 17, p. 74, L. 1876; re-en. Sec. 531, 5th Div. Rev. Stat. 1879; re-en. Sec. 1023, 5th Div. Comp. Stat. 1887; re-en. Sec. 1271, Pol. C. 1895; re-en. Sec. 511, Rev. C. 1907.

606. Ballot-box to be exhibited. Before receiving any ballots, the judges must, in the presence of any persons assembled at the polling place, open and exhibit the ballot-box and remove any contents therefrom, and then close and lock the same, delivering the key to one of their members, and thereafter the ballot-box must not be removed from the polling place or presence of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed.

History: Ap. p. Sec. 18, p. 463, Cod. Stat. 1871; re-en. Sec. 17, p. 74, L. 1876; re-en. Sec. 531, 5th Div. Rev. Stat. 1879; re-en. Sec. 1023, 5th Div. Comp. Stat. 1887; amd. Sec. 1272, Pol. C. 1895; re-en. Sec. 512, Rev. C. 1907. Cal. Pol. C. Sec. 1162.

607. County clerk to have printed instructions to the electors. The county clerk of each county must cause to be printed in large type on

cards, in the English language, instructions for the guidance of electors in preparing their ballots. He must furnish six cards to the judges of election in each election precinct, and one additional card for each fifty registered electors, or fractional part thereof, in the precinct, at the same time and in the same manner as the printed ballots. The judges of election must post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about polling places upon the day of election. Said cards must be printed in large, clear type, and must contain full instructions to the voters as to what should be done, viz.:

1. To obtain ballots for voting.
2. To prepare the ballots for deposit in the ballot-boxes.
3. To obtain a new ballot in the place of one spoiled by accident or mistake. Said card must also contain a copy of sections 10753, 10757, 10758, 10759, 10760, 10761 of the Penal Code. There must also be posted in each of the compartments, or booths, one of the official tickets, as provided in sections 677 to 686, without the official stamp, and not less than three such tickets posted elsewhere in and about the polling places upon the day of election.

History: En. Sec. 1273, Pol. C. 1895; re-en. Sec. 513, Rev. C. 1907. Cal. Pol. C. Sec. 1207.

608. Forms for transmission of election returns. In sending out election supplies to each precinct for each general election, it shall be the duty of the county clerk in each county to send with such supplies not less than six printed forms, with a return envelope, for the use of judges of election in transmitting election returns for public information. Said printed forms shall be in ballot form on tinted paper, and the name of each candidate and each proposition voted on shall be printed on said blank. Brief instructions for the use of said blank, as contained in this act, shall also be printed on said blank.

History: En. Sec. 1, Ch. 12, L. 1915.

609. Copying total vote cast for each candidate. As soon as all of the ballots have been counted in any precinct, it shall be the duty of the election judges to correctly copy the total vote cast for each candidate and the total vote cast for and against each proposition on the blanks furnished by the county clerk, as provided in the preceding section.

History: En. Sec. 2, Ch. 12, L. 1915.

610. Posting and mailing blanks. One of said blanks, properly filled out, shall be posted forthwith at the polling place; and one copy, correctly filled out, shall be sent by mail or by messenger, when the same can be done without expense, to the county clerk. Said copy may be sent by the same messenger carrying the official election returns, but the same shall not be inclosed or sealed with the other returns.

History: En. Sec. 3, Ch. 12, L. 1915.

611. Penalty for failure to comply with law. Any judge of election, or other officer, who shall fail or refuse to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars.

History: En. Sec. 4, Ch. 12, L. 1915.

CHAPTER 51.

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETING OR BY ELECTORS.

Section 612. Convention or Primary Meeting Defined.
613. Certificates of Nomination, What to Contain.
614. Certificate, Where Filed.
615. Certificates of Nomination Otherwise Made.
616. Certificate Not to Contain Certain Things—One Person Not to Be Nominated for More Than One Office.
617. Certificates to Be Preserved One Year.
618. When Certificate to Be Filed.
619. Secretary of State to Certify to County Clerk Names of Persons Nominated.
620. Candidate May Decline Ten Days Before Election—In Municipal Election, Two Days.
621. Vacancies May Be Filled by Further Certificates.
622. Errors, How Corrected.
623. Qualification of Voter at Primary Election.
624. Who Entitled to Vote.
625. Judges.
626. Clerk.
627. Challenges—Oath—Penalty.
628. Fraudulent Voting or Counting.
629. Unlawful Interference.
630. Penalties.

612. Convention or primary meeting defined. Any convention or primary meeting held for the purpose of making nominations to public office, or the number of electors required in this chapter, may nominate candidates for public office to be filled by election in the state. A convention or primary meeting within the meaning of this chapter is an organized assemblage of electors or delegates representing a political party or principle.

History: En. Sec. 2, p. 135, L. 1889; amd. Sec. 1310, Pol. C. 1895; re-en. Sec. 521, Rev. C. 1907. Cal. Pol. C. Sec. 1186.

This and the two succeeding sections, recognize systems of conventions and primary meetings held to nominate candidates for public office. Such conventions are meant to be organized assemblages of electors or delegates fairly representing the entire body of electors of the political party which may lawfully vote for the candidates of any such convention. Where, therefore, a judicial district comprises two counties, the nomination of a candidate for district judge by a political party at a county convention composed of delegates of that county alone, without the other having been represented or having an opportunity to participate in the proceedings, such action was a mere nullity. State ex rel. Woody v. Rotwitt, 18 Mont. 502, 506 et seq.; 46 Pac. 370.

Where a political club composed of four hundred members nominated a county ticket at a meeting of some fifty members, and no call for a convention was ever made nor any person ever elected as a delegate to a convention, nor any notice given that a convention was to be held, such proceedings were not those of an organized assemblage of delegates representing a political party within the meaning of this section. State ex rel. Russell v. Tooker, 18 Mont. 540, 543 et seq., 46 Pac. 530, 34 L. R. A. 315.

In the following case the supreme court, without directly citing this section, defined a political convention as "an organized assemblage of electors or delegates representing a political party or principle," and convention representation as "a gathering of electors springing from the electors who compose a political party or adhere to a political principle." Where it appeared that a convention was participated in by twenty-one electors of the county who appeared in response to personal invitation, and after acting as a county convention then proceeded to hold a state convention, no call for a state convention having ever been given or delegates elected to either convention, and no notice published throughout the state or county of the gathering of the new party, the nomina-

tion of a county ticket and presidential electors by such convention was a nullity. State ex rel. Metcalf v. Johnson, 18 Mont. 548, 552, 46 Pac. 533, 34 L. R. A. 313; State ex rel. Woody v. Rotwitt, 18 Mont. 502, 46 Pac. 370, affirmed.

A mass meeting in one of two counties composing a judicial district, called without notice, except to those present at the final adjournment of a regular county convention, for the announced purpose of formulating a protest to the action of the convention, has no authority to name delegates to represent the county in a state and judicial convention in place of those named by the regular county convention; and delegates named by such meeting, though recognized and seated by the state convention, have no authority to represent the county in the judicial convention, and a nomination made by it is invalid, because the electors of both counties are not represented. State ex rel. Scharnikow v. Hogan, 24 Mont. 383, 392, 62 Pac. 583. See, also, State ex rel. Gilchrist v. Weston, 27 Mont. 185, 191, 70 Pac. 519.

Where a call for a mass convention of electors stated that the object was to organize central committees opposed to corporate rule, and to give the voters of the state an opportunity to vote for men free from corporate control, but failed to state that the convention was to assemble to nominate candidates for any office whatever, it was not a call of the electors of the state to assemble and select candidates for public office. State ex rel. Athey v. Hays, 31 Mont. 233, 236, 78 Pac. 486.

A mass convention of electors can make nominations of candidates for public office only where such convention was called for that purpose. If the convention could not make such nominations because the call of the convention did not set forth such purpose, a committee appointed by the convention was without authority to make the nominations. State ex rel. Athey v. Hays, 31 Mont. 233, 236, 78 Pac. 486.

Partisan nominations of candidates for judicial offices are recognized by this and the next two succeeding sections. State ex rel. Holliday v. O'Leary, 43 Mont. 157, 167, 115 Pac. 204.

Held, that since the primary election law is made applicable only to general elections, fails to provide for the nomination of candidates to be voted for at special elections, and does not repeal prior statutes on the latter subject, this section and section 615, are still in force, and therefore nomination of candidates to be voted for at special elections must be made pursuant to the provisions of either this section or section 524. State ex rel. Reibold v. Duncan, 55 Mont. 380, 177 Pac. 250.

"Primary elections" as elections within constitution or statute relating to elections generally, see notes in 2 Ann. Cas. 251; 16 Ann. Cas. 251; Ann. Cas. 1913A, 702; Ann. Cas. 1918E, 79; 18 L. R. A. (N. S.) 412.

613. Certificates of nomination, what to contain. All nominations made by such convention or primary meeting must be certified as follows: The certificate of nomination, which must be in writing, must contain the name of each person nominated, his residence, his business, his business address, and the office for which he is named, and must designate, in not more than five words, the party or principle which such convention or primary meeting represents, and it must be signed by the presiding officer and secretary of such convention or primary meeting, who must add to their signatures their respective places of residence, their business, and business addresses. Such certificates must be delivered by the secretary or the president of such convention or primary meeting to the secretary of the state or to the county clerk, as in this chapter required.

History: En. Sec. 3, p. 136, L. 1889; re-en. Sec. 1311, Pol. C. 1895; re-en. Sec. 522, Rev. C. 1907. Cal. Pol. C. Sec. 1187.

The requirement of this section is evidently designed to guide the proper officer in printing the ballot, so that he may group the candidates and distinguish them by this designation. State ex rel. Kennedy v. Martin, 24 Mont. 403, 406, 62 Pac. 588.

Under this section all convention nominations of one party must be contained in a single certificate, and a separate certificate for each nominee cannot be filed. State ex rel. Galen v. Hays, 31 Mont. 227, 230, 78 Pac. 301.

Conclusiveness of certificate of nomination at primary election, see note in 99 L. R. A. (N. S.) 916.

614. Certificate, where filed. Certificates of nomination of candidates for offices to be filled by the electors of the entire state, or of any division or district greater than a county, must be filed with the secretary of state. Certificates of nomination for county, township, and precinct officers must be filed with the clerks of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal officers must be filed with the clerks of the respective municipal corporations wherein the officers are to be elected. The certificate of nomination of joint member of the house of representatives must be filed in the offices of the county clerks of the counties to be represented by such joint member.

History: En. Sec. 4, p. 136, L. 1889; re-en. Sec. 1312, Pol. C. 1895; re-en. Sec. 523, Rev. C. 1907. Cal. Pol. C. Sec. 1189.

An error in the certificate of nomination filed in accordance with this section, consisting of a misnomer in the name of the party which the convention represented, renders such certificate insufficient and void. State ex rel. Scharnikow v. Hogan, 24 Mont. 397, 401, 62 Pac. 683.

A district judge is a state officer, but there is no provision in this section requiring the certificate of nomination of such an officer from a district containing only a single county to be filed with the secretary of state. In this regard, therefore, there is no specific provision enjoining any duty upon this officer. In view of the policy of the statute and constitution, however, which appears to be that the nomination and election of officers in any county of the state shall be controlled exclusively by the electors therein and their local officers, the certificate of a candidate for district judge of a district containing only one county is, like that of a county officer, to be filed with the clerk of the county. State ex rel. Doran v. Hays, 27 Mont. 174, 177, 70 Pac. 321.

Referred to, in connection with related sections, as section 1312 of the Political Code in State ex rel. Woody v. Rotwitt, 18 Mont. 502, 506, 46 Pac. 370; cited or applied as section 1312, Political Code, in State ex rel. Scharnikow v. Hogan, 24 Mont. 379, 380, 62 Pac. 493, 51 L. R. A. 958; as section 523, Revised Codes, in State ex rel. Holliday v. O'Leary, 43 Mont. 157, 167, 115 Pac. 204.

615. Certificates of nomination otherwise made. Candidates for public office may be nominated otherwise than by convention or primary meeting in the manner following:

A certificate of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificates provided for in section 613, must be signed by electors residing within the state and district, or political division in and for which the officer or officers are to be elected, in the following required numbers:

The number of signatures must not be less in number than five per cent. of the number of votes cast for the successful candidate for the same office at the next preceding election, whether the said candidate be state, county, township, municipal, or any other political division or subdivision of state or county; but the signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature his place of residence, his business, and his business address. Any such certificate may be filed as provided for in the next preceding section of this chapter, in the manner and with the same effect as a certificate of nomination made by a party convention or primary meeting.

History: En. Sec. 5, p. 136, L. 1889; re-en. Sec. 1313, Pol. C. 1895; re-en. Sec. 524, Rev. C. 1907. Cal. Pol. C. Sec. 1188.

In the case cited below the court refrained from deciding the question whether, under the section of the Political Code corresponding with the above, a certificate of nomination to be valid must contain the designation of a party or principle, but was disposed to regard it as contemplating simply the candidacy of one not a nominee of a party—an independent or electors' candidate.

When all the statutes were read with relation to the different conditions contemplated, it was not prepared to say that the information referred to in said section necessarily extended to more than the name, residence, business address, and the office for which the candidate was nominated. It was decided that a candidate for district judge could not, by petitions, have his name placed on the ticket of a regular party in existence. State ex rel. Woody v. Rotwitt, 18 Mont. 502, 509, 46 Pac. 370.

Cited or applied as section 524, Revised Codes, in State ex rel. Haviland v. Beadle, 42 Mont. 174, 176, 111 Pac. 720; State ex rel. Holliday v. O'Leary, 43 Mont. 157, 165, 115 Pac. 204; State ex rel. Rowe v. Kehoe, 49 Mont. 582, 584, 144 Pac. 162; State ex rel. Reibold v. Duncan, 55 Mont. 376, 383, 177 Pac. 248.

616. Certificate not to contain certain things—One person not to be nominated for more than one office. No certificate of nomination must contain the name of more than one candidate for each office to be filled. No person must join in nominating more than one person for each office to be filled, and no person must accept a nomination to more than one office.

History: En. Sec. 6, p. 136, L. 1889; re-en. Sec. 1314, Pol. C. 1895; re-en. Sec. 525, Rev. C. 1907. Cal. Pol. C. Sec. 1190.

Where the same committee appointed by a mass convention nominated two tickets, composed of different persons as candidates for the same offices, such a proceeding was not only wrong, but illegal, and was within the inhibition of this section. This could not have been done by the convention, nor could it be done by the committee, and the names of such nominees were not entitled to places on the official ballot. State ex rel. Athey v. Hays, 31 Mont. 233, 237, 78 Pac. 486.

617. Certificates to be preserved one year. The secretary of state and the clerks of the several counties and of the several municipal corporations must cause to be preserved in their respective offices for one year all certificates of nomination filed under the provisions of this chapter. All such certificates must be open to public inspection under proper regulations to be made by the officers with whom the same are filed.

History: En. Sec. 7, p. 137, L. 1889; re-en. Sec. 1315, Pol. C. 1895; re-en. Sec. 526, Rev. C. 1907. Cal. Pol. C. Sec. 1191.

618. When certificate to be filed. Certificates of nomination to be filed with the secretary of state must be filed not more than sixty days and not less than thirty days before the day fixed by law for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed not more than sixty days and not less than twenty days before the election; certificates of the nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty days and not less than three days previous to the day of election; but the provisions of this section shall not be held to apply to nominations for special elections to fill vacancies.

History: En. Sec. 8, p. 137, L. 1889; amd. Sec. 1316, Pol. C. 1895; re-en. Sec. 527, Rev. C. 1907. Cal. Pol. C. Sec. 1192.

This section, requiring certificates of nomination to be filed with the secretary of state not more than sixty nor less than thirty days before election, is mandatory, and a certificate of original nominations made by a party convention cannot be filed less than thirty days before election. State ex rel. Galen v. Hays, 31 Mont. 227, 230, 78 Pac. 301.

Construction of provision in primary election law with respect to time of filing certificate of nomination, see note in Ann. Cas. 1914A, 1135.

619. Secretary of state to certify to county clerk names of persons nominated. Not less than twenty nor more than thirty days before an election to fill any public office, the secretary of state must certify to the county clerk of each county, within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated, as specified in the certificates of nomination filed with the secretary of state.

History: En. Sec. 9, p. 137, L. 1889; re-en. Sec. 1317, Pol. C. 1895; re-en. Sec. 528, Rev. C. 1907. Cal. Pol. C. Sec. 1193.

It is by means of the certificate mentioned in this section that the county clerk is informed how to prepare the official ballot for the electors. The secretary of state cannot certify a candidate nominated by electors, as the candidate of a political party, for clearly he is not such a candidate and has no place in a group of candidates certified as nominated by a regular political party convention or organization, under the name of the party making such nomination. State ex rel. Woody v. Rotwitt, 18 Mont. 502, 510, 511, 46 Pac. 370.

Cited or applied as section 1317, Political Code, in State ex rel. Scharnikow v. Hogan, 24 Mont. 379, 380, 62 Pac. 493, 51 L. R. A. 958.

620. Candidate may decline ten days before election—In municipal election, two days. Whenever any person nominated for public office, as in this chapter provided, shall at least ten days before election, except in the case of municipal elections, in writing, signed by him, notify the officer with whom the certificate nominating him is by this chapter to be filed, that he declines such nomination, such nomination shall be void. In municipal elections, such declination must be made at least two days before the election.

History: En. Sec. 11, p. 138, L. 1889; re-en. Sec. 1319, Pol. C. 1895; re-en. Sec. 529, Rev. C. 1907. Cal. Pol. C. Sec. 1192.

An election will not be declared void by reason of non-prejudicial defects in the nominating certificate. Stackpole v. Hallahan, 16 Mont. 40, 51 et seq., 40 Pac. 80, 28 L. R. A. 502.

Referred to as section 1319 of the Political Code in State ex rel. Kennedy v. Martin, 24 Mont. 403, 408, 62 Pac. 588.

Refusal to have one's name placed on primary ballot, see note in L. R. A. 1916E, 709.

621. Vacancies may be filled by further certificates. If any person so nominated dies before the printing of the tickets, or declines the nomination as in this chapter provided, or if any certificate of nomination is or becomes insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nomination. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancies, proceed to fill the same. The chairman and secretary of such committee must thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made must be executed in the manner prescribed for the original certificate of nomination, and has the same force and effect as an original certificate of nomination. When such certificate is filed with the secretary of state, he

must, in certifying the nominations to the various county clerks, insert the name of the person who has thus been nominated to fill a vacancy in place of the name of the original nominee. And in the event he has already transmitted his certificate he must forthwith certify to the clerks of the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents and the name of the person for whom such nominee is substituted.

History: En. Sec. 12, p. 138, L. 1889; re-en. Sec. 1320, Pol. C. 1895; re-en. Sec. 530, Rev. C. 1907. Cal. Pol. C. Sec. 1192.

This section does not forbid a political convention from appointing and delegating to a committee power to make nominations for office, and a nomination made by such committee after the adjournment of the convention is in effect the act of the convention, and therefore valid. State ex rel. Piggott v. Benton, 13 Mont. 306, 325 et seq.; 34 Pac. 301.

Where a convention of a political party has made a nomination, and authorized its committee to fill vacancies, and there is an error in the certificate of nomination filed, consisting of a misnomer of the party which the convention represented, such error renders the certificate void, thereby creating a vacancy to be filled by the committee as provided in this section, construed as section 1320 of the Political Code. State ex rel. Scharnikow v. Hogan, 24 Mont. 397, 399 et seq.; 62 Pac. 683.

This section is silent touching the time within which must be filed the certificate of nomination made by a committee to fill a vacancy occasioned by the insufficiency of the certificate of the original nomination. When a convention has made a nomination, and has authorized its committee to fill any vacancy that may occur, the filling of the vacancy by the committee upon the death or resignation of the candidate, or because the original certificate of nomination was or became insufficient or inoperative, may be made at any time before the day of election. State ex rel. Scharnikow v. Hogan, 24 Mont. 397, 402, 62 Pac. 683; State ex rel. Galen v. Hays, 31 Mont. 227, 231, 78 Pac. 301.

The inadvertent failure to include the name of a convention nominee for a certain office in the certificate of nominations renders the certificate insufficient, within the meaning of this section, and entitles the proper committee to fill the vacancy. State ex rel. Galen v. Hays, 31 Mont. 227, 231, 78 Pac. 301.

Referred to as section 1320 of the Political Code in State ex rel. Kennedy v. Martin, 24 Mont. 403, 408, 62 Pac. 588.

622. Errors, how corrected. Whenever it appears by affidavit that an error or omission has occurred in the publication of the name or description of a candidate nominated for office, or in the printing of the ballots, the district court of the county may, upon application of any elector, by order require the county or municipal clerk to correct such error, or to show cause why such error should not be corrected.

History: En. Sec. 19, p. 140, L. 1889; re-en. Sec. 1322, Pol. C. 1895; re-en. Sec. 532, Rev. C. 1907.

This section contemplates and authorizes the institution of proceedings to cure, not alone clerical omissions or errors, but likewise extends to instances of defects by way of omissions of names of candidates from the ballot, as well as to erroneous insertions of names of persons as candidates who are not in fact entitled to be so regarded, and whose names, unless stricken off the official ballot, will be erroneously printed thereon. State ex rel. Brooks v. Fransham, 19 Mont. 273, 288, 48 Pac. 1.

Cited or applied as section 1322, Political Code, in State ex rel. Scharnikow v. Hogan, 24 Mont. 383, 392, 62 Pac. 583.

623. Qualification of voter at primary election. No person shall be entitled to vote at any caucus, primary meeting, or election, held by any political party, except he be an elector of the state and county within which such caucus, primary meeting, or election is held, and a legal resident of the precinct or district within which such caucus, primary meet-

ing, or election is held, and the limits of which said precinct or district are fixed and prescribed by the regularly chosen and recognized representatives of the party issuing the call for such caucus, primary meeting, or election.

History: En. Sec. 1330, Pol. C. 1895; re-en. Sec. 533, Rev. C. 107.

Note.—In State ex rel. Reibold v. Duncan, 55 Mont. 380, it was held that sections 521 et seq., Rev. C. 1907 (Secs. 612 to 630 of this code), are still in effect for purposes of special elections. There is a question as to whether sections 533 to 540, Rev. C. 1907 (Secs. 623 to 630 of this code), have not been wholly superseded by the direct primary law. Since it is possible that these sections may now have application to the "conventions or primary meetings" referred to in section 612, this code, they have been retained in the present codification.

624. Who entitled to vote. No person shall be entitled to vote at any caucus, primary meeting, or election, who is not identified with the political party holding such caucus, primary meeting, or election, or who does not intend to act with such political party at the ensuing election, whose candidates are to be nominated at such caucus or primary meeting. And no person, having voted at any primary meeting or election of any political party whose candidates are to be or have been nominated, shall be permitted to vote at the primary meeting or election of any other political party whose candidates are to be or have been nominated and to be voted for at the same general or special election.

History: Ap. p. Sec. 1331, Pol. C. 1895; amd. Sec. 1, p. 115, L. 1901; re-en. Sec. 534, Rev. C. 1907.

625. Judges. Three judges, who shall be legal voters in the precinct where such caucus or primary meeting is held, shall be chosen by the qualified voters of said precinct or district, who are present at the opening of such caucus or primary meeting, and said judges shall be empowered to administer oaths and affirmations, and they shall decide all questions relating to the qualifications of those voting or offering to vote at such caucus or primary meeting, and they shall correctly count all votes cast and certify the results of the same.

History: En. Sec. 1332, Pol. C. 1895; re-en. Sec. 535, Rev. C. 1907.

626. Clerk. The judges shall select one of their number who shall act as clerk, and the clerk must keep a true record of each and every person voting, with their residence, giving the street and number and postoffice address.

History: En. Sec. 1333, Pol. C. 1895; re-en. Sec. 536, Rev. C. 1907. Cal. Pol. C. Sec. 1229.

627. Challenges—Oath—Penalty. Any qualified voter may challenge the right of any person offering to vote at such caucus or primary meeting, and in the event of such challenge, the person challenged shall swear to and subscribe an oath administered by one of the judges, which oath shall be substantially as follows:

"I do solemnly swear that I am a citizen of the United States, and am an elector of this county and of this precinct where this primary is now being held, that I have been and now am identified with the party or that it is my intention bona fide to act with the party, and identify myself with the same at the ensuing election, and that I have not voted

at any primary meeting or election of any other political party whose candidates are to be voted for at the next general or special election.''

If the challenged party takes the oath above prescribed he is entitled to vote; provided, in case a person taking the oath as aforesaid shall intentionally make false answers to any questions put to him by any one of the judges concerning his right to vote at such caucus or primary meeting or election, he shall, upon conviction be deemed guilty of perjury, and shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than three years.

History: Ap. p. Sec. 1334, Pol. C. 1895; amd. Sec. 2, p. 115, L. 1901; re-en. Sec. 537, Rev. C. 1907. Cal. Pol. C. Sec. 1230.

628. Fraudulent voting or counting. It shall be unlawful for any judge of any caucus or primary meeting or primary election to knowingly receive the vote of any person whom he knows is not entitled to vote, or to fraudulently or wrongfully deposit any ballot or ballots in the ballot-box, or take any ballot or ballots from the ballot-box of said caucus or primary election, or fraudulently or wrongfully mix any ballots with those cast at such caucus or primary election, or knowingly make any false count, canvass, statement, or return of the ballots cast or vote taken at such caucus or primary election.

History: En. Sec. 1335, Pol. C. 1895; re-en. Sec. 538, Rev. C. 1907.

629. Unlawful interference. No person shall, by bribery or other improper means or device, directly or indirectly, attempt to influence any elector in the casting of any ballot at such caucus or primary meeting, or deter him in the deposit of his ballot, or interfere or hinder any voter at such caucus or primary meeting in the full and free exercise of his right of suffrage at such caucus or primary meeting.

History: En. Sec. 1336, Pol. C. 1895; re-en. Sec. 539, Rev. C. 1907.

630. Penalties. Any person or persons violating any of the provisions of this act, except as provided in section 627, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than three months nor more than twelve months, or by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 3, p. 116, L. 1901; re-en. Sec. 540, Rev. C. 1907.

CHAPTER 52.

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY.

Section 631. Construction of Law.
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631. Construction of law. Whenever the provisions of this law in operation prove to be of doubtful or uncertain meaning, or not sufficiently explicit in directions and details, the general laws of Montana, and especially the election and registration laws, and the customs, practice, usage, and forms thereunder, in the same circumstances or under like conditions, shall be followed in the construction and operation of this law, to the end that the protection of the spirit and intention of said laws shall be extended so far as possible to all primary elections, and especially to all primary nominating elections provided for by this law. If this proposed law shall be approved and enacted by the people of Montana, the title of this bill shall stand as the title of the law.

History: En. Sec. 1, Initiative Measure Nov. 1912. Cal. Pol. C. Secs. 1357-1380.

The so-called anti-fusion statute was not impliedly repealed by the primary election law. State ex rel. Metcalf v. Wileman, 49 Mont. 436, 437, 143 Pac. 565.

Cited or applied as Laws of 1913, p. 570, in Cadle v. Town of Baker, 51 Mont. 176, 181, 149 Pac. 960.

632. Date of holding primaries. On the seventieth day preceding any general election (not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections) at which public officers in this state and in any district or county are to be elected a primary nominating election shall be held in accordance with this law in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this law, for senator in congress, and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen at the ensuing election wholly by electors within this state, or any subdivision of this state, and also for choosing and electing county central committeemen by the several parties subject to the provisions of this law.

History: En. Sec. 2, Initiative Measure Nov. 1912.

633. Primary nominating election notices. It shall be the duty of the county clerk, thirty days before any primary nominating election, to prepare printed notices of such election, and mail two of said notices to each judge and clerk of election in each precinct; and it shall be the duty of the several judges and clerks immediately to post said notice in public places in their respective precincts. Said notices shall be substantially in the following form:

Primary Nominating Election Notice.

Notice is hereby given that on....., the..... day of ....., 19..., at the....., in the Precinct of ....., in the County of ....., Montana, a primary nominating election will be held at which the (insert names of political parties subject to this law) will choose their candidates for state, district, county, precinct and other offices, namely (here name the offices to be filled, including a Senator in Congress when the next Legislative Assembly is to elect a Senator, delegates to any constitutional convention then called, and candidates for county central committeemen to be elected); which election will be held at 12 o'clock, noon, and will continue until 7 o'clock in the afternoon of said day.

Dated this.....day of....., 19....

....., County Clerk.

History: En. Sec. 3, Initiative Measure Nov. 1912.

634. Application of law to cities and towns. The nomination of candidates for municipal offices by the political parties subject to the provisions of this law shall be governed by this law in all incorporated towns and cities of this state having a population of thirty-five hundred and upward as shown by the last preceding national or state census. All petitions by the members of such political parties for placing the names of candidates for nomination for such municipal offices on the primary nominating ballots of the several political parties shall be filed with the city clerk of said several towns and cities, and it shall be the duty of such officers to prepare and issue notices of election for such primary nominating elections in like manner as the several county clerks perform

similar duties for nomination by such political parties for county offices at primary nominating elections. The duties imposed by this law on the county clerks at primary nominating elections are hereby, as to said towns and cities, designated to be the duties of the city clerk of said towns and cities as to primary nominating elections of the political parties subject to the provisions of this law, provided, that in cities and towns the primary nominating election shall be held on the fourteenth day preceding their municipal elections. Under the provisions of this law the lawfully constituted legislative and executive authorities of cities and towns within the provisions of this section shall have such power and authority over the establishing of municipal voting precincts and wards, municipal boards of judges and clerks of election and other officers of their said municipal election, and other matters pertaining to municipal primary nominating elections required for such cities and towns by this law, such legislative and executive authorities have over the same matter at their municipal elections for choosing the public officers of said cities and towns.

History: En. Sec. 4, Initiative Measure Nov. 1912; amd. Sec. 1, Ch. 88, L. 1921.

635. Emergency clause. This act is declared to be an emergency law, and a law necessary for the immediate preservation of the public peace and safety.

History: En. Sec. 3, Ch. 88, L. 1921.

636. Counting of ballots. Immediately after the closing of the polls at a primary nominating election, the clerks and judges of election shall open the ballot-boxes at each polling place and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each political party, at the same time bunching the tickets cast for each political party together in separate piles, and shall then fasten each pile separately by means of a brass clip, or may use any means which shall effectually fasten each pile together at the top of each ticket. As soon as the clerks and judges have sorted and fastened together the ballots separately for each political party, then they shall take the tally sheets provided by the county clerk and shall count all the ballots for each political party separately until the count is completed, and shall certify to the number of votes for each candidate for nomination for each office upon the ticket of each party. They shall then place the counted ballots in the box. After all have been counted and certified to by the clerks and judges they shall seal the returns for each of said political parties in separate envelopes, to be returned to the county clerk.

History: En. Sec. 5, Initiative Measure Nov. 1912.

637. Form of tally sheets—Canvass of votes. Tally sheets for each political party having candidates to be voted for at said primary nominating election shall be furnished for each voting precinct by the county clerk, at the same time and in the same manner that the ballots are furnished and shall be substantially as follows:

Tally sheet of the primary nominating election for ..... (name of political party) held at.....precinct, in the county of ..... on the ..... day of ..... 19....

The names of the candidates shall be placed on the tally sheets and numbered in the order in which they appear on the official and sample ballots, and in each case shall have the proper political party designated at the head thereof.

The following shall be the form of the tally sheets kept by the judges, and clerks of the primary nominating election under this law, containing the number and name of each person voted for, the particular office for nomination to which each person was voted for, the total number of votes cast for each candidate for nomination. The tally or count as it is kept by each of the clerks shall be audibly announced as it proceeds, and shall be kept in the manner and form as follows:

No.	Name of Candidate	Office	Total Vote Received	No.	Tally 5	No.	Tally 10	No.	Tally 15
12	.....	.....	.....	12	.....	12	.....	12	.....
13	.....	.....	.....	13	.....	13	.....	13	.....
14	.....	.....	.....	14	.....	14	.....	14	.....

The columns for the numbers 12, 13, 14, etc., shall not be over three-eighths of an inch wide. The columns for the tallies shall be three-eighths of an inch wide, the lines shall be three-eighths of an inch apart; every ten lines the captions of the columns shall be reprinted between double-ruled lines in bold-faced small pica, and all figures shall be printed in bold-faced small pica. The tally sheets shall conclude with the following form of certificate:

We hereby certify that at the above primary nominating election and polling place each of the foregoing named persons received the number of votes set opposite his name, as above set forth, for the nomination for the office specified.

....., Chairman. ....., Clerk.
(Who kept this sheet.)
....., Judge. ....., Clerk.
....., Judge. ....., Clerk.
(Who kept the other sheet.)

During the counting of the ballots each clerk shall, with pen and ink, keep tally upon one of the above tally sheets, of each political party, and shall total the number of tallies and write the total in ink immediately to the right of the last tallies for each candidate and also in the columns headed "total vote" and shall prepare the certificate thereto above indicated; and immediately upon the completion of the count, all the clerks shall sign the tally sheets, and each of them shall certify which sheets were kept by him; and the chairman and the judges, being satisfied of the correctness of the same, shall then sign all of said tally sheets. The clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct, and shall prepare the certificate thereto, which statement shall be signed by the judges and clerks who complete the count, and shall be immediately

posted in a conspicuous place on the outside of said polls, there to remain for ten days.

History: En. Sec. 6, Initiative Measure Nov. 1912.

638. Poll-books and tally sheets to be sealed and returned. Immediately after canvassing the votes in the manner aforesaid, the judges and clerks who complete the count, before they separate or adjourn shall inclose the poll-books in separate covers and securely seal the same. They shall also inclose the tally sheets in separate envelopes and seal the same securely. They shall also envelope all the ballots fastened together, as aforesaid, and seal the same securely; and they shall be in writing, with pen and ink, specify the contents, and address each of said packages upon the outside thereof to the county clerk of the county in which the election precinct is situated. These sealed packages of counted ballots shall be marked on the outside, showing what numbers are contained therein, but once sealed they are not to be opened by any one until so ordered by the proper court. When the count is completed, the ballots counted and sealed, and enveloped and marked for identification as aforesaid, shall be packed in the two ballot-boxes, and nothing else shall be put into the boxes. The boxes shall then be locked, and the official seal of the board shall be pasted over the keyhole and over the rim of the lid of the box, so that the box cannot be opened without breaking the seal. Thereafter neither the county clerk nor the canvassers making the abstracts of the votes shall break the said seals upon the ballot-boxes, nor shall anyone break the seals on the boxes or the ballots, except upon the order of the proper court in case of contest, or upon the order of the county board when the boxes are needed for the ensuing election.

History: En. Sec. 7, Initiative Measure Nov. 1912.

639. Political party nominations made exclusively as herein provided. Every political party shall nominate all its candidates for public office under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 612 of this code. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of that by which he is nominated. No independent or non-partisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective political parties for such public office in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots.

History: En. Sec. 8, Initiative Measure Nov. 1912.

640. Petitions for nomination to be filed. Before or at the time of beginning to circulate any petition for nomination to any office under this law, the person who is to be a candidate for such nomination shall

send by registered mail, or otherwise, to the secretary of state, or the county clerk or city clerk, a copy of his petition for nomination, signed by himself; and such copy shall be filed and shall be conclusive evidence for the purpose of this law that said elector has been a candidate for nomination by his party. All nominating petitions and notices pertaining to state or district offices to be voted for in more than one county, and for judges of the district court, shall be filed in the office of the secretary of state; for county offices and district offices to be voted for in one county only, shall be filed with the county clerk; and for all city offices, in the office of the city clerk.

History: En. Sec. 9, Initiative Measure Nov. 1912.

641. Form of petition for nomination—Statement of candidates. Any qualified elector who has filed his petition shall have his name printed on the official nominating ballot of his party as a candidate for nomination for any office at any primary nominating election held under the provisions of this act, if there shall be filed in his behalf a petition signed as herein required, and substantially in the following form:

To ..... (address of the officer with whom the petition is to be filed), and to the members of the.....party and the electors of (State), Counties of....., comprising the ..... District, (County), (city), (as the case may be), in the State of Montana—

I, ..., reside at ....., and my post-office address is..... If I am nominated for the office of ..... at the primary nominating election to be held in the (State of Montana), (district), (county), (city), the ..... day of ....., 19..., I will accept the nomination and will not withdraw, and if I am elected I will qualify as such officer.

If I am nominated and elected I will, during my term of office (here the candidate, in not exceeding one hundred words, may state any measures or principles he especially advocates, and the form in which he wishes it printed after his name on the nominating ballot, in not exceeding twelve words).

[In case of an elector seeking nomination for the office of senator or representative in the legislative assembly, he may include one of the following two statements in his petition; but if he does not do so, the secretary of state or county clerk, as the case may be, shall not on that account refuse to file his petition:

Statement No. 1.

I further state to the people of Montana, as well as to the people of my legislative district, that during my term of office I will always vote for that candidate for United States senator in congress who has received the highest number of the people's votes for that position at the general election next preceding the election of a senator in congress, without regard to my individual preference.

.....

(Signature of the candidate for nomination.)

If the candidate shall be unwilling to sign the above statement, then he may sign the following statement as a part of his petition:

Statement No. 2.

During my term of office I shall consider the vote of the people for United States senator in congress as nothing more than a recommendation, which I shall be at liberty to wholly disregard, if the reason for doing so seems to me to be sufficient.]

.....

(Signature of the candidate for nomination.)

Every such petition shall be signed as above by the elector seeking such nomination. There shall be a separate leaf or sheet signed as above on every such petition for each precinct in which it is circulated. After the above, and on separate sheet or sheets, shall be the following petition:

To ....., (Secretary of State for Montana),
or to ....., the County Clerk for the County
of ....., Montana, (or to .....
City Clerk of.....), (as the case may be).

We, the undersigned members of the ..... party and qualified electors and residents of ..... precinct, in the County of ....., State of Montana, respectfully request that you will cause to be printed on the official nominating ballot for the ..... party, at the aforesaid primary nominating election, the name of the above signed ..... (name of applicant) as a candidate for nomination to the office of ..... (title of office) by said ..... party.

Form.

Name.....Postoffice Address.....
Street and Number, if any ..... Precinct .....

Name	Postoffice Address	Street and number, if any	Precinct

Each and every leaf or sheet of said petition containing signatures shall be verified in substantially the following form by one or more of the signers of said petition:

State of Montana, County of....., ss.

I, ..., being first duly sworn, say: I am personally acquainted with all the persons who have signed this sheet of the foregoing petition, and I personally know that their signatures thereon are genuine; and I believe that their postoffice address and residence are correctly stated and that they are qualified electors and members of the ..... party.

.....

(Signature of affiant.)

Subscribed and sworn to before me this ..... day of ....., 19....

.....

(Signature and title of officer before whom oath is made.)

History: En. Sec. 10, Initiative Measure Nov. 1912.

Note.—The bracketed portion of the above section is now obsolete.

642. Percentage of electors required on petition. The vote cast by a political party in each voting precinct for representative in congress at

the last preceding general election shall be the basis on which the percentage for petitions shall be counted. In the case of any political party not represented by any candidates for any office on the ballot at the last preceding general election, nomination papers must be signed by as many voters as are required in the case of the candidates of the party requiring the least numbers of signatures entitled, as herein provided, to a place on the ballot at such primary. If the nomination is for a municipal office, or for an office to be voted for in only one county, the necessary number of signers shall include electors residing in at least one-fifth of the voting precincts of the county, municipality or district; if it be a state or district office, and the district comprises more than one county, the necessary number of signers shall include electors residing in each of at least one-eighth of the precincts in each of at least two counties in the district; if it be an office to be voted for in the state at large, the necessary number of signers shall include electors residing in each of at least one-tenth of the precincts in each of at least seven counties of the state; if it be an office to be voted for in a congressional district, the necessary number of signers shall include electors residing in at least one-tenth of the precincts in each of at least one-fourth of the counties in such district. The number of signers required on every such petition shall be at least two per cent. of the party vote in the electoral district as above stated; provided, that the whole number of signers required on a nominating petition under the provisions of this law for any office to be voted for in the state at large or in a congressional district shall not exceed one thousand, nor in any other case shall the whole number required exceed five hundred signers. All the leaves or sheets making one petition shall be fastened together before they are forwarded to the proper officers for filing. There shall not be in any petition the name of more than one candidate for nomination. Any elector may sign more than one nominating petition required by this law for the same office. It shall be unlawful for any person to sign another person's name to any petition required by this law. It shall be unlawful for any person to sign any nominating petition required by this law unless he is a qualified elector. Any names or signatures placed on any petition in violation of the provisions of this law shall not be counted in computing the number of signers necessary to make the same a valid and effective petition.

History: En. Sec. 11, Initiative Measure Nov. 1912.

643. Qualification of petitioners. No person who is not a qualified elector shall be qualified to join in signing any petition for nomination, or to vote at said primary nominating election. But this shall not be construed to prevent any member of any party from signing a petition for the nomination of any independent or non-partisan candidate after the primary nominating election, nor shall it be construed to prevent any qualified elector from signing petitions for more than one candidate for the same office on one party ticket.

History: En. Sec. 12, Initiative Measure Nov. 1912.

644. Time for filing petitions for nominations. All petitions for nomination under this act for offices to be filled by the state at large, or by any district consisting of more than one county, and nominating peti-

tions for judges of district courts in districts consisting of a single county, shall be filed in the office of the secretary of state not less than twenty days before the date of the primary nominating election; and for other offices to be voted for in only one county, or district or city, every such petition shall be filed with the county clerk or city clerk, as the case may be, not less than fifteen days before the date of the primary nominating election.

History: En. Sec. 13, Initiative Measure Nov. 1912.

645. "Register of Candidates." The county clerk, secretary of state, and the city clerk of towns and cities having two thousand inhabitants or more, shall keep a book entitled "Register of Candidates for Nomination at the Primary Nominating election," and he shall enter therein, on different pages of the book for the different political parties subject to the provisions of this law, the title of the office sought and the name and residence of each candidate for nomination at the primary nominating election; the name of his political party; the date of receiving the first copy of his petition, signed by the candidate; the words he wishes printed after his name on the nominating ballot, if any; the date of receiving his petition; the number of signatures thereon, and the number of signatures required to make a valid and sufficient petition for nomination to said office by his political party, and such other information as may aid him in arranging his official ballot for said primary nominating election immediately after the canvass of votes at a primary nominating election is completed, the county clerk, secretary of state, or city clerk, as the case may be, shall enter in his book marked "Register of Nominations," the date of such entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

History: En. Sec. 14, Initiative Measure Nov. 1912.

646. Register of candidates is public record—Disposition of poll-books, tally sheets, ballots, etc. Such registers of candidates for nomination, and of nominations and petitions, letters and notices, and other writings required by law as soon as filed, shall be public records, and shall be open to public inspection under proper regulations; and when a copy of any such writing is presented at the time the original is filed, or at any time thereafter, and a request is made to have such copy compared and certified, the officers with whom such writing was filed shall forthwith compare such copy with the original on file, and, if necessary, correct the copy and certify and deliver the copy to the person who presented it on payment of his lawful fees therefor. All such writings, poll-books, tally sheets, ballots, and ballot stubs pertaining to primary nominating elections under the provisions of this act shall be preserved as other records are for two years after the election to which they pertain, at which time, unless otherwise ordered or restrained by some court, the county clerk shall destroy the ballots and ballot stubs, by fire, without any one inspecting the same.

History: En. Sec. 15, Initiative Measure Nov. 1912.

647. Vacancies in nominations, how filled. The provisions of sections 620 and 621 of this code shall apply to nominations, or petitions for nominations, made under the provisions of this law, in case of the death of

the candidate or his removal from the state or his county or electoral district before the date of the ensuing election, but in no other case. In case of any such vacancy by death or removal from the state, or from the county or electoral district, such vacancy may be filled by the committee which has been given power by the political party or this law to fill such vacancies substantially in the manner provided by said sections 620 and 621 of this code.

History: En. Sec. 16, Initiative Measure Nov. 1912.

Neither this section nor section 32 of the primary election law empowers a county central committee to make an original nomination of a candidate to an office to be filled at a special election, the officer-elect having died soon after election and before induction into office. State ex rel. Smith v. Duncan, 55 Mont. 376, 177 Pac. 248.

When does vacancy in party ticket occur within statute authorizing filling of vacancies, see note in 41 L. R. A. (N. S.) 1088.

648. Arrangement and notice of nominations. Not more than twenty days and not less than seventeen days before the day fixed by law for the primary nominating election the secretary of state shall arrange, in the manner provided by this law, for the arrangement of the names and other information upon the ballots, all the names of and information concerning all the candidates for nomination contained in the valid petitions for nomination which have been filed with him in accordance with the provisions of this law, and he shall forthwith certify the same under the seal of the state, and file the same in his office, and make and transmit a duplicate thereof by registered letter to the county clerk of each county in the state, and he shall also post a duplicate thereof in a conspicuous place in his office and keep the same posted until after said primary nominating election has taken place. In case of emergency the secretary of state may transmit such duplicate by telegraph.

History: En. Sec. 17, Initiative Measure Nov. 1912.

649. Arrangement of ballots and notice. Not more than fifteen days and not less than twelve days before the day fixed by law for the primary nominating election, the county clerk of each county, or the city clerk of each city, as the case may be, subject to the provisions of this law, shall arrange in the manner provided by this law for the arrangement of the names and other information concerning all the candidates and parties named in the valid petitions for nomination which have been filed with him and those which have been certified to him by the secretary of state, in accordance with the provisions of this law; and he shall forthwith certify the same under the official seal of his office, and file the same in his office, and make and post a duplicate thereof in a conspicuous place in his office, and keep the same posted until after the primary nominating election has taken place; and he shall forthwith proceed and cause to be printed, according to law, the colored sample ballots and the official voting ballots required by this law.

History: En. Sec. 18, Initiative Measure Nov. 1912.

650. Ballots printed and furnished by county clerk. All blanks, ballots, poll-books and other supplies to be used at any primaries shall be provided, and all expenses necessarily incurred in the preparation for, or conducting such primaries shall be paid out of the treasury of the county

in the same manner and by the same officers as in the case of elections. Not later than one day next preceding any primary the county clerk must furnish one of the judges of the primaries in each precinct with a copy of the official register and a check list for the precinct.

History: En. Sec. 19, Initiative Measure Nov. 1912.

651. Ballots, how arranged, printed and voted. At all primaries there shall be a ballot made up of the several party tickets herein provided for, each of which shall be printed on a separate sheet of white paper, all of which shall be of the same size, and all shall be securely fastened together at the top and folded, provided that there shall be as many separate tickets as there are parties entitled to participate in said primary election.

The names of all candidates shall be arranged alphabetically according to surnames, under the appropriate title of the respective officers, and under the proper party designation upon the party ticket. If any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written, this ballot shall be counted for such person only as a candidate of the party upon whose ticket his name is written, and shall in no case be counted for such person as a candidate upon any other ticket. In case any person is nominated, as provided in this act, upon more than one ticket, he shall forthwith file with the secretary of state or county clerk a written declaration indicating the party designation under which his name is to be printed on the official ballot, for the primary election, failing in which his name shall be printed upon the party ticket for which the greater number of nominating signatures have been filed for such candidate and no candidate shall have his name printed on more than one ticket. The ballots with the endorsements shall be printed on white paper in substantially the form of the Australian ballot used in general elections, except that the candidates of each party shall be printed on a separate sheet. After preparing his ballot, the elector shall detach the same from the remaining tickets and fold it so that its face will be concealed and the official stamp thereon seen. The remaining tickets attached together shall be folded in like manner by the elector who shall thereupon, without leaving the polling-place, vote the marked ballot forthwith, and deposit the remaining tickets in the separate ballot-box to be marked and designated as the blank ballot-box. Immediately after the canvass the judges of election shall without examination destroy the tickets deposited in the blank ballot-box.

History: En. Sec. 20, Initiative Measure Nov. 1912.

652. Official and sample ballots—Preparation and number. There shall be provided and furnished at each primary nominating election for each election precinct for each voter at least two official ballots intended to be voted, and a like number of the colored sample ballots. The sample ballots shall be duplicate impressions of the official ballots to be voted, but in no case shall they be white, nor shall the sample ballots have perforated stubs, nor shall they have the same margin either at the top or sides or bottom, as the official voting ballots have, or nearer thereto than twelve points. These colored sample ballots shall be furnished as soon as printed, at any time before the primary nominating election by the

respective county or city clerks in reasonable quantities, to all electors applying for the same; and on the day of said election, under the direction and control of the judges at each polling-place, said colored sample ballots shall be given in proper quantities to all electors applying for them.

History: En. Sec. 21, Initiative Measure Nov. 1912.

653. Names of candidates for United States senator to be placed on ballots. At all general primary nominating elections next preceding the election of a senator in congress by the legislature of Montana there shall be placed upon the official primary nominating election ballots, by each of the county clerks and clerks of the county board, the names of all candidates for the office of senator in congress, for whose nominations petitions have been duly made and filed under the provisions of this law, the votes for which candidates shall be counted and certified to by the election judges and clerks in the same manner as the votes for other candidates; and records of the vote for such candidates shall be made out and sworn to by the board of canvassers of each county of the state and returned to the secretary of state at the time and in like manner as they shall transmit other records and returns required by this law.

History: En. Sec. 22, Initiative Measure Nov. 1912.

654. Canvass of returns. On the third day after the close of any primary nominating election, or sooner if all the returns be received, the county clerk, taking to his assistance two justices of the peace of the county of different political parties, if practicable, shall proceed to open said returns and make abstracts of the votes. Such abstracts of votes for nominations for governer and for senator in congress shall be on one separate sheet for each political party, and shall be immediately transmitted to the secretary of state in like manner as other election returns are transmitted to him. Such abstract of votes for nomination of each party for lieutenant-governer, secretary of state, attorney-general, state auditor, superintendent of public instruction, railroad commissioners, clerk of the supreme court, state treasurer, justices of the supreme court, members of congress, judges of the district court, and members of the legislative assembly, who are to be nominated from a district composed of more than one county, shall be on one sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by the following section. The abstract of votes for county and precinct offices shall be on another sheet separately for each political party; and it shall be the duty of said clerk immediately to certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination as candidates for members of the legislative assembly, county, and precinct offices, respectively, and to notify by mail each person who is so nominated; provided, that when a tie shall exist between two or more persons for the same nomination by reason of said two or more persons having an equal and the highest number of votes for nomination by one party to one and the same office, the county clerk shall give notice to the several persons so having the highest and equal number of votes to attend at his office at a time to be appointed by said clerk, who shall

then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared nominated by his party; and said clerk shall forthwith enter upon his register of nominations the name of the persons thus duly nominated, in like manner as though he had received the highest number of the votes of his party for that nomination; and it shall be the duty of the county clerk of every county, on receipt of the returns of any general primary nominating election, to make out his certificate stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the county board of county commissioners at its next term, and the said board shall order the compensation aforesaid to be paid out of the county treasury. In all primary nominating elections in this state, under the provisions of this law, the person having the highest number of votes for nomination to any office shall be deemed to have been nominated by his political party for that office.

History: En. Sec. 23, Initiative Measure Nov. 1912.

655. Duties of county clerk after canvass of vote. The county clerk, immediately after making the abstracts of votes given in his county, shall make a copy of each of said abstracts and transmit it by mail to the secretary of state, at the seat of government; and it shall be the duty of the secretary of state, in the presence of the governor and the state treasurer, to proceed within fifteen days after the primary nominating election, and sooner, if all returns be received, to canvass the votes given for nomination for governor, senator in congress, lieutenant-governor, attorney-general, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, state auditor, justices of the supreme court, clerk of the supreme court, members of congress, judges of the district court, senators and representatives, and all other officers to be voted for by the people of the state, or of any district comprising more than one county; and the governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party. In case there shall be no choice for nomination for any office by reason of any two or more persons having an equal and the highest number of votes of his party for nomination for either of said offices, the secretary of state shall immediately give notice to the several persons so having the highest and equal number of votes to attend at his office, either in person or by attorney, at a time to be appointed by said secretary, who shall then and there proceed to publicly decide by lot which of said persons so having an equal number of votes shall be declared duly nominated by his party; and the governor shall issue his proclamation declaring the nomination of such person or persons, as above provided.

History: En. Sec. 24, Initiative Measure Nov. 1912.

656. Error in ballot or count. Whenever it shall appear by affidavit to the district court or judge thereof, or to the supreme court or judge thereof, that an error or omission has occurred or is about to occur in the printing of the name of any candidate or other matter on the official primary nominating election ballots or that any error has been or is about to be committed in the printing of the ballots, or that the name of any

person or any other matter has been or is about to be wrongfully placed upon such ballots, or that any wrongful act has been performed by any judge or clerk of the primary election, county clerk, canvassing board or member thereof, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons aforesaid has occurred or is about to occur, such court or judge shall by order require the officer or person or persons charged with the error, wrongful act, or neglect, to forthwith correct the error, desist from the wrongful act, or perform the duty and do as the court shall order, or show cause forthwith why such error should not be corrected, wrongful act desisted from, or such duty or order performed. Failure to obey the order of any such court or judge shall be contempt. Any person in interest or aggrieved by the refusal or failure of any person to perform any duty or act required by this law shall, without derogation to any other right or remedy, be entitled to pray for a mandamus in the district court of appropriate jurisdiction, and any proceedings under the provisions of this law shall be immediately heard and decided.

History: En. Sec. 25, Initiative Measure Nov. 1912.

657. Secretary of state may send for returns. If the returns and abstracts of the primary nominating election of any county in the state shall not be received at the office of the secretary of state within twelve days after said election, the secretary of state shall forthwith send a messenger to the county board of such county, whose duty it shall be to furnish said messenger with a copy of said returns, and the said messenger shall be paid out of the county treasury of such county the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county. The county clerk, whenever it shall be necessary for him to do so in order to send said returns and abstracts within the time above limited, may send the same by telegraph, the message to be repeated, and the county shall pay the expense of such telegram.

History: En. Sec. 26, Initiative Measure Nov. 1912.

658. Penalty for official misconduct. If any judge or clerk of a primary nominating election, or other officers or persons on whom any duty is enjoined by this law, shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the discharge of the same, such judge, clerk, officer or other person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred dollars nor more than five hundred dollars.

History: En. Sec. 27, Initiative Measure Nov. 1912.

659. Notice of contest. Any person wishing to contest the nomination of any other person to any state, county, district, township, precinct, or municipal office may give notice in writing to the person whose nomination he intends to contest that his nomination will be contested stating the cause of such contest briefly, within five days from the time said person shall claim to have been nominated.

History: En. Sec. 28, Initiative Measure Nov. 1912.

660. Service of notice—Contest—How heard. Said notice shall be served in the same manner as a summons issued out of the district court three days before any hearing upon such contest as herein provided shall take place, and shall state the time and place that such hearing shall be had. Upon the return of said notice served to the clerk of the court he shall thereupon enter the same upon his issue docket as an appeal case, and the same shall be heard forthwith by the district court; provided, that if the case cannot be determined by the district court in term time, within fifteen days after the termination of such primary nominating election, the judge of the district court may hear and determine the same at chambers forthwith, and shall make all necessary orders for the trial of the case and carrying his judgment into effect; provided, that the district court provision of this section shall not apply to township or precinct officers. In case of contest between any persons claiming to be nominated to any township or precinct office, said notice shall be served in the manner aforesaid, and shall be returned to the district court of the county.

History: En. Sec. 29, Initiative Measure Nov. 1912.

Note.—Section 30 of this act is omitted from this code in conformity with the decision of the supreme court in Wilkinson v. LaCombe, 59 Mont.

661. Contest—How tried and decided. Each party to such contest shall be entitled to subpoenas, and subpoenas duces tecum, as in ordinary cases of law; and the court shall hear and determine the same without the intervention of a jury, in such manner as shall carry into effect the expressed will of a majority of the legal voters of the political party, as indicated by their votes for such nominations, not regarding technicalities or errors in spelling the name of any candidate for such nomination; and the county clerk shall issue a certificate to the person declared to be duly nominated by said court, which shall be conclusive evidence of the right of said person to hold said nomination; provided, that the judgment or decision of the district court in term time, or a decision of the judge thereof in vacation, as the case may be, may be removed to the supreme court in such manner as may be provided for removing such causes from the district court to the supreme court.

History: En. Sec. 31, Initiative Measure Nov. 1912.

662. County and city central committeemen, how elected. There shall be elected by each political party, subject to the provisions of this law, at said primary nominating election, a committeeman for each election precinct, who shall be a resident of such precinct. Any elector, being a member of their party, may be placed in nomination for committeeman of any precinct by a writing so stating, signed by any five members of any political party being qualified electors of such precinct, and filed in the office of the county clerk within the time required in this act for the filing of petitions naming individuals as candidates for nomination at the regular biennial primary election; but no such nomination paper shall be filed unless verified by the affidavit of the signers to the effect that they are bona fide members of the political party named in the same. The names of the various candidates for precinct committeemen of each political party shall be printed on the ticket of the same in the same manner as other candidates and the voter shall express his choice among them in

like manner as for such other candidates. The committeeman thus elected shall be the representative of his political party in and for such precinct in all ward or subdivision committees that may be formed. The committeemen elected in each precinct in each county shall constitute the county central committee of each of said respective political parties. Those committeemen who reside within the limits of any incorporated city or town shall constitute ex-officio the city central committee of each of said respective political parties, and shall have the same power and jurisdiction as to the business of their several parties in such city matters that the county committee has in county matters, save only the power to fill vacancies in said committee, which power is vested in the county central committee. Each committeeman shall hold such position for the term of two years from the date of the first meeting of said committee immediately following their election. In case of a vacancy happening on account of death, resignation, removal from the precinct, or otherwise, the remaining members of said county committee may select a committeeman to fill the vacancy and he shall be a resident of the precinct in which the vacancy occurred. Said county and city central committees shall have the power to make rules and regulations for the government of their respective political parties in each county and city, not inconsistent with any of the provisions of this law, and to elect the county member of the state central committee, and of the members of the congressional committee, and said committees shall have the same power to fill all vacancies and make rules in their jurisdiction that the county committees have to fill county vacancies and make rules. Said county and city central committees shall have the power to make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary nominating election, where such vacancy is caused by death or removal from the electoral district, but not otherwise. Said committees shall meet and organize by electing a chairman and secretary within five days after the candidates of their respective political parties shall have been nominated. They may select managing or executive committees and authorize such sub-committees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law.

History: En. Sec. 32, Initiative Measure Nov. 1912.

Neither this section nor section 16 of the primary election law empowers a county central committee to make an original nomination of a candidate to an office to be filled at a special election, the officer-elect having died soon after election and before induction into office. State ex rel. Smith v. Duncan, 55 Mont. 376, 177 Pac. 248.

663. National committeeman—Selection and term. The state central committee of each political party in the state of Montana shall select one national committeeman, who shall represent said political party as a member of the national committee of said party; said committeeman shall be selected in each year in which a president and vice-president of the United States are elected, and such selection shall be made prior to the meeting of the national conventions of the respective political parties, and said national committeeman shall hold office for a term of four years.

History: En. Sec. 1, Ch. 1, Ex. L. 1921.

664. Immediate selection of committeeman. Upon the passage and approval of this act, the state central committee of each political party shall select a national committeeman who shall hold office from the date of his selection until the year 1924, and until the selection of his successor.

History: En. Sec. 2, Ch. 1, Ex. L. 1921.

665. Penalty for violation of law. If any candidate for nomination shall be guilty of any wrongful or unlawful act or acts at a primary nominating election which would be sufficient, if such wrongful or unlawful act or acts had been done by such candidate at the regular general election, to cause his removal from office, he shall, upon conviction thereof, be removed from office in like manner as though such wrongful or unlawful act or acts had been committed at a regular general election, notwithstanding that he may have been regularly elected and shall not have been guilty of any wrongful or unlawful act at the election at which he shall have been elected to his office.

History: En. Sec. 33, Initiative Measure Nov. 1912.

666. Candidates to formulate state platform. The candidates for the various state offices, and for the United States senate, representatives in congress and the legislative assembly nominated by each political party at such primary, and senators of such political party, whose term of office extends beyond the first Monday in January of the year next ensuing, and the members of the state central committee of such political party, shall meet at the call of the chairman of the state central committee not later than September fifteenth next preceding any general election. They shall forthwith formulate the state platform of their party. They shall thereupon proceed to elect a chairman of the state central committee and perform such other business as may properly be brought before such meeting.

History: En. Sec. 34, Initiative Measure Nov. 1912.

667. Penalty for bribery, etc. Any person who shall offer, or with knowledge of the same permit any person to offer for his benefit, any bribe to a voter to induce him to sign any nomination paper, and any person who shall accept any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe be offered or accepted before or after such signing, shall be guilty of a misdemeanor, and upon trial and conviction thereof be punished by a fine of not less than twenty-five nor more than one thousand dollars, and by imprisonment in the county jail of not less than ten days nor more than six months.

History: En. Sec. 35, Initiative Measure Nov. 1912.

668. General penal laws applicable. Any act declared an offense by the general laws of this state concerning caucuses, primaries and elections shall also, in like case, be an offense in and as to all primaries as herein defined, and shall be punished in the same form and manner as therein provided, and all the penalties and provisions of the law as to such caucuses, primaries and elections, except as herein otherwise provided, shall

apply in such case with equal force, and to the same extent as though fully set forth in this act.

History: En. Sec. 36, Initiative Measure Nov. 1912.

669. Forgery and suppression of nomination papers. Any person who shall forge any name of a signer or a witness to a nomination paper shall be guilty of forgery, and on conviction punished accordingly. Any person who, being in possession of nomination papers entitled to be filed under this act, or any act of the legislature, shall wrongfully either suppress, neglect or fail to cause the same to be filed at the proper time in the proper office, shall, on conviction, be punished by imprisonment in the county jail not to exceed six months, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment in the discretion of the court.

History: En. Sec. 37, Initiative Measure Nov. 1912.

670. General laws applicable to this enactment. The provisions of the laws of this state now in force in relation to the holding of elections, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof, the appointment and compensation of officers of election, and all other kindred subjects, shall apply to all primaries, insofar as they are consistent with this act, the intent of this act being to place the primary under the regulation and protection of the laws now in force as to elections.

History: En. Sec. 38, Initiative Measure Nov. 1912.

CHAPTER 53.

PRESIDENTIAL PREFERENCE PRIMARY.

Section 671. Presidential Preference Primary Nominating Election.
672. Voters to Express Preference—Ballots, How Prepared and Voted.
673. Election of Delegates to National Convention and Nomination of Presidential Electors, How Made.
674. Expenses of Delegates, How Paid—Oath of Office.
675. Campaign Books, How Prepared and Allotted.
676. Space in Campaign Books, How Allotted and Paid for.

671. Presidential preference primary nominating election. In the years when the president and vice-president of the United States are to be elected, the primary nominating election shall be held on the last Tuesday of May of said year, provided if said date should occur on a legal holiday then said election shall be held the day following said holiday, and all laws pertaining to the nomination of candidates, registration of voters and all other things incident and pertaining to the holding of the regular biennial nominating election shall be in full force and effect.

History: Secs. 671 to 676 were enacted by the people as an initiative measure at the general election of 1912; effective under governor's proclamation Dec. 13th, 1912; Sec. 673 amd. Sec. 1, Ch. 206, L. 1921.

This act cannot be so construed with the direct primary law as to permit the holding of but one election for state and county officers and to nominate presidential electors and elect delegates to national conventions. State ex rel. Taylor v. Duncan, 52 Mont. 69, 155 Pac. 1111.

672. Voters to express preference—Ballots, how prepared and voted. When candidates for the offices of president and vice-president of the United States are to be nominated, every qualified elector of a political

party subject to this law shall have opportunity to vote his preference, on his party nominating ballot, for his choice for one person to be the candidate of his political party for president, and one person to be the candidate of his political party for vice-president of the United States, either by writing the names of such persons in blank spaces to be left on said ballot for that purpose or by marking with a cross before the printed names of the persons of his choice, as in the case of other nominations. The names of any persons shall be so printed on said ballots solely on the petition of their personal supporters in Montana without said persons themselves signing any petition or acceptance. The names of persons in such political party who shall be presented by petition of their supporters for nomination to be party candidates for the office of president or vice-president of the United States, shall be printed on the nominating official ballot, and the ballots shall be marked, and the votes shall be counted, canvassed and returned in like manner and under the same conditions as to names, petitions and other matters, as far as the same are applicable, as the names and petitions of aspirants for the party nomination for the office of governor and for United States senator in congress are, or may be by law required to be marked, filed, counted, canvassed and returned.

History: See History of Sec. 671.

673. Election of delegates to national convention and nomination of presidential electors, how made. The members of the political parties subject to this law shall elect their party delegates to their national conventions for the nomination of their party candidates for president and vice-president of the United States, and shall nominate candidates for their party presidential electors at such nominating election, the governor shall grant a certificate of election to each of the delegates so elected, which certificate shall show the number of votes received in the state by each person of such delegate's political party for nomination as its candidate for president and vice-president. Nominating petitions for the office of delegate to the respective party national conventions, to be chosen and elected at said nominating election, shall be sufficient if they contain a number of signatures of the members of the party equal to one per centum of the party vote in the state at the last preceding election for representative in congress; provided that not more than five hundred signatures shall be required on any such petition. A number of such candidates equal to the number of delegates to be elected by each party which is subject to the provisions of this law, receiving, respectively, each for himself the highest number of votes for such office, shall be thereby elected. Every political party subject to the provisions of this law shall be entitled to nominate, at said nominating election, as many candidates for the office of presidential elector as there are such officers to be elected; that number of aspirants in every such party who shall receive, respectively, each for himself, the highest number of votes of his party for that nomination, shall be thereby nominated as a candidate of his political party for the office of presidential elector.

History: See History of Sec. 671; amd. Sec. 2, Ch. 206, L. 1921.

Nomination of presidential electors, see note in 43 L. R. A. (N. S.) 287.

674. Expenses of delegates, how paid—Oath of office. Every delegate to a national convention of a political party recognized as such organiza-

tion by the laws of Montana, shall receive from the state treasury the amount of his traveling expenses necessarily spent in actual attendance upon said convention, as his account may be audited and allowed by the secretary of state, but in no case to exceed two hundred dollars for each delegate; provided, that such expenses shall never be paid to any greater number of delegates of any political party than would be allowed such party under the plan by which the number of delegates to the republican national convention was fixed by the republican party of Montana in the year 1912. The election of such national delegates for political parties not subject to the direct primary nominating elections law shall be certified in like manner as nominations of candidates of such political parties for elective public offices. Every such delegate to a national convention to nominate candidates for president and vice-president, shall subscribe to an oath of office than he will uphold the constitution and the laws of the United States and of the state of Montana, and that he will, as such officer and delegate, to the best of his judgment and ability, faithfully carry out the wishes of his political party as expressed by its voters at the time of his election.

History: See History of Sec. 671.

675. Campaign books, how prepared and allotted. The committee or organization which shall file a petition to place the name of any person on the nominating ballot of their political party to be voted for by its members for expression of their choice for nomination as the candidate of such party for president or vice-president of the United States, shall have the right, upon payment thereof, to four pages of printed space in the campaign books of such political party provided for by law. In this space said committee shall set forth their statement of the reasons why such person should be voted for and chosen by the members of their party in Montana and in the nation as its candidate. Any qualified elector of any such political party who favors or opposes the nomination of any person by his own political party as its candidate for president or vice-president of the United States, may have not exceeding four pages of space in his aforesaid party nominating campaign book, at a cost of one hundred dollars per printed page, to set forth his reasons therefor.

History: See History of Sec. 671.

676. Space in campaign books, how allotted and paid for. Every person regularly nominated by a political party, recognized as such by the laws of Montana for president or vice-president of the United States, or for any office to be voted for by the electors of the state at large, or for senator or representative in congress, shall be entitled to use four pages of printed space in the state campaign book provided for by law. In this space, the candidate, or his supporters with his written permission filed with the secretary of state, may set forth the reasons why he should be elected. No charge shall be made against candidates for president and vice-president of the United States for this printed space. The other candidates above named shall pay at the rate of one hundred dollars per printed page for said space, and said payment shall not be counted as a part of the ten per cent of one year's salary that each candidate is allowed to spend for campaign purposes.

History: See History Sec. 671.

CHAPTER 54.

BALLOTS, PREPARATION AND FORM.

Section 677. Ballots, How Printed and Distributed.
678. County Clerk to Print Ballots—Elector May Vote for Any Person.
679. Municipal Clerk to Act in Municipal Elections.
680. Pasters to Be Printed and Distributed Where Vacancy Has Been Filled.
681. Form, Color and Size of Ballot.
682. Ballot to Indicate Party or Principal—Selection, How Made in Case of Double Nomination.
683. Blank Space and Margin.
684. Stub, Size and Contents.
685. Uniformity of Size and Printing.
686. County Clerk to Prepare Ballot, When and How.
687. Number of Ballots to Be Provided for Each Precinct.

677. Ballots, how printed and distributed. All ballots cast in elections for public officers within the state (except school district officers), must be printed and distributed at public expense as provided in this chapter. The printing of ballots and cards of instruction for the elections in each county, and the delivery of the same to the election officers is a county charge, and the expense thereof must be paid in the same manner as the payment of other county expenses, but the expense of printing and delivering the ballots must, in the case of municipal elections, be a charge upon the city or town in which such election is held.

History: En. Sec. 1, p. 135, L. 1889; re-en. Sec. 1350, Pol. C. 1895; re-en. Sec. 541, Rev. C. 1907. Cal. Pol. C. Sec. 1185.

Validity and effect of statutes requiring ballots to be numbered, see notes in 6 Ann. Cas. 969; 8 L. R. A. (N. S.) 888.

Validity and effect of Australian ballot laws, see notes in 4 Ann. Cas. 144; 6 Ann. Cas. 970; 16 L. R. A. 754.

Validity of statute providing for separate ballot for particular officer, see note in Ann. Cas. 1913E, 775.

678. County clerk to print ballots—Elector may vote for any person. Except as in this chapter otherwise provided, it is the duty of the county clerk of each county to provide printed ballots for every election for public officers in which electors or any of the electors within the county participate, and to cause to be printed in the ballot the name of every candidate whose name has been certified to or filed with the county clerk in the manner provided for in this chapter. Ballots other than those printed by the respective county clerks according to the provisions of this chapter must not be cast or counted in any election. Any elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, and must mark the same as provided in section 696, and such vote must be counted the same as if printed upon the ballot and marked by the voter, and any voter may take with him into the polling-place any printed or written memorandum or paper to assist him in marking or preparing his ballot except as otherwise provided in this chapter.

History: En. Sec. 1351, Pol. C. 1895; re-en. Sec. 542, Rev. C. 1907. Cal. Pol. C. Sec. 1196.

By statute a uniform ballot has been adopted, to be printed and distributed at public expense, and no others than those so provided can be cast or counted. Harrington v. Crichton, 53 Mont. 388, 391, 164 Pac. 537.

Cited or applied as section 1351, Political Code, in State ex rel. Brooks v. Fransham, 19 Mont. 273, 286, 48 Pac. 1.

679. Municipal clerk to act in municipal elections. In all municipal elections the city clerk must perform all the duties prescribed for county clerks in this chapter.

History: En. Sec. 1352, Pol. C. 1895; re-en. Sec. 543, Rev. C. 1907.

680. Pasters to be printed and distributed where vacancy has been filled. When any vacancy occurs before election day and after the printing of the ballots, and any person is nominated according to the provisions of this code to fill such vacancy, the officer whose duty it is to have the ballots printed and distributed must thereupon have printed a requisite number of pasters containing the name of the new nominee, and must mail them by registered letter to the judges of election in the various precincts interested in such election, and the judges of election, whose duty it is made by the provisions of this chapter to distribute the ballots, must affix such pasters over the name for which substitution is made in the proper place on each ballot before it is given out to the elector.

History: En. Sec. 1353, Pol. C. 1895; re-en. Sec. 544, Rev. C. 1907.

Referred to as section 1353 of the Political Code in State ex rel. Scharnikow v. Hogan, 24 Mont. 397, 403, 62 Pac. 683.

681. Form, color and size of ballot. Ballots prepared under the provisions of this chapter must be white in color and of a good quality of paper, and the names must be printed thereon in black ink. The ballots used in any one county must be uniform in size, and every ballot must contain the names of every candidate whose nomination for any special office specified in the ballot has been certified or filed according to the provisions of law, and no other names. The list of candidates of the several parties shall be placed in separate columns of the ballot, in such order as the authorities charged with the printing of the ballots shall decide. As near as possible the ballot shall be in the following form: (stub hereinafter provided for in this section)

.....(Perforated line).....

DEMOCRATIC.	REPUBLICAN.	LABOR PARTY.
For Governor ☐ Joseph K. Toole ☐	For Governor ☐ John E. Richards ☐	For Governor ☐ Fred Whiteside ☐
For Lieut.-Governor ☐ Frank C. Higgins ☐	For Lieut.-Governor ☐ Alex. C. Botkin ☐	For Lieut.-Governor ☐ ☐
For Sec. of State ☐ Geo. M. Hays	For Sec. of State ☐ Louis Rotwitt	For Sec. of State ☐ W. R. Allen

and continuing in like manner as to all candidates to be voted for at such election.

History: Ap. p. Sec. 17, p. 139, L. 1889; amd. Sec. 1354, Pol. C. 1895; amd. Sec. 1354, p. 117, L. 1901; amd. Sec. 2, Ch. 88, L. 1907; Sec. 545, Rev. C. 1907. Cal. Pol. C. Sec. 1197.

Note.—Sections 681 to 686 were originally part of section 545, Revised Codes, 1907, which has been divided in this code.

The so-called anti-fusion statute, consisting of this section and the five following sections, was not impliedly repealed by the primary election law of 1913, and is not unconstitutional. State ex rel. Metcalf v. Wileman, 49 Mont. 436, 437, 143 Pac. 565.

Cited or applied as section 1354, Political Code, before amendment, in State ex rel. Brooks v. Fransham, 19 Mont. 273, 286, 48 Pac. 1; as Laws of 1901, p. 117, before amendment, in State ex rel. Riley v. Weston, 31 Mont. 218, 226, 78 Pac. 487; as section 545, Revised Codes, in Harrington v. Crichton, 53 Mont. 388, 391, 164 Pac. 537.

682. Ballot to indicate party or principle—Selection, how made in case of double nomination. Every ballot must also contain the name of the party, or principle, which the candidates in the respective columns represent, as contained in the certificates of nomination; provided, however, that where any person is nominated for the same office by more than one party or convention, his name shall be placed upon the ticket under the designation of the party which first nominated him, unless he declines, in writing, one or more of such nominations, or by written election indicates the party designation under which he desires his name to be printed, or if he was nominated by more than one party or convention at the same time shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed a written election indicating the party designation under which he desires his name to be printed on the ballot, and it shall be so printed. If he shall fail or neglect to so file such an election, the officer with whom the certificate of nomination is required to be filed shall place his name under the designation of either of the parties by which he was nominated, but under no other designation whatever, and no person, who has been nominated by petition or otherwise, shall have his name printed upon the ticket if the same already appears under a party designation.

History: See history Sec. 681.

Validity of non-partisan ballot law, see note in Ann. Cas. 1915C, 504.

Constitutionality of legislation affecting party representation on ballot, see note in 35 L. R. A. (N. S.) 353.

Number of times name of candidate may appear on official ballot, see notes in 3 Ann. Cas. 796; 4 Ann. Cas. 145; Ann. Cas. 1913B, 177; 37 L. R. A. (N. S.) 825.

683. Blank space and margin. Below the names of candidates for each office there must be left a blank space large enough to contain as many written names of candidates as there are persons to be elected. There must be a margin on each side of at least half an inch in width, and a reasonable space between the names printed thereon, so that the voter may clearly indicate, in the way hereinafter provided, the candidate or candidates for whom he wishes to cast his ballot.

History: See history Sec. 681.

684. Stub, size and contents. The ballot shall be printed on the same leaf with a stub, and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire

width of the ballot, and shall be of sufficient depth to allow the following instructions to voters to be printed thereon, such depth to be not less than two inches from the perforated line to the top thereof, upon the face of which stub shall be printed, in type known as brevier capitals. the following: "This ballot should be marked with an 'X' in the square before the name of each person or candidate for whom the elector intends to vote. In cases of a ballot containing a constitutional amendment, or other question to be submitted to a vote of the people, by marking an 'X' in the square before the answer of the question or amendment submitted. The elector may write in the blank spaces, or paste over another name, the name of any person for whom he wishes to vote, and vote for such person by marking an 'X' in the square before such name." On the back of the stub shall be printed or stamped by the county clerk, or other officer whose duty it is to provide the ballots, the consecutive number of the ballot, beginning with number "1," and increasing in regular numerical order to the total number of ballots required for the precinct.

History: See history Sec. 681.

685. Uniformity of size and printing. All of the official ballots of the same sort, prepared by any officer or board for the same balloting place, shall be of precisely the same size, arrangement, quality and tint of paper, and kind of type, and shall be printed in black ink of the same tint, so that when the stubs numbered as aforesaid shall be detached therefrom, it shall be impossible to distinguish any one of the ballots from the other ballots of the same sort, and the names of all candidates printed upon the ballots shall be in type of the same size and character.

History: See history Sec. 681.

686. County clerk to prepare ballot, when and how. Whenever the secretary of state has duly certified to the county clerk any question to be submitted to the vote of the people, the county clerk must print the ballot in such form as will enable the electors to vote upon the question so presented in the manner provided by law. The county clerk must also prepare the necessary ballots whenever any question is required by law to be submitted to the electors of any locality, and any of the electors of the state generally, except that as to all questions submitted to the electors of a municipal corporation alone the city clerk must prepare the necessary ballots.

History: See history Sec. 681.

687. Number of ballots to be provided for each precinct. The county clerk must provide for each election precinct in the county one and one-half times as many ballots as there are electors registered in the precinct. If there is no registry in the precinct, the county clerk must provide ballots to the number of one and one-half times the number of electors who voted at the last preceding election in the precinct. He must keep a record in his office, showing the exact number of ballots, with numbered stubs attached, that are delivered to the judges of each precinct. In municipal elections it is the duty of the city clerk to provide ballots as specified in this section.

History: Ap. p. Sec. 1355, Pol. C. 1895; amd. Sec. 3, Ch. 88, L. 1907; Sec. 546, Rev. C. 1907. Cal. Pol. C. 1199.

CHAPTER 55.

CONDUCTING ELECTIONS: THE POLLS, VOTING AND CHALLENGES.

Section 688. Voting, to Commence When and Continue How Long.
689. Time of Opening and Closing of Polls.
690. Proclamation at Opening and Thirty Minutes Before Closing Polls.
691. Proclamation at Closing Polls.
692. Sufficient Booths or Compartments Must Be Furnished.
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703. Record That Person Has Voted, How Kept.
704. Marking Precinct Registry Book When Elector Has Voted—Procedure.
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710. Challenges, How Determined.
711. Trial of Challenges.
712. If a Person Refuses to Be Sworn, Vote to Be Rejected.
713. Proceedings Upon Determination of Challenges.
714. List of Challenges to Be Kept.

688. Voting, to commence when and continue how long. Voting may commence as soon as the polls are open, and may be continued during all the time the polls remain open.

History: En. Sec. 1365, Pol. C. 1895; re-en. Sec. 556, Rev. C. 1907. Cal. Pol. C. Sec. 1224.

689. Time of opening and closing of polls. The polls must be opened at eight o'clock on the morning of election day, and must be kept open continuously until six o'clock in the afternoon of said day, when the same must be closed.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887; amd. Sec. 1290, Pol. C. 1895; re-en. Sec. 514, Rev. C. 1907. Cal. Pol. C. Sec. 1160.

690. Proclamation at opening and thirty minutes before closing polls. Before the judges receive any ballots they must cause it to be proclaimed aloud at the place of election that the polls are open, and thirty minutes before the closing of the polls proclamation must be made that the polls will close in one-half hour.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887; amd. Sec. 1291, Pol. C. 1895; re-en. Sec. 515, Rev. C. 1907. Cal. Pol. C. Sec. 1163.

691. Proclamation at closing polls. When polls are closed, that fact must be proclaimed aloud at the place of election; and after such proclamation no ballots must be received.

History: Ap. p. Sec. 11, p. 462, Cod. Stat. 1871; re-en. Sec. 11, p. 73, L. 1876; re-en. Sec. 525, 5th Div. Rev. Stat. 1879; re-en. Sec. 1017, 5th Div. Comp. Stat. 1887; amd. Sec. 1292, Pol. C. 1895; Re-en. Sec. 516, Rev. C. 1907. Cal. Pol. C. Sec. 1164.

Validity of ballot cast after time for closing polls, see note in Ann. Cas. 1913B, 166; Ann. Cas. 1916E, 1006.

692. Sufficient booths or compartments must be furnished. All officers upon whom is imposed by law the duty of designating the polling-places must provide in each polling-place designated by them, a sufficient number of places, booths, or compartments, each booth or compartment to be furnished with a door or curtain sufficient in character to screen the voter from observation, and must be furnished with such supplies and conveniences as shall enable the elector to prepare his ballot for voting, and in which electors must mark their ballots, screened from observation, and a guard-rail so constructed that only persons within such rail can approach within ten feet of the ballot-boxes, or the places, booths, or compartments herein provided for. The number of such places, booths, or compartments must not be less than one for every fifty electors, or fraction thereof, registered in the precinct. In precincts containing less than twenty-five registered voters, the election may be conducted under the provisions of this chapter without the preparation of such booths or compartments, as required by this section.

History: En. Sec. 22, p. 141, L. 1889; re-en. Sec. 1357; p. 118, L. 1901; re-en. Sec. 548, Rev. C. 1907. Cal. Pol. C. Sec. 1203.

Effect of failure to comply with statute with respect to arrangement of voting rooms or booths, see note in Ann. Cas. 1916E, 917.

693. Elector to cast his ballot without interference. No person other than electors engaged in receiving, preparing, or depositing their ballots, or a person present for the purpose of challenging the vote of an elector about to cast his ballot, is permitted to be within said rail; and in cases of small precincts where places, booths, or compartments are not required, no person engaged in preparing his ballot shall, in any way, be interfered with by any person, unless it be some one authorized by the provisions of this chapter to assist him in preparing his ballot; nor shall any officer of election do any electioneering on election day. No person whatsoever shall do any electioneering on election day, within any polling-place, or any building in which an election is being held, or within twenty-five feet thereof; said space of twenty-five feet to be protected by ropes and kept free of trespassers; nor shall any person obstruct the doors or entries thereto, or prevent free ingress to and egress from said building. Any election officer, sheriff, constable, or other peace officer is hereby authorized and empowered, and it is hereby made his duty, to clear the passageway, and prevent such obstruction, and to arrest any person so doing. No person shall remove any ballot from the polling-place before the closing of the polls. No person shall show his ballot after it is marked, to any person, in such a way as to reveal the contents thereof, or the name of the candidate or candidates for whom he has marked his vote; nor shall any person solicit the elector to show the same; nor shall any person, except the judge of election, receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than one of the judges of election having charge of the ballots; nor shall any person other than such judge of election deliver a ballot to such elector. No elector shall vote, or offer to vote, any ballot except such as he has received from the judges of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Every elector who does

not vote a ballot delivered to him by the judges of election having charge of the ballots, shall, before leaving the polling-place, return such ballot to such judges.

History: Ap. p. Sec. 22, p. 141, L. 1889; re-en. Sec. 1358, Pol. C. 1895; amd. Sec. 1358, p. 118, L. 1901; re-en. Sec. 549, Rev. C. 1907. Cal. Pol. C. Sec. 1215.

Cited or applied as section 1358, Political Code, as amended, in Lane v. Bailey, 29 Mont. 548, 560, 75 Pac. 191.

694. Expenses of providing places for election. The expense of providing such places or compartments, ropes, and guard-rails is a public charge, and must be provided for in the same manner as the other election expenses.

History: En. Sec. 1359, p. 119, L. 1901; re-en. Sec. 550, Rev. C. 1907.

695. Delivery of official ballots to elector. At any election the judges of election must designate two of their number whose duty it is to deliver ballots to the qualified electors. Before delivering any ballot to an elector, the said judges must print on the back, and near the top of the ballot, with the rubber or other stamp provided for the purpose, the designation "official ballot" and the other words on same, as provided for in section 603 of this code; and the clerks must enter on the poll-lists the name of such elector and the number of the stub attached to the ballot given him. Each qualified elector must be entitled to receive from the judges one ballot.

History: Ap. p. Sec. 23, p. 141, L. 1889; amd. Sec. 1360, Pol. C. 1895; amd. Sec. 4, Ch. 88, L. 1907; Sec. 551, Rev. C. 1907.

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub—thus leaving the ballot without the stamp—did not render the ballot void. Harrington v. Crichton, 53 Mont. 388, 164 Pac. 537.

Cited or applied as section 1360, Political Code, before amendment, in State ex rel. Brooks v. Fransham, 19 Mont. 273, 287, 48 Pac. 1.

696. Method of voting. On receipt of his ballot the elector must forthwith, without leaving the polling-place and within the guard-rail provided, and alone, retire to one of the places, booths, or compartments, if such are provided, and prepare his ballot. He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote. In case of a ballot containing a constitutional amendment, or other question to be submitted to the vote of the people, by marking an "X" in the square before the answer of the question or amendment submitted. The elector may write in the blank spaces or paste over any other name the name of any person for whom he wishes to vote, and vote for such person by marking an "X" before such name. No elector is at liberty to use or bring into the polling-place any unofficial sample ballot. After preparing his ballot the elector must fold it so the face of the ballot will be concealed and so that the indorsements stamped thereon may be seen, and hand the same to the judges in charge of the ballot-box, who shall announce the name of the elector and the printed or stamped number on the stub of the official ballot so delivered to him, in a loud and distinct tone of voice. If such elector be entitled then and there to vote, and if such printed or stamped number is the same as that entered on the poll-list as the number on the stub of the official ballot last delivered to him by the ballot judge, such judge shall receive

such ballot, and, after removing the stub therefrom in plain sight of the elector, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot-box for the reception of voted ballots, and the stubs in a box for detached ballot stubs. Upon voting, the elector shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain within the guard-rail for other purposes than voting.

History: Ap. p. Sec. 24, p. 142, L. 1889; amd. Sec. 1361, Pol. C. 1895; amd. Sec. 1361, p. 119, L. 1901; Amd. Sec. 5, Ch. 88, L. 1907; Sec. 552, Rev. C. 1907. Cal. Pol. C. Sec. 1205.

In an election contest, the court properly refused to count for a candidate ballots marked as follows: (1) Where the cross was placed after the candidate's name and entirely without his party column; (2) where perpendicular lines were drawn through the names in one party column, but no cross was placed before the candidate's name; and (3) where his name was written in one party column, but no cross marked in the square before the name. In neither instance was there a substantial, or any, compliance with the provisions of this section. Carwile v. Jones, 38 Mont., 590, 595, 101 Pac. 153.

In an election contest, the court properly refused to count a ballot for a candidate which was marked by crossing out all the names in other party columns, but which failed to show an "X" before his name. While the intention of the voter is generally a very material consideration, he must express his intention substantially as indicated by the statute. Carwile v. Jones, 38 Mont. 590, 596, 101 Pac. 153.

Where the cross-mark was placed after the candidate's name but within his party column, the ballot was void, since the elector did not substantially comply with the requirement of this section relative to placing the mark before the name. Carwile v. Jones, 38 Mont. 590, 597, 101 Pac. 153.

Any mark within the square before the candidate's name, which can be said to be a crossing of two lines, will answer the requirements of the statute that the elector must place an "X" in such square; and in the absence of anything to indicate a purpose on his part to identify his ballot by the use of a third line within the square, a defect in the mark is not sufficient to vitiate the ballot. Carwile v. Jones, 38 Mont. 590, 598, 101 Pac. 153.

A ballot properly marked, but from which the stub has not been detached by the ballot judge, as required by this section, should be counted; a voter is not to be disfranchised by the errors or wrongful acts of election officers. Carwile v. Jones, 38 Mont. 590, 599, 101 Pac. 153.

A ballot bearing the indorsement: "Voted by H. and M. (judges election) for illegibility of voter," was not void on the ground that the reason given for assisting the voter was not one recognized by law, since section 699, post, does not require the judges to certify the reason for assisting an elector, and the words "for illegibility of voter" were therefore surplusage; and in the absence of a showing why they gave assistance, it will be presumed that they regularly performed their official duties. Carwile v. Jones, 38 Mont. 590, 597, 101 Pac. 153.

Cited or applied as section 1361, Political Code, before amendment, in State ex rel. Brooks v. Fransham, 19 Mont. 273, 292, 48 Pac. 1; as section 552, Revised Codes, in Harrington v. Crichton, 53 Mont. 388, 164 Pac. 537.

Validity of ballot with respect to place of mark for candidate, see notes in 20 Ann. Cas. 672; Ann. Cas. 1912E, 657; 47 L. R. A. 812.

Kind of mark made for candidate as affecting validity of ballot see notes in Ann. Cas. 1918A, 1131, 1160, 1165; 16 L. R. A. 754.

Distinguishing marks which invalidate ballots, see notes in 49 A. S. R. 240; 13 L. R. A. 61.

697. Only one person to occupy booth, and no longer than five minutes. No more than one person must be allowed to occupy any one booth at one time, and no person must remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than five minutes, if the other booths or compartments are occupied.

History: En. Sec. 25, p. 142, L. 1889; re-en. Sec. 1362, Pol. C. 1895; re-en. Sec. 553, Rev. C. 1907. Cal. Pol. C. Sec. 1206.

698. Spoiled ballot. Any elector who by accident or mistake spoils his ballot, may, on returning said spoiled ballot, receive another in place thereof.

History: En. Sec. 26, p. 142, L. 1889; re-en. Sec. 1363, Pol. C. 1895; re-en. Sec. 554, Rev. C. 1907. Cal. Pol. C. Sec. 1207.

699. Judges may aid disabled elector. Any elector who declares to the judges of election, or when it appears to the judges of election that he cannot read or write, or that because of blindness or other physical disability he is unable to mark his ballot, but for no other cause, must, upon request, receive the assistance of two of the judges, who shall represent different parties, in the marking thereof, and such judges must certify on the outside thereof that it was so marked with their assistance, and must thereafter give no information regarding the same. The judges must require such declaration of disability to be made by the elector under oath before them, and they are hereby authorized to administer the same. No elector other than the one who may, because of his inability to read or write, or of his blindness or physical disability, be unable to mark his ballot, must divulge to any one within the polling-place the name of any candidate for whom he intends to vote, or ask or receive the assistance of any person within the polling-place in the preparation of his ballot.

History: Ap. p. Sec. 27, p. 142, L. 1889; amd. Sec. 1364, Pol. C. 1895; amd. Sec. 1364, p. 120, L. 1901; re-en. Sec. 555, Rev. C. 1907. Cal. Pol. C. Sec. 1208.

Where it appeared in an election contest that a voter's ballot had been indorsed by the judges of election, as required by this section, it was necessary to show that it could not thereby be identified, in order to let in, as secondary evidence, testimony as to how he voted. Lane v. Bailey, 29 Mont. 548, 560, 75 Pac. 191.

Cited or applied as section 555, Revised Codes, in Carwile v. Jones, 38 Mont. 590, 597, 101 Pac. 153; Gervais v. Rolfe, 57 Mont. 209, 212, 187 Pac. 899.

Assistance of voter at election, see notes in Ann. Cas. 1912B, 109; 40 L. R. A. (N. S.) 535.

700. Manner of voting. The person offering to vote must hand his ballot to the judges, and announce his name, and in incorporate cities and towns any such person must also give the name of the street, avenue, or location of his residence, and the number thereof, if it be numbered, or such clear and definite description of the place of such residence as shall definitely fix the same.

History: En. Sec. 1366, Pol. C. 1895; re-en. Sec. 557, Rev. C. 1907. Cal. Pol. C. Sec. 1225.

701. Announcement of voter's name. The judges must receive the ballot, and before depositing it in the ballot-box must, in an audible tone of voice, announce the name, and in incorporated towns and cities the judges must also announce the residence of the person voting, and the same must be recorded on each poll-book.

History: En. Sec. 1367, Pol. C. 1895; re-en. Sec. 558, Rev. C. 1907. Cal. Pol. C. Sec. 1226.

702. Putting ballot in box. If the name be found on the official register in use at the precinct where the vote is offered, or if the person offering to vote produce and surrender a proper registry certificate, and the vote is not rejected, upon a challenge taken, the judges must imme-

diately and publicly, in the presence of all the judges, place the ballot, without opening or examining the same, in the ballot-box.

History: En. Sec. 1368, Pol. C. 1895; re-en. Sec. 559, Rev. C. 1907. Cal. Pol. C. Sec. 1227.

703. Record that person has voted, how kept. When the ballot has been placed in the box, one of the judges must write the word "Voted" opposite the number of the person on the check-list for the precinct.

History: En. Sec. 1369, Pol. C. 1895; re-en. Sec. 560, Rev. C. 1907. Cal. Pol. C. Sec. 1228.

704. Marking precinct registry book when elector has voted—Procedure. The judges of election in each precinct, at every general or special election, shall, in the precinct register book, which shall be certified to them by the county clerk, mark a cross (X) upon the line opposite to the name of the elector. Before any elector is permitted to vote the judges of election shall require the elector to sign his name upon one of the precinct register books, designated by the county clerk for that purpose, and in a column reserved in the said precinct books for the signature of electors. If the elector is not able to sign his name, he shall be required by the judges to produce two freeholders who shall make an affidavit before the judges of election, or one of them, in substantially the following form:

State of Montana, }
County of..... } ss.

"We, the undersigned witnesses, do swear that our names and signatures are genuine, and that we are each personally acquainted with ..... (the name of the elector), and that we know that he is residing at ....., and that we believe that he is entitled to vote at this election, and that we are each freeholders in the county," which affidavit shall be filed by the judges, and returned by them to the county clerk, with the return of the election; one of the judges shall thereupon write the elector's name, and note the fact of his inability to sign, and the names of the two freeholders who made the affidavit herein provided for. If the elector fails or refuses to sign his name, and, if unable to write, fails to procure two freeholders who will take the oath herein provided, he shall not be allowed to vote. Immediately after the election and canvass of the returns, the judges of election shall deliver to the county clerk the copy of said official precinct register, sealed, with the election returns and poll-book, which have been used at said election.

History: En. Sec. 26, Ch. 113, L. 1911; amd. Sec. 26, Ch. 74, L. 1913; amd. Sec. 26, Ch. 122, L. 1915.

Note.—The foregoing section appears as section 576 of this code. It is also printed here because of its application to the subject embraced in this chapter.

705. List of voters. Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order voting. Such list is known as the poll-list and forms a part of the poll-book of the precinct.

History: En. Sec. 1370, Pol. C. 1895; re-en. Sec. 561, Rev. C. 1907. Cal. Pol. C. Sec. 1229.

706. Grounds of challenge. Any person offering to vote may be orally challenged by any elector of the county, upon either or all of the following grounds:

1. That he is not the person whose name appears on the register or check-list.
2. That he is an idiot or insane person.
3. That he has voted before that day.
4. That he has been convicted of a felony and not pardoned.

History: En. Sec. 1371, Pol. C. 1895; re-en. Sec. 562, Rev. C. 1907. Cal. Pol. C. Sec. 1230.

707. Proceedings on challenges for want of identity. If the challenge is on the ground that he is not the person whose name appears on the official register, the judges must tender him the following oath:

"You do swear (or affirm) that you are the person whose name is entered on the official register and check-list."

History: En. Sec. 1372, Pol. C. 1895; re-en. Sec. 563, Rev. C. 1907. Cal. Pol. C. Sec. 1231.

708. Same on challenges for having voted before. If the challenge is on the ground that the person challenged has voted before that day, the judges must tender to the person challenged this oath:

"You do swear (or affirm) that you have not before voted this day."

History: En. Sec. 1373, Pol. C. 1895; re-en. Sec. 564, Rev. C. 1907. Cal. Pol. C. Sec. 1234.

709. Same on ground for conviction of crime. If the challenge is on the ground that the person challenged has been convicted of a felony, the judges must tender him the following oath:

"You do swear (or affirm) that you have not been convicted of a felony."

History: En. Sec. 1374, Pol. C. 1895; re-en. Sec. 565, Rev. C. 1907. Cal. Pol. C. Sec. 1235.

710. Challenges, how determined. Challenges upon the grounds either:

1. That the person challenged is not the person whose name appears on the official register; or

That the person has before voted that day, are determined in favor of the person challenged by his taking the oath tendered.

2. A challenge upon the ground that the person challenged has been convicted of a felony and not pardoned must be determined in favor of the person challenged on his taking the oath tendered, unless the fact of conviction be proved by the production of an authenticated copy of the record or by the oral testimony of two witnesses. If the person challenged asserts that he has been convicted of a felony and pardoned therefor, he must exhibit his pardon or a proper certified copy thereof to the judges, and if the pardon be found sufficient, the judges must tender to him the following oath: "You do swear that you have not been convicted of any felony other than that for which a pardon is now exhibited." Upon taking this oath the person challenged must be permitted to vote if otherwise qualified, unless a conviction of some other felony be proved, as in this section provided for the proof of a conviction.

History. En. Sec. 1375, Pol. C. 1895; re-en. Sec. 566, Rev. C. 1907. Cal. Pol. C. Sec. 1236.

Power of election officers with respect to rejection of votes offered, see note in Ann. Cas. 1913D, 1245.

Personal liability of election officer for rejecting ballots, see note in 11 L. R. A. (N. S.) 501.

711. Trial of challenges. Challenges for causes other than those specified in the preceding section must be tried and determined by the judges of election at the time of the challenge.

History: En. Sec. 1376, Pol. C. 1895; re-en. Sec. 567, Rev. C. 1907. Cal. Pol. C. Sec. 1237.

712. If a person refuses to be sworn, vote to be rejected. If any person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he must not be allowed to vote.

History: En. Sec. 1377, Pol. C. 1895; re-en. Sec. 568, Rev. C. 1907. Cal. Pol. C. Sec. 1238.

Duty of election officer to accept sworn vote, see note in 36 L. R. A. (N. S.) 968.

713. Proceedings upon determination of challenges. If the challenge is determined against the person offering to vote, the ballot must, without examination, be destroyed by the judges in the presence of the person offering the same; if determined in his favor, the ballot must be deposited in the ballot-box.

History: En. Sec. 1378, Pol. C. 1895; re-en. Sec. 569, Rev. C. 1907. Cal. Pol. C. Sec. 1242.

714. List of challenges to be kept. The judges must cause each of the clerks to keep a list showing:

1. The names of all persons challenged.
2. The grounds of such challenges.
3. The determination of the judges upon the challenge.

History: En. Sec. 1379, Pol. C. 1895; re-en. Sec. 570, Rev. C. 1907. Cal. Pol. C. Sec. 1243.

CHAPTER 56.

VOTING BY ABSENT ELECTORS.

Section 715. Voting by Elector When Absent From Place of Residence.
716. Application by Absentee for Ballot.
717. Form of Application.
718. Affidavit of Absentee—Fees.
719. Duty of Clerk to Deliver Application or Ballot.
720. Mailing Ballot to Elector—Form of Return and Affidavit.
721. Marking and Swearing to Ballot by Elector.
722. Disposition of Marked Ballot Upon Receipt by Clerk.
723. Delivery or Mailing of Ballots to Election Judges.
724. Clerk to Keep Record of Ballots and Issue Certificate.
725. Duty of Election Judges—Poll-Lists, Numbering Ballots, and Rejected Ballots.
726. Voting Before Election Day by Prospective Absentee.
727. Envelopes Containing Ballots—Deposit in Box and Rejection of Ballot.
728. Transmission of Ballot by Special Delivery.
729. Voting in Person by Elector on Election Day.
730. Procedure When Elector Is Present After Marking Absent Ballot.
731. Opening of Envelopes After Deposit.
732. False Swearing Perjury; Official Misconduct a Misdemeanor.
733. Voting Machines—Canvass of Votes.
734. Duty of Elector if Present on Election Day.
735. Violation of Law by Elector or Officer Outside of State—Change of Venue.

715. Voting by elector when absent from place of residence. Any qualified elector of this state, having complied with the laws in regard to registration, who is absent from the county of which he is an elector on the day of holding any general or special election, or primary election for the nomination of candidates for such general election, or any municipal general, special, or primary election, may vote at any such election as hereinafter provided.

History: En. Sec. 1, Ch. 110, L. 1915; amd. Sec. 1, Ch. 155, L. 1917.

716. Application by absentee for ballot. At any time within thirty days next preceding such election, any voter expecting to be absent on the day of election from the county in which his voting precinct is situated may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal general, special, or primary election, for an official ballot or official ballots to be voted at such election as an absent voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917.

717. Form of application. Application for such ballots shall be made on a blank to be furnished by the county clerk of the county of which the applicant is an elector, or the city or town clerk, if it be a municipal general, special, or primary election, and shall be in substantially the following form:

I, ..., a duly qualified elector of the .....precinct, in the county of..... and State of Montana, and to the best of my knowledge and belief entitled to vote in such precinct at the next election, expecting to be absent from the said county on the day for holding such election, hereby make application for an official ballot to be voted by me at such election.

(Signed) .....

Postoffice address to which ballot is to be mailed:

.....

History: En. Sec. 3, Ch. 110, L. 1915; re-en. Sec. 3, Ch. 155, L. 1917.

718. Affidavit of absentee—Fees. There shall also be printed on said application an affidavit substantially in the following form:

State of Montana, }
County of .....} ss.

.....and....., being severally duly sworn, each for himself on his oath says: That he is a resident and registered elector of the precinct mentioned in the foregoing application, and that he knows the person whose signature is appended to the said application; that the said person is the identical person named in said application, and resides in the said precinct.

.....

.....

Subscribed and sworn to before me this.....day of....., A. D. 19...

This affidavit must be subscribed by the witnesses and sworn to before some officer authorized to administer oaths, and the application shall not be deemed complete without his affidavit.

The voter making such application shall pay or transmit therewith to the county or city or town clerk the sum of thirty cents, which shall be treated as official receipts of the office. No other fee shall be charged by such clerk for any services in connection with such voting.

History: En. Sec. 4, Ch. 110, L. 1915; amd. Sec. 4, Ch. 155, L. 1917.

719. Duty of clerk to deliver application or ballot. Such application blank shall, upon request therefor, be sent by such county or city or town clerk to any elector of the county, by mail, and shall be delivered to any elector upon application made personally at the office of such county or city or town clerk; provided, however, that no elector shall be entitled to receive such a ballot on election day, nor unless his application is made to or received by the county or city or town clerk before the delivery of the official ballots to the judge of election.

History: En. Sec. 5, Ch. 110, L. 1915; re-en. Sec. 5, Ch. 155, L. 1917.

720. Mailing ballot to elector—Form of return and affidavit. Upon receipt of such application, properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been printed, the said county or city or town clerk shall send to such elector by mail, postage prepaid, one official ballot, or if there be more than one ballot to be voted by an elector of such precinct, one of each kind, and shall inclose with such ballot or ballots an envelope, to be furnished by such county or city or town clerk, which envelope shall bear upon the front thereof the name, official title and postoffice address of such county or city or town clerk, and upon the other side a printed affidavit, in substantially the following form:

State of.....)
County of.....) ss.

I,....., do solemnly swear that I am a resident of the.....precinct, (and if he be a resident of a city or town, add: "Residing at....., in the town or city of....."") county of....., and State of Montana, and entitled to vote in such precinct at the next election; that I expect to be absent from the said county of my residence on the day of holding such election and that I will have no opportunity to vote in person on that day.

.....

Subscribed and sworn to before me this.....day of....., 19....; and I hereby certify that the affiant exhibited to me the enclosed ballot or ballots for inspection before marking, and that the same was (or were) then unmarked and that he then in my presence, and in the presence of no other person, and in such manner that I could not see his vote, marked said ballot (or ballots) and inclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

.....

.....

History: En. Sec. 6, Ch. 110, L. 1915; amd. Sec. 6, Ch. 155, L. 1917.

721. Marking and swearing to ballot by elector. Such voter shall make and subscribe the said affidavit before an officer authorized by law to

administer oaths, and who has an official seal, and may do so at any place in the state of Montana, or in any other state or territory of the United States, before any officer authorized by the laws of this state to take acknowledgments of instruments without the state, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots shall thereupon, in the presence of such officer, be folded by such voter so that each ballot will be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope without detaching any stub or stubs, and the said envelope securely sealed. Said officer shall thereupon append his signature and official title and affix his seal at the end of said jurat and certificate. Said envelope shall be mailed by such absent voter, postage prepaid, or delivered to the county or city or town clerk, as the case may be.

History: En. Sec. 7, Ch. 110, L. 1915; amd. Sec. 7, Ch. 155, L. 1917.

722. Disposition of marked ballot upon receipt by clerk. Upon receipt of such envelope, such county or city or town clerk shall forthwith inclose the same, unopened, together with the written application of such absent voter in a larger envelope, which shall be securely sealed and indorsed with the name of the proper voting precinct, the name and official title of such clerk, and the words "This envelope contains an absent voter ballot, and must be opened only on election day at the polls when the same are open," and such clerk shall safely keep the same in his office until the same is delivered or mailed by him as provided in the next section.

History: En. Sec. 8, Ch. 110, L. 1915; re-en. Sec. 8, Ch. 155, L. 1917.

723. Delivery or mailing of ballots to election judges. In case such envelope is received by such clerk prior to the delivery of the official ballots to a judge of election of the precinct in which such absent voter resides, said larger envelope, containing the said voter's envelope, and his said application, as above provided, shall be delivered to the judge of election of such precinct, to whom the official ballots of the precinct shall be delivered, and at the same time. In case the official ballots for such precinct shall have been delivered to the judge of election prior to the time of the receipt by the said clerk of said absent voter's envelope, such clerk shall immediately after inclosing such voter's envelope and his application in a larger envelope, and after indorsing the latter as provided in the foregoing section, address and mail the larger envelope, postage prepaid, to the said judge of election of said precinct, as hereinafter further provided.

History: En. Sec. 9, Ch. 110, L. 1915; re-en. Sec. 9, Ch. 155, L. 1917.

724. Clerk to keep record of ballots and issue certificate. The ballot or ballots to be delivered or marked by such absent voter shall be one of the regular official ballots to be used at such election, and of each kind of such official ballots if there be more than one kind to be voted, beginning with ballot one and following consecutively, according to the number of applications for such absent voter ballots. The county or city or town clerk shall keep a record of all ballots so delivered for the purpose of absent voting, as well as of ballots, if any, marked before him as herein-

after provided, and shall make and deliver to the judge of election, to whom the ballots for the precinct are delivered, and at the time of the delivery of such ballots, a certificate stating the numbers of ballots delivered or mailed to absent voters, as well as those marked before him, if any, and the names of the voters to whom such ballots shall be delivered or mailed, or by whom they shall have been marked if marked before him.

History: En. Sec. 10, Ch. 110, L. 1915; re-en. Sec. 10, Ch. 155, L. 1917.

725. Duty of election judges — Poll-lists, numbering ballots and rejected ballots. The judges of election, at the opening of the polls, shall note on the poll-lists, when one is required by law to be kept, opposite the numbers corresponding to the numbers of the ballots issued to absent voters, as shown by the certificate of the county or city or town clerk, the fact that such ballots were issued to absent voters, and shall reserve said numbers for the absent voters. The notation may be made by writing the words "absent voters" opposite such numbers.

The judges shall not allow any names to be inserted in the poll-list on the lines corresponding to said numbers, except the name of the elector entitled to each particular number according to the certificate of the county or city or town clerk, and the number of his ballot. Any so rejected shall be placed together with the voter's application and the absent voter's envelope provided for the purpose by the clerk and recorder or city or town clerk, which shall be sealed and indorsed by the words, "rejected absent voter ballots" numbered....., and shall put thereon the number of the ballots given to absent voters according to the county or city or town clerk's certificate. There shall be a separate inclosing envelope for the ballot or ballots of each absent voter whose ballot or ballots may have been rejected, and such envelopes shall be placed in an envelope together with the other ballots, and shall not be opened without order of a court of competent jurisdiction.

History: En. Sec. 11, Ch. 110, L. 1915; amd. Sec. 11, Ch. 155, L. 1917.

726. Voting before election day by prospective absentee. Any qualified elector who is present in his county after the official ballots of such county have been printed and who has reason to believe that he will be absent from such county on election day as provided in section 716 may vote before he leaves his county, in like manner as an absent voter, before the county or city or town clerk or some officer authorized to administer oaths and having an official seal; and the provisions of this act shall be deemed to apply to such voting. If the ballot be marked before the county or city or town clerk it shall be his duty to deal with it in the same manner as if it had come by mail.

History: En. Sec. 12, Ch. 110, L. 1915; amd. Sec. 12, Ch. 155, L. 1917.

727. Envelopes containing ballots—Deposit in box and rejection of ballot. At any time between the opening and closing of the polls on such election day, the judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application, with the signature to such affidavit.

In case the judge find the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such

precinct, and has not voted at such election, they shall open the absent voter's envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting the same to be opened or examined, shall ascertain whether the stub or stubs is or are still attached to the ballot or ballots, and whether the number thereon corresponds to the number in the county or city or town clerk's certificate. If so, they shall indorse the same in like manner that other ballots are indorsed, shall detach the stub as in other cases, and deposit the ballot or ballots in the proper ballot-box or boxes, and make in their election list and books the proper entries to show such elector to have voted. In case such affidavit is found to be insufficient, or that the said signatures do not correspond, or that such applicant is not then a duly qualified elector of such precinct, such vote shall not be allowed, but, without opening the absent voter envelope, the judges of such election shall mark across the face thereof "rejected as defective," or "rejected as not an elector" as the case may be. The absent voter envelope, when such absent vote is voted, and the absent voter envelope with its contents, unopened, when such absent vote is rejected, shall be deposited in the ballot-box containing the general or party ballots, as the case may be, retained and preserved in the manner by law provided for the retention and preservation of official ballots voted at such election. If, upon opening the absent voter's envelope, it be found that the stub of any ballot has been detached, or that the number thereon does not correspond to the number in the county or city or town clerk's certificate of the number issued to such absent voter, the ballot shall be rejected, and it shall then and there, and without looking at the face thereof, be marked on the back "rejected on the ground of.....," filling the blank with the statement of the reason of the rejection; which statement shall be dated and signed by the majority of the judges. The ballot or ballots so rejected, together with the absent voter's envelope bearing the application, and the said application, shall be all inclosed in an envelope, which shall be then and there securely sealed, and on such envelope the judges shall write or cause to be written (if not already printed thereon) the words, "rejected ballot of absent voter" (writing in the name of the elector). "The rejected ballot or ballots is or are ....." The judges shall designate the rejected ballot as "general ballot," if it be a ballot for candidates that be rejected. If the rejected ballot be a one put on a question submitted to the vote of the electors, the judges shall designate such ballot as ballot question No..... in the certificate on the envelope. There shall be a separate inclosing envelope for the ballot or ballots of each absent voter whose ballot or ballots may have been rejected and such inclosing envelope shall be placed in the envelope in which the other ballots voted or (are) required to be placed and shall not be opened without an order of a court of competent jurisdiction. The county or city or town clerk shall provide and have delivered to the judge of election suitable envelopes for inclosing rejected absent voter's ballots.

History: En. Sec. 13, Ch. 110, L. 1915; amd. Sec. 13, Ch. 155, L. 1917.

728. Transmission of ballot by special delivery. Whenever the county or city or town clerk shall mail the envelope containing an absent voter's

envelope and ballots, as provided in this act, to a judge of election, he shall place thereon the proper postage and the proper stamp or stamps, and the proper markings to secure the transmission and delivery thereof as a special delivery letter, in accordance with the postal laws of the United States and the regulations of the United States postoffice.

History: En. Sec. 14, Ch. 110, L. 1915; amd. Sec. 14, Ch. 155, L. 1917.

729. Voting in person by elector on election day. Any qualified elector who has marked his ballot as hereinbefore provided, who shall be in his precinct on election day, shall be permitted to vote in person, provided his said ballot has not already been deposited in the ballot-box.

History: En. Sec. 15, Ch. 110, L. 1915; re-en. Sec. 15, Ch. 155, L. 1917.

730. Procedure when elector is present after marking absent ballot. In case any elector who shall have marked his ballot as an absent voter, as in this act provided, shall appear at the voting place of his precinct on election day, before his ballot or ballot shall have been deposited in the ballot-box, his envelope containing his ballot shall, if he so desires, be opened in his presence, and the ballot or ballots found therein shall be deposited in the ballot-box as hereinbefore provided. If such elector shall ask for a new ballot or ballots with which to vote, he shall be entitled to the same, but in such case his absent-voter envelope shall not be opened, and the judges shall mark, or cause to be marked, across the face thereof, "unopened because voter appeared and voted in person," and then deposit in the said envelope, unopened, in the ballot-box. If the envelope containing the absent-voter ballot shall have been marked "rejected as defective," and deposited in the ballot-box, such elector so appearing shall have the same right to vote as if he had not attempted to vote as an absent voter. If voting machines are there used, he shall vote by machine as other voters.

History: En. Sec. 16, Ch. 110, L. 1915; re-en. Sec. 16, Ch. 155, L. 1917.

731. Opening of envelopes after deposit. If the aforesaid envelope containing an absent-voter ballot shall have been deposited, unopened, in the ballot-box, the said envelope shall not be opened, without an order of a court of competent jurisdiction.

History: En. Sec. 17, Ch. 110, L. 1915; re-en. Sec. 17, Ch. 155, L. 1917.

732. False swearing perjury; official misconduct a misdemeanor. If any person shall wilfully swear falsely to any affidavit in this act provided for, he shall, upon conviction thereof, be deemed guilty of perjury, and shall be punished as in such cases by law provided. If the county or city or town clerk, or any election officer, shall refuse or neglect to perform any of these duties prescribed by this act, or shall violate any of the provisions thereof, or if any officer taking the affidavit provided for in section 720 shall make any false statement in his certificate thereto attached, or look at any mark or marks made by the voter upon any such ballot, or permit or allow any other person to be present at the marking of any such ballot by the voter, or to see any mark or marks made thereon by the voter, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by

imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 18, Ch. 110, L. 1915; amd. Sec. 18, Ch. 155, L. 1917.

733. Voting machines—Canvass of votes. In and for precincts where voting-machines are to be used, the county or city or town clerk shall cause to be printed and shall provide ballots in the regular form of printed ballots, and sufficient printed ballots and sufficient in number for possible absent voters, and also poll-books and ballot-boxes such as lists required for the precincts in which printed ballots are used. Absent voters' ballots received in such precincts shall be cast as in this act provided, and all provisions of this act and of the election laws shall apply to the casting, canvassing, counting, and returning of such ballots and votes, except as herein otherwise provided. In making the canvass, the votes cast by absent voters shall be added by the judges of election to the votes cast on the voting machines, and the results determined and reported accordingly.

History: En. Sec. 19, Ch. 110, L. 1915; amd. Sec. 19, Ch. 155, L. 1917.

734. Duty of elector if present on election day. In case any elector who shall have taken advantage of the provisions of this act, and marked his ballot as an absent voter, as in this act provided, shall not leave his county, or shall return thereto on or before election day, and in time to allow him to go to the polls, to-wit, to the voting place in his precinct, and to be admitted therein before the close of the polls, it shall be his duty so to go to the said voting place and to present himself to the judges of election at said voting place, and if he shall wilfully neglect so to do, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment not more than thirty days in the county jail or by both such fine and imprisonment. If such an elector so appears the judges of election shall note in the poll-books and lists the fact of his appearance as well as whether or not he voted in person.

History: En. Sec. 20, Ch. 110, L. 1915; re-en. Sec. 20, Ch. 155, L. 1917.

735. Violation of law by elector or officer outside of state—Change of venue. If any elector of this state or any other person or any officer shall, in any matter connected with voting outside of the state under the provisions of this law, in any manner violate any of the provisions of this act, or of any of the election or penal laws of this state applicable to voting under this act, in such manner that such violation would constitute an offense if committed within the state, then and in such case such elector, person, or officer shall be deemed guilty of a like offense, and be punishable to the same extent and in the same manner as if the act, omission, or violation had been committed in this state, and may be prosecuted in any county in this state; provided, however, that if the defendant or one of several defendants be a resident of the state he may have the case removed to the county in which the ballot was cast, or was to be cast, if not, in fact cast; and provided, further, that the court may order any such case removed to such county, subject always to the power of the court of any county to grant a change of venue as in other cases.

History: En. Sec. 21, Ch. 155, L. 1917.

CHAPTER 57.

VOTING BY ABSENT ELECTORS IN MILITARY OR NAVAL SERVICE.

Section 736. Voting by Absent Electors in Military or Naval Service.
737. Duty of County Clerk.
738. General Register to Be Prepared by Secretary of State.
739. Transmission by Telegram to County Clerks of Names of Candidates.
740. Official Ballot to Be Prepared and Printed, When.
741. Duty of Secretary of State and County Clerk.
742. Official Envelopes—Affidavit of Elector to Be Printed Thereon.
743. Signing, Marking, and Sealing Ballot.
744. Time for Casting Vote.
745. Transmission of Ballots to Electors.
746. Transmission of Voted Ballots to County Clerk—Duty of Clerk.
747. Ballot to Be Deposited With State Treasurer, When—Duty of State Canvassing Board.
748. Disposition of Envelopes When Received Before Certain Dates—Procedure of Canvassing Board.
749. County Board of Canvassers, to Convene When and Take What Action.
750. Procedure in Determining Number of Votes Cast for Each Candidate.
751. Returns Received After a Certain Date Not to Be Canvassed.
752. Persons Before Whom Oaths May Be Taken and Ballots Marked.
753. Effect of Informalities in Execution of Law; Penal Laws Applicable.
754. Disposition of Canvassed Ballots.
755. Printing and Distribution of Copies of Act.
756. Construction of Act.

736. Voting by absent electors in military or naval service. Any qualified duly registered elector of this state who is absent from the state of Montana and the county of which he is an elector on the date of holding any general election, and who is in the actual military service of the state of Montana, or of the United States in the army or navy thereof, or who is in the actual service of the National Red Cross, or the Young Men's Christian Association, or the Young Women's Christian Association, or the Knights of Columbus, or any similar organization auxiliary to the army and navy, and recognized by the government of the United States, shall be entitled to vote as fully as if he were present at his place of residence in the manner hereinafter provided.

History: **En. Sec. 1, Ch. 18, Ex. L. 1918.**

Right of soldier or sailor in actual service to vote, see notes in Ann. Cas. 1917B, 485; 25 L. R. A. 482.

737. Duty of county clerk. Within thirty days after the approval of this act, and each thirty days following, and thereafter not later than five days after the general primary election held preceding the general election, the county clerk of each and every county within the state of Montana shall make out and forward by registered mail to the secretary of the state and the adjutant-general of the state of Montana a separate list of the names of all persons who are qualified registered electors, known to him to be in the actual service of the army or navy of the state of Montana, or of the United States of America, or any of the organizations mentioned in section 736 of this code, and also the names of all persons proven to him to be so engaged by the affidavit of two qualified electors residing within the county.

History: **En. Sec. 2, Ch. 18, Ex. L. 1918.**

738. General register to be prepared by secretary of state. It shall be the duty of the secretary of state to prepare and make a general register on cards by counties, in which shall be entered the names of the voters of the state absent from their respective counties in time of war in the actual military service of the state of Montana, or of the United States of America, or in the actual service of any of the organizations named in section 736 of this code, from the lists of names so certified to the said secretary of state by the county clerks of the several counties of the state of Montana. Said cards in each county shall be arranged in alphabetical order of the names of the voters, and shall contain the name and residence and precinct of each such voter, and the name of the county and city or town in which he resides, and so far as can be ascertained without prejudice to the military purposes of the federal government of the place or post of duty at which such elector is stationed.

It is hereby made the duty of the secretary of state and the adjutant-general of the state of Montana to secure the necessary information to complete such general register from the appropriate naval and military authorities, or from the most accessible source from which said information can be obtained. The secretary of state shall furnish proper blanks to the several county clerks and to the adjutant-general for such purpose, and such general register shall be a public record and shall at all reasonable times be open to inspection by any voter in this state.

It is hereby made the duty of every public officer and every citizen to furnish to the secretary of state such information as he may possess relating to such absent voter, and any person who shall refuse so to do, or who furnishes false information in reference to such absent voters, shall be deemed guilty of a felony, and shall upon conviction thereof be punished by imprisonment in the state prison for not less than one year nor more than three years.

History: En. Sec. 3, Ch. 18, Ex. L. 1918.

739. Transmission by telegram to county clerks of names of candidates. It is hereby made the duty of the secretary of state, immediately and within twenty-four hours after the canvass of the returns for state offices shall have been completed of any general primary election, to transmit by telegram to each of the several county clerks of the state of Montana the names of any and all candidates of each and every political party which may be entitled to be printed on the official ballot for the general election to be held within the state of Montana.

History: En. Sec. 4, Ch. 18, Ex. L. 1918.

740. Official ballot to be prepared and printed, when. It is hereby made the duty of the county clerks of the several counties of the state of Montana to have prepared and printed the official ballot to be used at the general election, not more than ten days after the canvass and return of the general primary election and the receipt by him from the secretary of state of the names of persons to be printed on the official ballots to be used in said general election.

History: En. Sec. 5, Ch. 18, Ex. L. 1918.

741. Duty of secretary of state and county clerk. It is hereby made the duty of the secretary of state, within ten days after a general primary

election, to notify the county clerks of the several counties of the state of Montana the number of absent voters as shown by the register in this act provided for in each of the several counties. The county clerk of each county shall forward to the secretary of state one official ballot for each of said persons so absent from the county in which he resides, and which said official ballot shall bear indorsed in the proper place as provided by law, the stamp showing that said ballot is an official ballot, and shall have stamped across the face thereof the words, "ballot of absent voter engaged in military service." The county clerk of each county shall, not later than ten days after he shall have been notified of the result of the general primary election held preceding the general election, send to the secretary of state by registered mail, postage prepaid, one official ballot, or if there be more than one ballot to be voted by the elector of such county, one of each kind, for each of said voters.

History: En. Sec. 6, Ch. 18, Ex. L. 1918.

742. Official envelopes—Affidavit of elector to be printed thereon. The county clerk of each county shall cause to be prepared and printed a sufficient number of official envelopes, to be used for voters absent from their counties as shown by the general register herein provided for. Upon one side of said envelope shall be printed, in substantially the following form, the following:

Official War Ballot
Name .....
County .....
Date .....

SECRETARY OF STATE,
Helena,
Mont.

Upon the other side of such envelope shall be printed the following:

Oath of Elector.

I do solemnly swear (or affirm) that I am a citizen of the United States and am now of the age of.....years, and that I am a resident of the county of....., State of Montana, and was such resident at the time of my entry in the military service of the United States, and am entitled to vote in such county at the general election to be held in the State of Montana on the fifth day of November, 1918. That I am at the present time engaged in the actual service of the..... .....(here insert the branch of service engaged in), and absent from the State of Montana by reason of such service, and that I will have no opportunity to vote in person on that date; and that I have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered, or promised to contribute to another, to be paid or used in money or other valuable thing as compensation or reward for the giving or withholding of a vote at this election, and have not made any promise to influence the giving or withholding of any such vote, and that I have not made or become, directly or

indirectly, interested in any bet or wager depending upon the result of this election.

.....

Signature of Elector.

I, the undersigned, do hereby certify that the affiant whose name is subscribed to the foregoing affidavit was sworn to by and before me, and that said affiant exhibited to me the inclosed ballot (or ballots) for inspection before marking, and that the same was (or were) then unmarked, and that he then, in the presence of myself, and in the presence of no other person, and in such manner that I could not see his vote, marked said ballot or ballots, and inclosed and sealed the same in this envelope; that the affiant was not solicited or advised by me to vote for or against any candidate or measure.

.....

History: En. Sec. 7, Ch. 18, Ex. L. 1918.

743. Signing, marking, and sealing ballot. Any such voter shall sign the oath and statement provided for in the preceding section before a person authorized to administer an oath as in this act provided, and may do so at any place in which the elector may be present, and such elector shall thereupon, in the presence of such person authorized to administer an oath, and no other person, mark such ballot or ballots in such manner that such person cannot see the vote on such ballot or ballots, which shall thereupon, in the presence of such person, be folded by the voter so the ballot will be separate so as to seal the vote, and shall be, in the presence of such person, placed in said envelope without detaching any stub or stubs, and the said envelope securely sealed. The person before whom such envelope is sealed shall append his signature and title at the end of the certificate herein provided; said envelope shall be mailed by such absent voter, postage prepaid, to the secretary of state of Montana.

History: En. Sec. 8, Ch. 18, Ex. L. 1918.

744. Time for casting vote. Every elector authorized by the provisions of this act may cast his ballot at any time before six o'clock p. m. of the day on which said general election will be held.

History: En. Sec. 9, Ch. 18, Ex. L. 1918.

745. Transmission of ballots to electors. The secretary of state shall, within forty-eight hours after the receipt of the official ballots and envelopes, as provided for in this act, from the several county clerks cause the official ballot or ballots and envelopes so received to be inclosed in a separate envelope and addressed to the qualified elector, to be delivered to the adjutant-general of the state of Montana who shall cause to be deposited in the United States mail such ballot, addressed to such qualified electors, to be forwarded to them through such channels and in such manner as may have been directed by the military authorities of the government of the United States, and by such means as shall, in the judgment of the adjutant-general of the state of Montana, be best suited to secure their safe and timely delivery for the use of the voters.

History: En. Sec. 10, Ch. 18, Ex. L. 1918.

746. Transmission of voted ballots to county clerk—Duty of clerk. Upon receipt of the envelope containing the ballot of any elector by the secretary of state, he shall, if the same be received by him five days before the date of the general election, forward the same, unopened, in a large envelope by registered mail to the county clerk of the county in which such elector resides, and the county clerk of the county in which such elector resides shall forthwith inclose the same, unopened, in a larger envelope, which shall be securely sealed and indorsed with the name of the proper voting precinct, the name and official title of such clerk, and the words "this envelope contains an absent voter ballot, and must be opened only on election day and at the polls when the same are opened;" and such clerk shall safely keep the same in his office until same is delivered or mailed by him to the judges of election of the precinct in which such absent voter resides, as provided by this law.

History: En. Sec. 11, Ch. 18, Ex. L. 1918.

747. Ballot to be deposited with state treasurer, when—Duty of state canvassing board. If the envelope containing the vote of an absent voter be received by the secretary of state on or after five days preceding the day of general election, and on or before the first Monday in December following the general election, such envelope containing the ballot of such absent voter shall by said secretary of state, unopened, be deposited with the state treasurer, who shall retain the envelopes containing such ballots until the first Monday in December succeeding the general election. On the first Monday of December, the state canvassing board shall convene at the state capitol, and shall in public, at the hour of twelve o'clock noon, open the envelopes and packages so received, and proceed to canvass said vote for all persons or measures voted for in the manner provided by law. The state board of canvassers shall cause to be transmitted by the secretary of state to the county clerks of each county a complete statement of the votes cast for each person, as shown by the canvass of said vote, and the vote so received by each candidate shall be added to the total vote received by said person, as shown by the county board of canvassers or the state board of canvassers.

History: En. Sec. 12, Ch. 18, Ex. L. 1918.

748. Disposition of envelopes when received before certain dates—Procedure of canvassing board. If the envelope containing the vote of an absent voter be received by the secretary of state after the first Monday in December following the general election, and on or before the fourth Monday in December following the general election, such envelope containing the ballot of such absent voter shall by the secretary of state, unopened, be deposited with the state treasurer, who shall retain the envelopes containing such ballots until the fourth Monday in December succeeding the general election. On the fourth Monday of December following the general election, the state canvassing board shall convene at the state capitol and shall in public, at the hour of twelve o'clock noon, open the envelope and packages so received, and proceed to canvass said vote for all persons or measures voted for in the manner provided for by law. The state board of canvassers shall cause to be transmitted by the

secretary of state to the county clerks of each county a complete statement of the votes cast for each person, as shown by the canvassing of said vote, and the vote so received by each candidate shall be added to the total vote received by said person as shown by the prior official canvass. At the meeting of the state canvassing board on the first Monday in December following the general election and on the fourth Monday in December following the general election the state canvassing board shall proceed to canvass such statements and returns of the absent voters' ballots herein provided for, and shall from such statements and returns, together with the statements and returns theretofore made of such election, make new and separate statements of the votes cast in each county, or any part thereof, as shown by the canvass of such vote, and shall complete their canvass and make the statements provided for in this act, and they shall not, until the fourth Monday in December following the general election, finally determine the result of the election; but nothing herein shall prevent any county board of canvassers or state board of canvassers from proceeding as provided by law, except as to such final determination. Such meeting or meetings of the board of county canvassers or state canvassers shall be deemed a continuation of its regular session.

History: En. Sec. 13, Ch. 18, Ex. L. 1918.

749. County board of canvassers, to convene when and take what action. The county board of canvassers of each county of the state shall convene at the county seat of their respective counties on the last day of December, or as soon as the final returns shall have been received from the secretary of state, but not later than the Saturday preceding the first Monday in January following the general election, and shall from the returns theretofore canvassed by them, together with such statements and returns as shall have been received from and certified to by the secretary of state of Montana, make new and separate statements of the votes cast in such county, or any part thereof, and shall complete their canvass and make the final statements provided for by law, and they shall not until such meeting finally determine the result of the election; but nothing herein shall prevent the county board of canvassers from proceeding as provided by law for canvassing the returns of such election, except as to final determination. Such meeting or meetings of the board of county canvassers shall be deemed a continuation of its regular session.

History: En. Sec. 14, Ch. 18, Ex. L. 1918.

750. Procedure in determining number of votes cast for each candidate. The county board of canvassers and the state board of canvassers shall each, in the determination of the number of votes received by any person for any office, add the total number of votes received by such person at the general election and canvassed by said boards in the manner provided by law, the number of votes received by any such person as canvassed by the state board of canvassers, and the total number of votes so received by any person as a candidate for any office of the state of Montana shall be the number of votes declared and determined by the county board of canvassers or the state board of canvassers and they shall thereupon declare such person elected as shown by such vote and shall order issued thereto certificates of election.

History: En. Sec. 15, Ch. 18, Ex. L. 1918.

751. Returns received after a certain date not to be canvassed. No statement of returns or any ballot of an absent voter, as provided in this act, which shall not have been made or canvassed prior to or on the fourth Monday of December succeeding the general election, shall be canvassed or affect the result of such an election; and no return or statement not received by the county or state boards of canvassers at their meetings herein provided for shall be thereafter canvassed or affect the result of such election.

History: En. Sec. 16, Ch. 18, Ex. L. 1918.

752. Persons before whom oaths may be taken and ballots marked. Persons authorized to administer oaths and before whom an elector may mark his ballot as hereinabove provided shall be: Any commissioned officer of the army or navy of the United States; any person in charge of a section, camp, or detachment of any of the auxiliary organizations mentioned in section seven hundred thirty-six of this code; or any person authorized to administer oaths by the laws of this state or of the United States, or of the county in which the elector may be and marks his ballot.

History: En. Sec. 17, Ch. 18, Ex. L. 1918.

753. Effect of informalities in execution of law—Penalty laws applicable. No mere informality in the matter of carrying out or executing the provisions of this act shall invalidate the election, or authorize the rejection of the returns thereof, and the provisions of this act shall be liberally construed for the purposes herein expressed and intended. All the provisions of the penal law of the state of Montana relating to crime against the elective franchise shall be deemed to apply to the provisions of this act.

History: En. Sec. 18, Ch. 18, Ex. L. 1918.

754. Disposition of canvassed ballots. All ballots received by the secretary of state and canvassed under this act shall be securely sealed in separate packages and retained by him, subject to the order of any court of competent jurisdiction.

History: En. Sec. 19, Ch. 18, Ex. L. 1918.

755. Printing and distribution of copies of act. The secretary of state shall cause this act to be printed in suitable form and a copy thereof to be forwarded with the ballot to each person entitled to vote under the provisions of this act.

History: En. Sec. 20, Ch. 18, Ex. L. 1918.

756. Construction of act. Nothing in this act shall be deemed to repeal or amend any of the provisions of the law now existing relating to elections, but this act shall be construed as supplementary to all such laws and designed to carry into effect the purposes herein expressed, but in case of conflict, or apparent conflict, the provisions of this act shall, within its scope and purpose, prevail.

History: En. Sec. 21, Ch. 18, Ex. L. 1918.

CHAPTER 58.

VOTING MACHINE, CONDUCT OF ELECTION WHEN USED.

Section 757. State Board of Voting-Machine Commissioners.
758. Specifications of Machines Required.
759. Purchase and Use of Voting-Machines at Elections.
760. Payment for Machines, How Provided for.
761. Method of Conducting Elections.
762. Assistance to Elector Unable to Record Vote.
763. Ballots and Instructions to Voters.
764. City and County Clerks to Set up Machines for Use.
765. Irregular Ballots.
766. Counting the Votes.
767. Election Returns.
768. Election Laws Applicable.
769. Penalty for Neglect of Duty by Election Officer.
770. Penalty for Tampering With or Injuring Machines.
771. Penalty for Violation of Duty by Judge of Election.
772. Penalty for Fraudulent Returns or Certificates.
773. Experimental Use of Machines—Defective Machines.

757. State board of voting-machine commissioners. The governor, secretary of state, and state auditor, and their successors in office, are hereby created and constituted the state board of voting-machine commissioners. It shall be the duty of said board to examine all voting or ballot machines in order to determine whether such machines comply with the requirements of this act and can safely be used by voters at elections under the provisions of this act, and no machine or machines shall be provided or used at any election in this state unless the said machine or machines shall have received the approval of a majority of said board as herein provided. Said board may employ two qualified mechanics, who shall be qualified electors of the state of Montana, to examine said machines and assist said board in the discharge of its duties under this act, the compensation to be paid such qualified mechanics not to exceed the sum of ten dollars each for each day actually employed. Any machine or machines which shall have the approval of the majority of said board may be provided for in this act. The report of said board on each and every kind of voting-machine shall be filed with the secretary of state within thirty days after examining the machine, and the secretary of state shall, within five days after the filing of any report approving any machine or machines, transmit to the board of county commissioners, city council or other board of officers having charge and control of elections in each of the counties and cities of this state, a list of the machines so approved. No machine or machines shall be used unless they shall have received the approval of the state board at least sixty days prior to any election at which such machine or machines are to be used. The compensation of the mechanics and all other expenses connected with the examination of any machine shall be paid, or caused to be paid, by the person or company submitting a machine for examination before the filing of the report thereon. The amount of such expenses shall be certified by the state auditor and paid to the state treasurer.

History: En. Sec. 1, Ch. 168, L. 1907; Sec. 609, Rev. C. 1907.

This act is not invalid as in contravention of section 1, article 9, Constitution of Montana, providing that all elections shall be "by ballot," the term "ballot" being employed, not to designate a piece of paper, but a method to insure, so far as possible, the secrecy and integrity of

the popular vote. State ex rel. Fenner v. Keating, 53 Mont. 371, 377 et seq.; 163 Pac. 1156.

Constitutionality of statutes authorizing use of voting machines, see notes in 124 A. S. R. 573; 7 L. R. A. (N. S.) 621; 24 L. R. A. (N. S.) 188.

Use of voting machines at elections, see notes in 2 Ann. Cas. 840; 5 Ann. Cas. 864; 9 Ann. Cas. 275; 12 Ann. Cas. 474.

758. Specifications of machines required. No machine or machine system shall be approved by the commission unless it be so constructed as to afford every elector a reasonable opportunity to vote for any person for any office, or for or against any proposition for whom, or for or against which he is by law entitled to vote, and enable him to do this in secrecy; and it must be so constructed as to preclude an elector from voting for any candidate for the same office or upon any question more than once, and from voting for any person for any office for whom he is not by law entitled to vote. The machine or machine system must admit of his voting a split ticket as he may desire. It must also be so constructed as to register or record each and every vote cast. For presidential electors one device may be provided for voting for all the candidates of one party at one time by the use of such device, opposite or adjacent to which shall be a ballot on the machine containing the names of all the candidates for all presidential electors of that party, and a vote registered or recorded by the use of such device shall be counted for each of such candidates on said ballot. The machine must be constructed so that it cannot be tampered with or manipulated for any fraudulent purpose; and the machine must be so locked, arranged, or constructed that during the progress of the voting no person can see or know the number of votes registered or recorded for any candidate.

History: En. Sec. 2, Ch. 168, L. 1907; Sec. 610, Rev. C. 1907.

In an action of quo warranto to determine the title to an office, the claim was made that the voting-machines used at an election in one of the counties of the state did not comply with the law which authorizes their use, basing the contention upon the provision of above section, that "the machine must be constructed so that it cannot be tampered with or manipulated for any fraudulent purpose." The provision quoted is, however, to be read in connection with the remainder of the act and, when so read, it becomes obvious that the act does not require a voting-machine which will be proof against all tampering or manipulation, but one which, when honestly operated, will enable an elector to secretly cast his vote as he wishes to cast it and have it counted as cast, and which cannot be tampered with or manipulated in such a way that, though properly operated by the elector, it would seem to receive and record his vote without doing so. State ex rel. Fenner v. Keating, 53 Mont. 371, 381, 163 Pac. 1156.

759. Purchase and use of voting-machines at elections. The boards of county commissioners of counties of the first class shall, and the boards of county commissioners of other counties and city councils of all cities and towns, may, at their option, adopt and purchase, for use in the various precincts, any voting-machine approved in the manner above set forth in this act, by the voting-machine commission, and none other. If it shall be impracticable to supply each and every election district with a voting-machine or voting-machines at any election following the adoption of such machines in a city, village, or town, as many may be supplied as it is practicable to procure, and the same shall be used in such precinct of the municipality, as the proper officers may order. The proper officers of any city, village, or town may, not later than the tenth day of September, in any year in which a general election is held, unite two or more precincts

into one for the purpose of using therein at such election a voting-machine, and the notice of such uniting shall be given in the manner prescribed by law for the change of election districts.

History: En. Sec. 3, Ch. 168, L. 1907; Sec. 611, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1909.

760. Payment for machines, how provided for. Payment for voting machines purchased may be provided by the issuance of interest-bearing bonds, certificates of indebtedness, or other obligation, which will be a charge upon such county, city, or town. Such bonds, certificates, or other obligation may be made payable at such time or times, not exceeding ten years from the date of issue, as may be determined, but shall not be issued or sold at less than par.

History: En. Sec. 4, Ch. 168, L. 1907; Sec. 612, Rev. C. 1907.

761. Method of conducting elections. The room in which the election is held shall have a railing separating that part of the room to be occupied by the election officers from that part of the room occupied by the voting-machine. The exterior of the voting-machine and every part of the polling-place shall be in plain view of the judges. The machine shall be so placed that no person on the opposite side of the railing can see or determine how the voter casts his vote, and that no person can so see or determine from the outside of the room. After the opening of the polls, the judges shall not allow any person to pass within the railing to that part of the room where the machine is situated, except for the purpose of voting and except as provided in the next succeeding section of this act; and they shall not permit more than one voter at a time to be in such part of the room. They shall not themselves remain or permit any person to remain in any position that would permit him or them to see or ascertain how the voter votes or how he has voted. No voter shall remain within the voting-machine booth or compartment longer than one minute, and if he should refuse to leave it after that lapse of time he shall at once be removed by the judges. The election board of each election precinct in which a voting-machine is used shall consist of three judges of election. Where more than one machine is to be used in an election precinct, one additional judge shall be appointed for each additional machine. Before each election at which voting-machines are to be used, the custodian shall instruct all judges of election that are to serve thereat in the use of the machine and their duties in connection therewith; and he shall give to each judge that has received such instruction, and is fully qualified to conduct the election with the machine, a certificate to that effect. For the purpose of giving such instruction, the custodian shall call such meeting or meetings of the judges of election as shall be necessary. Each judge of election shall attend such meeting or meetings and receive such instructions as shall be necessary for the proper conduct of the election with the machine; and, as compensation for the time spent in receiving such instruction, each judge that shall qualify for and serve in the election shall receive the sum of one dollar, to be paid to him at the same time and in the same manner as compensation is paid to him for his services on election day. No such judge of election shall serve in any election at which a voting-machine is used, unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine, and has received a certifi-

cate to that effect from the custodian of the machines; provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency.

History: En. Sec. 5, Ch. 168, L. 1907; Sec. 613, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1909.

762. Assistance to elector unable to record vote. If any voter shall, in the presence of the judges of election, declare that he is unable to read or write the English language, or that by reason of a physical disability or total blindness he is unable to register or record his vote upon the machine, he shall be assisted as provided by section.....of the statutes of ..... Any person who shall deceive any elector in registering or recording his vote under this section, or who shall register or record his vote in any other way than as requested by such person or who shall give information to any person as to what ticket or for what person or persons such person voted, shall be punished as provided in section 10753 of the Penal Code.

History: En. Sec. 6, Ch. 168, L. 1907; Sec. 614, Rev. C. 1907.

763. Ballots and instructions to voters. Not more than ten (10) or less than three (3) days before each election at which voting-machines are to be used, the board, or officials, charged with the duty of providing ballots, shall publish in newspapers representing at least two (2) political parties a diagram of reduced size showing the face of the voting-machine, after the official ballot labels are arranged thereon, together with illustrated instructions how to vote, and a statement of the locations of such voting machines as shall be on public exhibition; a voting-machine shall at all time be on exhibition for public demonstration in the office of the county clerk and recorder in the counties where said voting-machines are used, and it shall be the duty of said county clerk and recorder to demonstrate and explain the working and operation of said voting machine to any inquiring voter; or in lieu of such publication, said board or officials may send by mail or otherwise at least three (3) days before the election, a printed copy of said reduced diagram to each registered voter. Not later than forty (40) days before each election at which voting-machines are to be used the secretary of state shall prepare samples of the printed matter and supplies named in this section, and shall furnish one of each thereof to the board or officials having charge of election in each county, city, or village in which the machines are to be used, such samples to meet the requirements of the election to be held, and to suit the construction of the machine to be used. The board or officials charged with the duty of providing ballots, shall provide for each voting-machine for each election the following printed matter and supplies; suitable printed or written directions to the custodian for testing and preparing the voting-machines for the election; one certificate on which the custodian can certify that he has properly tested and prepared the voting-machine for the election; one certificate on which some person other than the custodian preparing the machine, can certify that the voting-machine has been examined and found to have been properly prepared for the election; one certificate on which the party representatives can verify that they have witnessed the testing and preparation of the machines; one certificate on which the

deliverer of the machine can certify that he has delivered the machines to the polling-places in good order; one card stating the penalty for tampering with or injuring a voting-machine; two seals for sealing the voting-machine; one envelope in which the keys to the voting-machine can be sealed and delivered to the election officers, said envelope to have printed or written thereon the designation and location of the election district in which the machine is to be used, the number of machine, the number shown on the protective counter thereof after the machine has been prepared for the election and the number or other designation on such seal as the machine is sealed with; said envelope to have attached to it a detachable receipt for the delivery of the keys of the voting-machine to the judge of election; one envelope in which keys to the voting-machine can be returned by the election officers after the election; one card stating the name and telephone address of the custodian on the day of the election; two statements of canvass on which the election officers can report the canvass of the votes as shown on the voting-machine, together with other necessary information relating to the election, said statements of canvass to take the place of all tally papers, statements, and returns as provided heretofore; three (3) complete sets of ballot labels; two diagrams of the face of the machine with the ballot labels thereon, each diagram to have printed above it the proper instructions to voters for voting on the machine; six (6) suitable printed instructions to judges of election; six (6) notices to judges of election to attend the instruction meeting; six (6) certificates that the judges of election have attended the instruction meeting, have received the necessary instruction, and are qualified to conduct the election with the machine. The ballot labels shall be printed in black ink on clear white material of such size and arrangement as shall suit the construction of the machine; provided, however, that the ballot labels for the questions may contain a condensed statement of each question to be voted on, followed by the words "Yes" and "No"; and provided further, that the titles of the officers thereon shall be printed in type as large as the space for each office will reasonably permit, and wherever more than one candidate will be voted for for an office, there shall be printed below the office title thereof the words "vote for any two," or such number as the voter is lawfully entitled to vote for for such office. When any person is nominated for an office by more than one political party his name shall be placed upon the ticket under the designation of the party which first nominated him; or, if nominated by more than one party at the same time, he shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed, a written statement indicating the party designation under which he desires his name to appear upon the ballot, and it shall be so printed. If he shall refuse or neglect to so file such a statement, the officer with whom the certificate of nomination is required to be filed shall place his name under the designation of either of the parties nominating him, but under no other designation whatsoever. If the election be one at which all the candidates for office of presidential electors are to be voted for with one device, the county commissioners shall furnish for each machine twenty-five (25) ballots for each political party, each ballot containing the names of the candidates for the office of presidential electors of such party and a

suitable space for writing in names, so that the voter can vote thereon for part of the candidates for the office of presidential electors of one party and part of the candidates therefor of one or more other parties or for persons for that office not nominated by any party. For election precincts in which voting-machines are to be used, no books or blanks for making poll-lists shall be provided, but in lieu thereof, the registry lists shall contain a column in which can be entered the number of each voter's ballot as indicated by the number registered on the public counter as he emerges from the voting machine.

History: En. Sec. 7, Ch. 168, L. 1907; Sec. 615, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1909; amd. Sec. 1, Ch. 246, L. 1921.

764. City and county clerks to set up machines for use. The city or county clerks of each city or county in which a voting-machine is to be used shall cause the proper ballots to be put upon each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set and adjusted ready for use in voting when delivered at the precinct, and for the purpose of so labeling the machines, putting in order, setting and adjusting the same, they may employ one or more competent persons, and they shall cause the machine so labeled, in order and set and adjusted, to be delivered at the voting precinct, together with all necessary furniture and appliances that go with the same in the room where the election is to be held in the precinct, in time for the opening of the polls on election day; provided, however, that a shield of tin painted black made to conform with the shape of the keys or levers on said voting-machine, shall be placed over the keys or levers not in use on the face of the ballot of the voting machine; said shields to be plainly marked with the words "not in use"; and provided that a space of at lease one row of keys or levers be left vacant and marked "not in use" between the rows assigned to the two parties obtaining the largest number of votes cast at the previous general election; and provided, also that the general ballot used on the voting-machine shall conform in the location of the various parties and the location of the various names of the candidates, with the paper ballots used in the precincts where voting-machines are not in use. Thus the party assigned to the first vertical column on the paper ballot be given the first vertical column or the top horizontal row on the voting-machine; the party assigned to the second vertical column on the paper ballot be given the second vertical column, or the second horizontal row to be voted on the voting-machine. The judges shall compare the ballots on the machine with the sample ballot, see that they are correct, examine and see that all the counters, if any, in the machine are set at zero, and that the machine is otherwise in perfect order, and they shall not thereafter permit the machine to be operated or moved except by electors in voting, and they shall also see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine, if such machine be so arranged.

History: En. Sec. 8, Ch. 168, L. 1907; Sec. 616, Rev. C. 1907; amd. Sec. 2, Ch. 246, L. 1921.

765. Irregular ballots. In case a voting-machine be adopted which provides for the registry or recording of votes for candidates whose names are not on the official ballot, such ballots shall be denominated irregular

ballots. A person whose name appears on a ballot, or on or in a machine or machine system, shall not be voted for for the same office or on or in any regular device for casting an irregular ticket, and any such vote shall not be counted, except for the office of presidential electors, and an elector may vote in or on such irregular device for one or more persons nominated by one party with one or more persons nominated by any one or all other parties, or for one or more persons nominated by one or more parties with one or more persons not in nomination, or he may vote in such irregular device a presidential electoral ticket composed entirely of names of persons not in nomination.

History: En. Sec. 9, Ch. 168, L. 1907; Sec. 617, Rev. C. 1907.

766. Counting the votes. As soon as the polls of the election are closed the judges shall immediately lock the machine, or remove the recording device so as to provide against voting, and open the registering or recording compartments in the presence of any person desiring to attend the same, and shall proceed to ascertain the number of votes cast for each person voted for at the election, and to canvass, record, announce, and return the same as provided by law.

History: En. Sec. 10, Ch. 168, L. 1907; Sec. 618, Rev. C. 1907.

767. Election returns. The judges, as soon as the count is completed and fully ascertained, shall place the machine for one hour in such a position that the registering or recording compartments will be in full view of the public and any person desiring to view the number of votes cast for each person voted for at the election, must be permitted to do so. Immediately after the above said one hour shall have expired the judges shall seal, close, lock the machine or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least thirty (30) days, unless opened by order of a court of competent jurisdiction. When irregular ballots have been voted, the judges shall return them in a properly sealed package endorsed "irregular ballots," and indicating the precinct and county and file such package with the city or county clerk. It shall be preserved for six (6) months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction; at the end of such six (6) months unless ordered otherwise by the court, such package and its contents shall be destroyed by the city or county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner. The officers heretofore charged with the duty of furnishing tally sheets and returns blanks shall furnish suitable returns blanks and certificates to the officers of election. Such return sheets shall have each candidate's name designated by the same reference character that said candidate's name bears on the ballot labels and counters, and shall make provision for writing in of the vote for such candidate in figures and shall also provide for writing in of the vote in words. Such return sheet shall also provide for the return of the vote on questions. It shall also have a blank thereon, on which can be marked the precinct, ward, etc., of which said return sheet bears the returns and the number and make of the machine used. Said return sheet shall also have a certificate thereon, to be executed before the polls open by the judges of election, stating that all counters except the protective counter, if any,

and except as otherwise noted thereon, stood at "000" at the beginning of the election, and that all of said counters had been carefully examined before the beginning of the election; that the ballot labels were correctly placed on the machine and correspond to the sample ballot, and such other statements as the particular machine may require; and shall provide for the signature of the election officers. Said return sheet shall also have thereon a second certificate stating the manner of closing the polls, the manner of verifying the returns, that the foregoing returns are correct, giving the indication of the public counter, and poll-list, and protective counter, if any, at the close of the election. Such certificate shall properly specify the procedure of canvassing the vote and locking the machine, etc., for the particular type of machine used, and such certificate shall be such that the election officers can properly subscribe to it as having been followed and shall have provisions for the signature of the election officers. The election officers shall conform their procedure to that specified in the certificate to which they must certify. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 11, Ch. 168, L. 1907; Sec. 619, Rev. C. 1907; amd. Sec. 3, Ch. 246, L. 1921.

768. Election laws applicable. All laws of this state applicable to elections where voting is done in another manner than by machine, and all penalties prescribed for violation of such laws, shall apply to elections and precincts where voting-machines are used, in so far as they are not in conflict with the provisions of this chapter.

History: En. Sec. 12, Ch. 168, L. 1907; Sec. 620, Rev. C. 1907.

769. Penalty for neglect of duty by election officer. Any public officer, or any election officer upon whom any duty is imposed by this act, who shall wilfully neglect or omit to perform any such duties, or do any act prohibited herein for which punishment is not otherwise provided herein, shall, upon conviction, be imprisoned in the state prison for not less than one year or more than three years, or be fined in any sum not exceeding one thousand dollars, or may be punished by both such imprisonment and fine.

History: En. Sec. 13, Ch. 168, L. 1907; Sec. 621, Rev. C. 1907.

770. Penalty for tampering with or injuring machines. Any person not being an election officer who, during any election or before any election, after a voting-machine has had placed upon it the ballots for such election, shall tamper with such machine, disarrange, deface, injure, or impair the same in any manner, or mutilate, injure, or destroy any ballot placed thereon or to be placed thereon, or any other appliance used in connection with such machine, shall be imprisoned in the state prison for a period of not more than ten years, or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment.

History: En. Sec. 14, Ch. 168, L. 1907; Sec. 622, Rev. C. 1907.

771. Penalty for violation of duty by judge of election. Whoever, being a judge of election, with intent to permit or cause any voting-machine to fail to correctly register or record any vote cast thereon, tampers with or disarranges such machine in any way, or any part or appliance thereof, or who causes or consents to said machine being used

for voting at any election with knowledge of the fact that the same is not in order or not perfectly set and adjusted, so that it will correctly register or record all votes cast thereon, or who, for the purpose of defrauding or deceiving any voter, or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear upon said machine that votes cast for one ticket, candidate, or proposition were cast for another ticket, candidate, or proposition, removes, changes, or mutilates any ballot on said machine, or any part thereof, or does any other like thing, shall be imprisoned in the state prison not more than ten years, or fined not exceeding one thousand dollars, or punished by both such fine and imprisonment.

History: En. Sec. 15, Ch. 168, L. 1907; Sec. 623, Rev. C. 1907.

772. Penalty for fraudulent returns or certificates. Any judge or clerk of an election who shall purposely cause the vote registered or recorded on or in such machine to be incorrectly taken down as to any candidate or proposition voted on, or who shall knowingly cause to be made or signed any false statement, certificate, or return of any kind, of such vote, or who shall knowingly consent to such things, or any of them, being done, shall be imprisoned in the state prison not more than ten years, or fined not more than one thousand dollars or punished by both such fine and imprisonment.

History: En. Sec. 16, Ch. 168, L. 1907; Sec. 624, Rev. C. 1907.

773. Experimental use of machines—Defective machines. The proper officers authorized by this act to adopt voting machines, may provide for the experimental use of an election in one or more precincts, of a machine approved by the Montana voting-machine commission without a formal adoption or purchase thereof and its use at such election shall be as valid for all purposes as if formally adopted. If from any cause a machine becomes unworkable, or unfit for use, voting shall proceed as in cases where machines are not used, and the county clerk must furnish each voting place with the supply of ballots and other supplies required by the election laws to be used in the case of emergency herein provided for, and in such case only.

History: En. Sec. 17, Ch. 168, L. 1907; re-en. Sec. 625, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1909; amd. Sec. 4, Ch. 246, L. 1921.

CHAPTER 59.

ELECTION RETURNS.

Section 774. Canvass to Be Public and Without Adjournment.
775. Mode of Canvassing.
776. Where Ballots Are in Excess of Names on Check-List.
777. What Ballots Must Be Counted.
778. Ascertaining the Number of Votes Cast and Persons Voted for.
779. Tickets to Be Strung and Inclosed in Sealed Envelopes.
780. Rejected Ballots.
781. Poll-Books, Signing and Certification of.
782. Election Returns by Judges; How Made.
783. One of the Judges to Keep Certain Papers and the Ballot-Box.
784. Custody of Election Returns.
785. Delivery to County Clerk.
786. Filing of Ballots and Stubs by County Clerk.
787. Keeping Returns Pending Contest.
788. Disposition of Returns Prior to Canvass of Vote.
789. Clerk to File in His Office Books, Papers, etc.

774. Canvass to be public and without adjournment. As soon as the polls are closed, the judges must immediately proceed to canvass the votes given at such election. The canvass must be public in the presence of bystanders and must be continued without adjournment until completed and the result thereof is publicly declared.

History: Ap. p. Sec. 22, p. 380, Bannack Stat.; re-en. Sec. 22, p. 464, Cod. Stat. 1871; re-en. Sec. 21, p. 75, L. 1876; re-en. Sec. 535, 5th Div. Rev. Stat. 1879; re-en. Sec. 1027, 5th Div. Comp. Stat. 1887; amd. Sec. 1400, Pol. C. 1895; re-en. Sec. 572, Rev. C. 1907. Cal. Pol. C. Sec. 1252.

Cited and applied in connection with related sections in Harrington v. Crichton, 53 Mont. 388, 392, 164 Pac. 537.

775. Mode of canvassing. The canvass must commence by a comparison of the poll-lists from the commencement, and the correction of any mistakes that may be found therein, until they are found to agree. The judges must then take out of the box the ballots unopened except to ascertain whether each ballot is single, and count the same to determine whether the number of ballots corresponds with the number of names on the poll-lists. If two or more ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed, and if, on comparing the count with the poll-lists and further considering the appearance of such ballots, a majority of the judges are of the opinion that the ballots thus folded together were voted by one elector, they must be rejected; otherwise they must be counted.

History: Ap. p. Sec. 23, p. 380, Bannack Stat.; re-en. Sec. 23, p. 464, Cod. Stat. 1871; re-en Sec. 22, p. 75, L. 1876; re-en. Sec. 536, 5th Div. Rev. Stat. 1879; re-en. Sec. 1028, 5th Div. Comp. Stat. 1887; amd. Sec. 1401, Pol. C. 1895; re-en. Sec. 573, Rev. C. 1907. Cal. Pol. C. Sec. 1253.

Cited and applied in connection with other related sections in Harrington v. Crichton, 53 Mont. 388, 392; 164 Pac. 537.

776. Where ballots are in excess of names on check-list. If the ballots then are found to exceed in number the whole number of names on the poll-list, they must be placed in the box (after being purged in the manner above stated), and one of the judges must, publicly, and without looking in the box, draw therefrom singly and destroy unopened so many ballots as are equal to such excess. And the judges must make a record on the poll-list of the number of ballots so destroyed.

History: Ap. p. Sec. 24, p. 380, Bannack Stat.; re-en. Sec. 24, p. 464, Cod. Stat. 1871; re-en. Sec. 23, p. 76, L. 1876; re-en. Sec. 537, 5th Div. Rev. Stat. 1879; re-en. Sec. 1029, 5th Div. Comp. Stat. 1887; amd. Sec. 1402, Pol. C. 1895; re-en. Sec. 574, Rev. C. 1907. Cal. Pol. C. Sec. 1255.

777. What ballots must be counted. In the canvass of the votes, any ballot which is not indorsed as provided in this code by the official stamp is void and must not be counted, and any ballot or parts of a ballot from which it is impossible to determine the elector's choice is void and must not be counted; if part of a ballot is sufficiently plain to gather therefrom the elector's intention, it is the duty of the judges of election to count such part.

History: En. Sec. 30, p. 143, L. 1889; re-en. Sec. 1403, Pol. C. 1895; re-en. Sec. 575, Rev. C. 1907.

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot was void under this section, and should not have been counted in an election contest. Carwile v. Jones, 38 Mont. 590, 598, 101 Pac. 153.

This section was enacted prior to the

provision for a stub at the head of the ballot. The legislature, by providing for the stub to be numbered, and to be removed only at the time of depositing the ballot in the ballot-box, has hit upon an effective method of guarding against fraud and illegal voting, and has insured the deposit of the ballot in the ballot-box, and the provisions of the section should now be construed in the light of the changed conditions. Hence where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub, thus leaving the ballot without the official designation, did not render the ballots void, and the same should have been counted. Harrington v. Crichton, 53 Mont. 388, 396, 164 Pac. 537.

Cited or applied as section 1403, Political Code, in State ex rel. Brooks v. Fransham, 19 Mont. 273, 292, 48 Pac. 1.

Are rejected ballots to be counted in determining total vote cast, see note in 45 L. R. A. (N. S.) 714.

Effect of blank ballots cast, see notes in 3 Ann. Cas. 70; Ann. Cas. 1916B, 121.

778. Ascertaining the number of votes cast and persons voted for. The ballots and poll-lists agreeing or being made to agree, the judges must then proceed to count and ascertain the number of votes cast for each person voted for. In making such count the ballots must be opened singly by one of the judges, and the contents thereof, while exposed to the view of the other judges, must be distinctly read aloud by the judge who opens the ballot. As the ballots are read, each clerk must write at full length on a sheet to be known as a tally-sheet the name of every person voted for and of the office for which he received votes, and keep by tallies on such sheet the number of votes for each person. The tally-sheets must then be compared and their correctness ascertained, and the clerks must, under the supervision of the judges, immediately thereafter set down, at length and in their proper places in the poll-books, the names of all persons voted for, the offices for which they respectively received votes, and the total number of votes received by each person, as shown by the tally-sheets. No ballot or vote rejected by the judges must be included in the count provided for in this section.

History: Ap. p. Sec. 25, p. 380, Bannack Stat.; re-en. Sec. 25, p. 464, Cod. Stat. 1871; re-en. Sec. 24, p. 76, L. 1876; re-en. Sec. 538, 5th Div. Rev. Stat. 1879; re-en. Sec. 1030, 5th Div. Comp. Stat. 1887; amd. Sec. 1404, Pol. C. 1895; re-en. Sec. 576, Rev. C. 1907.

779. Tickets to be strung and inclosed in sealed envelopes. The ballots, as soon as read or rejected for illegality, must be strung upon a string by one of the judges, and must not thereafter be examined by any person, but must, as soon as all legal ballots are counted, be carefully sealed in a strong envelope, each member of the judges writing his name across the seal.

History: En. Sec. 1405, Pol. C. 1895; re-en. Sec. 577, Rev. C. 1907. Cal. Pol. C. Sec. 1259.

780. Rejected ballots. Any ballot rejected for illegality must be marked by the judges, by writing across the face thereof "Rejected on the ground of .....," filling the blank with a brief statement of the reasons for the rejection, which statement must be dated and signed by a majority of the judges.

History: En. Sec. 1406, Pol. C. 1895; re-en. Sec. 578, Rev. C. 1907.

781. Poll-books—Signing and certification of. As soon as all the votes are counted and the ballots sealed up, the poll-books must be signed and

certified to by the judges and clerks of election substantially as in the form in section 600 of this code.

History: En. Sec. 1407, Pol. C. 1895; re-en. Sec. 579, Rev. C. 1907.

782. Election returns by judges; how made. The judges must, before they adjourn, inclose in a strong envelope, securely sealed up and directed to the county clerk, the check-lists, all certificates of registration received by them, one of the lists of the persons challenged, one of the poll-books, one of the tally-sheets, and the official oaths taken by the judges and clerks of election; and must inclose in a separate package or envelope, securely sealed up and directed to the county clerk, all detached stubs from ballots voted and all unused ballots with the numbered stubs attached; and must also inclose in a separate package or envelope, securely sealed up and directed to the county clerk, all ballots voted, including all voted ballots which, for any reason, were not counted or allowed, and indorse on the outside thereof "Ballots Voted." Each of the judges must write his name across the seal of each of said envelopes or packages.

History: Ap. p. Sec. 1408, Pol. C. 1895; amd. Sec. 6, Ch. 88, L. 1907; Sec. 580, Rev. C. 1907.

783. One of the judges to keep certain papers and the ballot-box. The judges must select one of their number to retain, open to the inspection of all electors, for at least six months, the other list of persons challenged, the other tally-sheet and poll-book. The judge so selected must also retain the ballot-box.

History: En. Sec. 1409, Pol. C. 1895; re-en. Sec. 581, Rev. C. 1907.

784. Custody of election returns. The sealed envelope containing the check-lists, certificates of registration, poll-book, tally-sheets, oaths of election officers, also the package or envelope containing the detached stubs and unused ballots, must, before the judges adjourn, be delivered to one their number, to be determined by lot, unless otherwise agreed upon.

History: Ap. p. Sec. 1410, Pol. C. 1895; amd. Sec. 7, Ch. 88, L. 1907; Sec. 582, Rev. C. 1907. Cal. Pol. C. Sec. 1263.

785. Delivery to county clerk. The judges to whom such packages are delivered must, within twenty-four hours, deliver them, without their having been opened, to the county clerk, or convey the same, unopened, to the postoffice nearest the house in which the election for such precinct was held, and register and mail the same, duly directed to the said clerk.

History: En. Sec. 1411, Pol. C. 1895; re-en. Sec. 583, Rev. C. 1907.

786. Filing of ballots and stubs by county clerk. Upon the receipt of the packages by the county clerk, he must file the one containing the ballots voted and the one containing the detached stubs and unused ballots, and must keep them unopened and unaltered for twelve months, after which time, if there is no contest commenced in some tribunal having jurisdiction about such election, he must burn such packages, or envelopes, without opening or examining their contents.

History: Ap. p. Sec. 1412, Pol. C. 1895; amd. Sec. 8, Ch. 88, L. 1907; Sec. 584, Rev. C. 1907. Cal. Pol. C. Sec. 1265.

787. Keeping returns pending contest. If, within twelve months, there is such a contest commenced, he must keep the packages of envelopes unopened and unaltered until it is finally determined, when he must, as provided in the preceding section, destroy them, unless the same are by virtue of an order of the tribunal in which the contest is pending, brought and opened before it to the end that evidence may be had of their contents, in which event the packages or envelopes and their contents are in the custody of such tribunal.

History: Ap. p. Sec. 1413, Pol. C. 1895; amd. Sec. 9, Ch. 88, L. 1907; Sec. 585, Rev. C. 1907. Cal. Pol. C. Sec. 1266.

Cited or applied as section 1413, Political Code, before amendment, in Lane v. Bailey, 29 Mont. 548, 560, 75 Pac. 191.

788. Disposition of returns prior to canvass of vote. The envelopes containing the check-lists, certificates of registration, poll-book, tally-sheets, and oaths of election officers must be filed by the county clerk and be kept by him, unopened and unaltered, until the board of county commissioners meet for the purpose of canvassing the returns, when he must produce them before such board, where the same shall be opened.

History: Ap. p. Sec. 1414, Pol. C. 1895; amd. Sec. 10, Ch. 88, L. 1907; Sec. 586, Rev. C. 1907.

789. Clerk to file in his office books, papers, etc. As soon as the returns are canvassed, the clerk must file in his office the poll-book, lists, and the papers produced before the board from the package mentioned in the next preceding section.

History: En. Sec. 1415, Pol. C. 1895; re-en. Sec. 587, Rev. C. 1907. Cal. Pol. C. Sec. 1268.

CHAPTER 60.

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES.

Section 790. Meeting of County Commissioners to Canvass Returns.
791. In Case of Absence Certain County Officers to Act.
792. Canvass to Be Postponed, When.
793. Canvass to Be Public.
794. Statement of the Result to Be Entered of Record.
795. Plurality to Elect.
796. Duty of Canvassing Board—Tie Vote.
797. Certificates Issued by the Clerk.
798. Returns for Joint Members of House of Representatives.
799. How Transmitted.
800. Duty of Clerk Receiving Such Returns.
801. State Returns, How Made.
802. How Transmitted
803. State Canvassers, Composition and Meeting of Board.
804. Messenger May Be Sent for Returns—His Duty and Compensation.
805. Governor to Issue Commissions.
806. Defect in Form of Returns to Be Disregarded.
807. Duty of Secretary of State to Print Election Laws.
808. Penalties.

790. Meeting of county commissioners to canvass returns. The board of county commissioners of each county is ex-officio a board of county canvassers for the county, and must meet as the board of county canvassers at the usual place of meeting of the county commissioners within ten days after each election, at twelve o'clock noon, to canvass the returns.

History: En. Sec. 2, p. 299, L. 1891; amd. Sec. 1430, Pol. C. 1895; re-en. Sec. 588, Rev. C. 1907. Cal. Pol. C. Sec. 1278.

Referred to as section 588, Revised Codes, with other sections, in State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 400, 170 Pac. 942.

Effect on election of irregular canvass of returns, see note in Ann. Cas. 1916A, 710.

Necessity of preliminary evidence to impeach returns before court will order recount of votes cast, see note in Ann. Cas. 1915A, 685.

Mandamus to compel board of canvassers to reassemble for purpose of recanvassing votes, see notes in 2 Ann. Cas. 553; Ann. Cas. 1912C, 1257; 36 L. R. A (N. S.) 1089.

Presumption as to time of alteration in statement of return of votes made by officials, see note in 39 L. R. A. (N. S.) 115.

791. In case of absence certain county officers to act. If, at the time and place appointed for such meeting, one or more of the county commissioners should not attend, the place of the absentees must be supplied by one or more of the following county officers, whose duty it is to act in the order named, to-wit, the treasurer, the assessor, the sheriff, so that the board of county canvassers shall always consist of three acting members. The clerk of the board of county commissioners is the clerk of the board of county canvassers.

History: Ap. p. Sec. 2, p. 299, L. 1891; amd. Sec. 1431, Pol. C. 1895; re-en. Sec. 589, Rev. C. 1907.

The members of a county board of canvassers do not necessarily embrace the same officers, but are subject to changes which depend upon circumstances, and a writ of mandate, isued to compel such board to reconvene and canvass the returns from an election precinct which they had excluded, is properly directed to the particular individuals comprising the board, describing them by name, and as constituting the board of county canvassers of election returns for a certain county of the state, the particular members of such board at the time in question being the persons against whom obedience must, if necessary, be enforced. State ex rel. Leech v. Board of Canvassers, 13 Mont. 23, 29, 31 Pac. 879.

Referred to in connection with other sections in State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 400, 170 Pac. 942.

792. Canvass to be postponed, when. If, at the time of meeting, the returns from each precinct in the county in which polls were opened have been received, the board of county canvassers must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all of the returns are received, or until seven postponements have been had. If the returns from any election precinct have not been received by the county clerk within seven days after any election, it is his duty forthwith to send a messenger to the judges for the missing returns, who must procure such returns from the judges, or any of them, and return the same to the county clerk. Such messenger must be paid out of the county treasury fifteen cents per mile in going and coming. If it appears to the board, by evidence, that the polls were not opened in any precinct, and no returns have been received therefrom, the board must certify to the same, and file such certificate with the county clerk, with the evidence, if any, who must enter the same in the minutes and in the statement mentioned in section 794.

History: Ap. p. Sec. 3, p. 300, L. 1891; amd. Sec. 1432, Pol. C. 1895; re-en. Sec. 590, Rev. C. 1907. Cal. Pol. C. Sec. 1280.

Referred to as section 590, Revised Codes, with other sections, in State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 400, 170 Pac. 942.

793. Canvass to be public. The canvass must be made in public by opening the returns and determining therefrom the vote of such county or precinct for each person voted for, and for and against each propo-

sition voted upon at such election, and declaring the result thereof. In canvassing, no returns must be rejected if it can be ascertained therefrom the number of votes cast for each person. The fact that the returns do not show who administered the oath to the judges or clerks of election, or a failure to fill out all the certificates in the poll-books, or to do or perform any other act in making up the returns, that is not essential to determine for whom the votes were cast, is not such an irregularity as to entitle the board to reject the same, but they must be canvassed as other returns are.

History: En. Secs. 4 and 5, p. 301, L. 1891; re-en. Sec. 1433, Pol. C. 1895; re-en. Sec. 591, Rev. C. 1907. Cal. Pol. C. Sec. 1281.

A county board of canvassers has no authority to inquire into the validity of a certificate of nomination of a nominee for office, and therefore, where the election returns are genuine and properly certified, prohibition will not lie to restrain the board from canvassing such returns and counting the vote cast for such person, as required by sections 4 and 6, pages 301, 302, laws of the second session, upon the ground that the nomination was invalid. Pigott v. Canvassers of Cascade County, 12 Mont. 537, 538, 31 Pac. 536.

The duties of a county canvassing board are ministerial, and such board has no authority to exclude the returns of an election precinct, regularly made, upon the ground that the voting was shown by affidavits to be illegal, and, having done so, may be compelled by mandamus to canvass such returns. State ex rel. Leech v. Board of Canvassers, 13 Mont. 23, 30, 31 Pac. 879. See, also, State ex rel. Breen v. Toole, 32 Mont. 4, 10, 79 Pac. 403; Poe v. Sheridan County, 52 Mont. 279, 288, 157 Pac. 185.

Where a county canvassing board issued a certificate of election to a candidate for the legislative assembly after unlawfully excluding the returns of a particular precinct, and then adjourned sine die, such board may be compelled by mandamus to reconvene and canvass the returns so excluded, and issue a certificate of election to the person shown by a complete canvass to be entitled thereto. State ex rel. Leech v. Board of Canvassers, 13 Mont. 23, 31, 31 Pac. 879.

Returns in the poll-book being left blank, and the certificate thereto not being properly filled in, are not grounds for rejecting returns, nor are they such irregularities as will entitle a board of canvassers to reject them. State ex rel. Leech v. Board of Canvassers, 13 Mont. 23, 36, 31 Pac. 879.

It is the duty of the board of canvassers to procure the check-lists and surrendered lists before rejecting the vote of a precinct as returned by the poll-books alone. State ex rel. Leech v. Board of Canvassers, 13 Mont. 23, 38, 31 Pac. 879.

Cited or applied as section 591, Revised Codes, in Stephens v. Nacey, 47 Mont. 479, 485, 133 Pac. 361.

794. Statement of the result to be entered of record. The clerk of the board must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the county.
2. The names of the persons voted for and the propositions voted upon.
3. The office to fill which each person was voted for.
4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions.
5. The number of votes given in the county to each of such persons, and for and against each of such propositions.

History: En. Sec. 6, p. 301, L. 1891; re-en. Sec. 1434, Pol. C. 1895; re-en. Sec. 592, Rev. C. 1907. Cal. Pol. C. Sec. 1282.

795. Plurality to elect. The person receiving at any election the highest number of votes for any office to be filled at such election is elected thereto.

History: En. Sec. 1170, Pol. C. 1895; re-en. Sec. 456, Rev. C. 1907. Cal. Pol. C. Sec. 1066.

796. Duty of canvassing board—Tie vote. The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or a subdivision thereof, and in the event of two or more persons receiving an equal and sufficient number of votes to elect to the office of state senator, or member of the house of representatives, it shall be the duty of the board, under the direction of and in the presence of the district court, or judge thereof, to recount the ballots cast for such persons, and the board shall declare elected the person or persons shown by the recount to have the highest number of votes. If such recount shall show that two or more such persons receive an equal and sufficient number of votes to elect to the same office, then, and in that event, the board shall certify such facts to the governor.

History: En. Sec. 6, p. 302, L. 1891; 593, Rev. C. 1907; amd. Sec. 1, Ch. 84, re-en. Sec. 1435, Pol. C. 1895; re-en. Sec. L. 1909.

797. Certificates issued by the clerk. The clerk of the board of county commissioners must immediately make out and deliver to such person (except to the person elected district judge) a certificate of election signed by him and authenticated with the seal of the board of county commissioners.

History: En. Sec. 7, p. 302, L. 1891; re-en. Sec. 1436, Pol. C. 1895; re-en. Sec. 594, Rev. C. 1907. Cal. Pol. C. Sec. 1284.

798. Returns for joint members of house of representatives. When there are members of the house of representatives voted for by the electors of a district composed of two or more counties, each of the clerks of the counties composing such district, immediately after making out the statement specified in section 794, must make a certified abstract of so much thereof as relates to the election of such officers.

History: En. Sec. 8, p. 302, L. 1891; re-en. Sec. 1437, Pol. C. 1895; re-en. Sec. 595, Rev. C. 1907.

799. How transmitted. The clerk must seal up such abstract, indorse it "Election Returns," and without delay transmit the same by mail to the clerk of the board of commissioners of the county which stands first in alphabetical arrangement in the list of counties composing such district.

History: En. Sec. 1438, Pol. C. 1895; re-en. Sec. 596, Rev. C. 1907. Cal. Pol. C. Sec. 1286.

800. Duty of clerk receiving such returns. The clerk to whom the returns of a district are made must, on the twentieth day after such election, or sooner, if the returns from all the counties in the district have been received, open in public such returns, and from them and the statement of the vote for such officers in his own county:

1. Make a statement of the vote of the district for such officers, and file the same, together with the returns, in his office.

2. Transmit a certified copy of such statement to the secretary of state.

3. Make out and deliver or transmit by mail to the persons elected a certificate of election (unless it is by law otherwise provided).

History: Ap. p. Sec. 9, p. 303, L. 1891; amd. Sec. 1439, Pol. C. 1895; re-en. Sec. 597, Rev. C. 1907. Cal. Pol. C. Sec. 1287.

801. State returns, how made. When there has been a general or special election for officers voted for by the electors of the state at large or for judicial officers (except justices of the peace), each clerk of the board of county canvassers, so soon as the statement of the vote of his county is made out and entered upon the records of the board of county commissioners, must make a certified abstract of so much thereof as relates to the votes given for persons for said offices to be filled at such election.

History: En. Sec. 10, p. 303, L. 1891; amd. Sec. 1440, Pol. C. 1895; re-en. Sec. 598, Rev. C. 1907. Cal. Pol. C. Sec. 1288.

802. How transmitted. The clerk must seal up such abstract, indorse it "Election Returns," and without delay transmit it by mail, registered, to the secretary of state.

History: En. Sec. 11, p. 303, L. 1891; re-en. Sec. 1441, Pol. C. 1895; re-en. Sec. 599, Rev. C. 1907. Cal. Pol. C. Sec 1289.

803. State canvassers, composition and meeting of board. On the first Monday of December after the day of election, at twelve o'clock noon, the state auditor, state treasurer, and attorney-general, who constitute a board of state canvassers, must meet in the office of the secretary of state and compute and determine the vote, and the secretary of state, who is secretary of said board, must make out and file in his office a statement thereof and transmit a copy of such statement to the governor.

History: En. Sec. 14, p. 304, L. 1891; amd. Sec. 1442, Pol. C. 1895; re-en. Sec. 600, Rev. C. 1907. Cal. Pol. C. Sec. 1290.

804. Messenger may be sent for returns—His duty and compensation. If the returns from all the counties have not been received on the fifth day before the day designated for the meeting of the board of state canvassers, the secretary of state must forthwith send a messenger to the clerk of the board of county canvassers of the delinquent county, and such clerk must furnish the messenger with a certified copy of the statement mentioned in section 794. The person appointed is entitled to receive as compensation five dollars per day for the time necessarily consumed in such service, and the traveling expenses necessarily incurred. His account therefor, certified by the secretary of state, after being allowed by the board of examiners, must be paid out of the general fund of the state treasury.

History: Ap. p. Secs. 12 and 13, p. 303, L. 1891; amd. Sec. 1443, Pol. C. 1895; re-en. Sec. 601, Rev. C. 1907.

805. Governor to issue commissions. Upon receipt of such copy mentioned in section 803, the governor must issue commissions to the persons who from it appear to have received the highest number of votes for offices to be filled at such election. In case a governor has been elected to succeed himself, the secretary of state must issue the commission.

History: En. Sec. 15, p. 304, L. 1891; amd. Sec. 1444, Pol. C. 1895; re-en. Sec. 602, Rev. C. 1907. Cal. Pol. C. Sec. 1291.

806. Defect in form of returns to be disregarded. No declaration of the result, commission, or certificate must be withheld on account of any defect or informality in the return of any election, if it can with reason-

able certainty be ascertained from such return what office is intended and who is elected thereto.

History: En. Sec. 17, p. 305, L. 1891; re-en. Sec. 1448, Pol. C. 1895; re-en. Sec 606, Rev. C. 1907. Cal. Pol. C. Sec. 1297.

Cited or applied as section 606, Revised Codes, in Stephens v. Nacey, 47 Mont. 479, 485, 133 Pac. 361.

807. Duty of secretary of state to print election laws. It is the duty of the secretary of state to cause to be published, in pamphlet form, a sufficient number of copies of election laws and such other provisions of law as bear upon the subject of elections, and to transmit the proper number to each county clerk, whose duty it is to furnish each election officer in his county with one of such copies.

History: En. Sec. 18, p. 305, L. 1891; re-en. Sec. 1449, Pol. C. 1895; re-en. Sec. 607, Rev. C. 1907.

808. Penalties. The penalties for the violation of election laws are prescribed in sections 10747 to 10820 of the Penal Code.

History: En. Sec. 1450, Pol. C. 1895; re-en. Sec. 608, Rev. C. 1907.

CHAPTER 61.

FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE.

Section 809. Tie Vote on Representatives in Congress.
810. Proceedings on Tie Vote.
811. Tie Vote on State Officers.
812. Tie Vote on Judicial Officers.

809. Tie vote on representative in congress. In case of a failure, by reason of a tie vote or otherwise, to elect a representative in congress, the secretary of state must transmit to the governor a certified statement showing the vote cast for such persons voted for, and in case of a failure to elect, by reason of a tie vote or otherwise, the governor must order a special election.

History: En. Sec. 16, p. 305, L. 1891; re-en. Sec. 1447, Pol. C. 1895; re-en. Sec. 605, Rev. C. 1907.

810. Proceedings on tie vote. In case any two or more persons have an equal and highest number of votes for either governor, lieutenant-governor, secretary of state, attorney-general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session, must forthwith, by joint ballot of the two houses, elect one of such persons to fill such office; and in case of a tie vote for clerk of the district court, county attorney, or for any county officer except county commissioner, and for any township officer, the board of county commissioners must appoint some eligible person, as in case of other vacancies in such offices; and in case of a tie vote for county commissioner, the district judge of the county must appoint an eligible person to fill the office, as in other cases of vacancy.

History: En. Sec. 1171, Pol. C. 1895; re-en. Sec. 457, Rev. C. 1907. Cal. Pol. C. Secs. 1067-1068.

This section does not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. In so far as it relates to officers named in the constitution and the authority of the county commissioners to fill vacancies therein, it is invalid. State ex rel. Chenoweth v. Acton, 31 Mont. 37, 40, 77 Pac. 299. See State ex rel. Jones v. Foster, 39 Mont. 583, 591, 104 Pac. 860.

If there is a clause in the constitution

providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial officers, whose terms end at the expiration of a definitely fixed period, the words, "and until his successor has elected and qualified," refer to those officers only who were first elected after the adoption of the constitution; they have no application to those chosen after such first election. State ex rel. Jones v. Foster, 39 Mont. 583, 586, 104 Pac. 860.

The provisions of the constitution, fixing the terms of judicial officers, are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized, under this section, to fill by appointment. State ex rel. Jones v. Foster, 39 Mont. 583, 592, 104 Pac. 860. See, also, State ex rel. Patterson v. Lentz, 50 Mont. 322, 336, 146 Pac. 932.

Effect of tie vote in election, see note in 17 Ann. Cas. 574; 47 L. R. A. 551.

Contest in case of decision of tie vote, see note in 47 L. R. A. 559.

811. Tie vote on state officers. In case of a tie vote for state officers, as specified in the preceding section, it is the duty of the secretary of state to transmit to the legislative assembly, at its next regular session, a certified copy of the statement showing the vote cast for the two or more persons having an equal and the highest number of votes for any state office.

History: En. Sec. 1445, Pol. C. 1895; re-en. Sec. 603, Rev. C. 1907.

812. Tie vote on judicial officers. In case any two or more persons have an equal and highest number of votes for justice of the supreme court, or judge of a district court, the secretary of state must transmit to the governor a certified statement showing the vote cast for such person, and thereupon the governor must appoint an eligible person to hold office as in case of other vacancies in such offices.

History: En. Sec. 1446, Pol. C. 1895; re-en. Sec. 604, Rev. C. 1907.

CHAPTER 62.

PRESIDENTIAL ELECTORS, HOW CHOSEN.

Section 813. Electors, When Chosen.
814. Returns, How Made.
815. Duty of Governor.
816. Meeting of Electors.
817. Vacancies, How Supplied.
818. Voting of Electors.
819. Separate Ballots for President and Vice-President.
820. Must Make Lists of Persons Voted for.
821. Result to Be Transmitted as Provided by Law of the United States.
822. Compensation of Electors.
823. How Audited and Paid.

813. Electors, when chosen. At the general election in November, preceding the time fixed by the law of the United States for the choice of president and vice-president of the United States, there must be elected as many electors of president and vice-president as this state is entitled to appoint.

History: En. Sec. 1, p. 173, L. 1891; re-en. Sec. 1460, Pol. C. 1895; re-en. Sec. 626, Rev. C. 1907. Cal. Pol. C. Sec. 1307.

Election of presidential electors, see note in 43 L. R. A. (N. S.) 284.

814. Returns, how made. The votes for electors of president and vice-president must be canvassed, certified to, and returned in the same manner as the votes for state officers.

History: En. Sec. 2, p. 173, L. 1891; re-en. Sec. 1461, Pol. C. 1895; re-en. Sec. 627, Rev. C. 1907. Cal. Pol. C. Sec. 1308.

815. Duty of governor. The governor must transmit to each of the electors a certificate of election, and on or before the day of their meeting deliver to each of the electors a list of the names of electors, and must do all other things required of him in the premises by any act of congress in force at the time.

History: En. Sec. 3, p. 174, L. 1891; re-en. Sec. 1462, Pol. C. 1895; re-en. Sec. 628, Rev. C. 1907. Cal. Pol. C. Sec. 1314.

816. Meeting of electors. The electors chosen must assemble at the seat of government on the second Monday in January next after their election, at two o'clock in the afternoon.

History: En. Sec. 4, p. 174, L. 1891; re-en. Sec. 1463, Pol. C. 1895; re-en. Sec. 629, Rev. C. 1907. Cal. Pol. C. Sec. 1315.

817. Vacancies, how supplied. In case of the death or absence of any elector chosen, or in case the number of electors from any cause be deficient, the electors then present must elect, from the citizens of the state, so many persons as will supply such deficiency.

History: En. Sec. 5, p. 174, L. 1891; re-en. Sec. 1464, Pol. C. 1895; re-en. Sec. 630, Rev. C. 1907. Cal. Pol. C. Sec. 1316.

818. Voting of electors. The electors, when convened, must vote by ballot for one person for president and one for vice-president of the United States, one of whom at least is not an inhabitant of this state.

History: En. Sec. 1465, Pol. C. 1895; re-en. Sec. 631, Rev. C. 1907. Cal. Pol. C. Sec. 1317.

819. Separate ballots for president and vice-president. They must name in their ballots the persons voted for as president, and in distinct ballots the persons voted for as vice-president.

History: En. Sec. 1466, Pol. C. 1895; re-en. Sec. 632, Rev. C. 1907. Cal. Pol. C. Sec. 1318.

820. Must make list of persons voted for. They must make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes given for each.

History: En. Sec. 1467, Pol. C. 1895; re-en. Sec. 633, Rev. C. 1907. Cal. Pol. C. Sec. 1319.

821. Result to be transmitted as provided by law of the United States. They must certify, seal up, and transmit such lists in the manner prescribed by the constitution and laws of the United States.

History: En. Sec. 1468, Pol. C. 1895; re-en. Sec. 634, Rev. C. 1907. Cal. Pol. C. Sec. 1320.

822. Compensation of electors. Electors receive the same pay and mileage as is allowed to members of the legislative assembly.

History: En. Sec. 7, p. 174, L. 1891; re-en. Sec. 1469, Pol. C. 1895; re-en. Sec. 635, Rev. C. 1907. Cal. Pol. C. Sec. 1321.

823. How audited and paid. Their accounts therefor, certified by the secretary of the state, must be audited by the state auditor, who must

draw his warrants for the same on the treasurer, payable out of the general fund.

History: En. Sec. 1470, Pol. C. 1895; re-en. Sec. 636, Rev. C. 1907. Cal. Pol. C. Sec. 1322.

CHAPTER 63.

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES.

Section 824. Election of United States Senators—For Full Term and to Fill Vacancies.
825. Writs of Election to Fill Vacancy.
826. When Held.
827. Returns, How Made.
828. Certificates Issued by Governor.

824. Election of United States senators—For full term and to fill vacancies. The election of senators in congress of the United States for full terms must be held on the first Tuesday after the first Monday in November next preceding the commencement of the term to be filled; and the elections of senators in congress of the United States to fill vacancies therein must be held at the time of the next succeeding general state election following the occurrence of such vacancy; if any election therefor be invalid or not held at such time, then the same shall be held at the second succeeding general state election. Nominations of candidates and elections to the office shall be made in the same manner as is provided by law in case of governor.

History: En. Sec. 1480, Pol. C. 1895; re-en. Sec. 637, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1915; amd. Sec. 1, Ch. 134, L. 1917.

Constitutionality of popular election of United States senators, see note in 41 L. R. A. (N. S.) 140.

Extent of federal control of congressional elections, see note in 53 L. R. A. 663.

Admissibility of declarations of votes as to how they voted in contested election for members of congress, see note in 15 Ann. Cas. 244.

825. Writs of election to fill vacancy. When a vacancy happens in the office of one or more senators from the state of Montana in the congress of the United States, the governor of this state shall issue, under the seal of the state, a writ or writs of election, to be held at the next succeeding general state election, to fill such vacancy or vacancies by vote of the electors of the state; provided, however, that the governor shall have power to make temporary appointments to fill such vacancy or vacancies until the electors shall have filled them.

History: En. Sec. 1481, Pol. C. 1895; re-en. Sec. 638, Rev. C. 1907; amd. Sec. 2, Ch. 126, L. 1915.

826. When held. At the general election to be held in the year eighteen hundred and ninety-two, and at the general election every two years thereafter, there must be elected for each congressional district one representative to the congress of the United States.

History: En. Sec. 2, p. 306, L. 1891; re-en. Sec. 1490, Pol. C. 1895; re-en. Sec. 639, Rev. C. 1907. Cal. Pol. C. Sec. 1343.

827. Returns, how made. The vote for representative in congress must be canvassed, certified to, and transmitted in the same manner as the vote for state officers.

History: En. Sec. 2, p. 306, L. 1891; re-en. Sec. 1491, Pol. C. 1895; re-en. Sec. 640, Rev. C. 1907. Cal. Pol. C. Sec. 1344.

828. Certificates issued by governor. The governor must, upon the receipt of the statement mentioned in section 803 of this code, transmit to the person elected a certificate of his election, sealed with the great seal and attested by the secretary of the state.

History: En. Sec. 3, p. 306, L. 1891; re-en. Sec. 1492, Pol. C. 1895; re-en. Sec. 641, Rev. C. 1907. Cal. Pol. C. Sec. 1347.

CHAPTER 64.

CONTESTING ELECTIONS.

829. Election contests are governed by the provisions of sections 659 to 661, and sections 10810 to 10814 of these codes.

Note.—New section recommended by code commissioner.

EDUCATION. CHAPTERS 65 TO 105.

Chapter 65. The State Board of Education—Its Composition, Powers and Duties.
66. Control of State Educational, Charitable and Reformatory Institutions.
67. The University of Montana.
68. The State University, Including Law and Forestry Schools.
69. The School of Mines, Including the State Bureau of Mines and Metallurgy.
70. The College of Agriculture and Mechanic Arts, Including Agricultural Experiment Station.
71. The Montana Grain Inspection Laboratory.
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73. The Northern Montana Agricultural and Manual Training School.
74. The State Normal College.
75. The Public Schools—Superintendent of Public Instruction.
76. County Superintendent of Schools.
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78. School Trustees.
79. School Districts.
80. Rural School Districts.
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83. School Day, Month and Year—Holidays—Pioneer and Arbor Day.
84. Instruction in Fire Dangers and Prevention of Communicable Diseases.
85. Teachers—Certificate of Qualification—Powers and Duties.
86. State and County Examinations and Certificates.
87. Teachers' Institutes and Summer Schools.
88. Teachers' Retirement Salary Fund.
89. Pupils—Discipline—Prohibition Against Secret Fraternities.
90. Compulsory Attendance—Employment of Children—Truant Officers.
91. Part-Time Schools.

92. Industrial Schools.
93. Juvenile Disorderly Persons—Commitment to Industrial School.
94. Schoolhouse Sites and Construction.
95. School Libraries.
96. Text-Books.
97. Finance.
98. Extra Taxation for School Purposes.
99. Bonds.
100. Manual and Industrial Training.
101. County High Schools—Superintendent of City and County High Schools.
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CHAPTER 65.

THE STATE BOARD OF EDUCATION—ITS COMPOSITION, POWERS AND DUTIES.

Section 830. Membership.
831. Appointment and Term.
832. Oaths.
833. Officers.
834. Quorum.
835. Meetings.
836. Powers and Duties.
837. State Certificates, How Obtained.
838. Life Certificates, How Obtained.
839. Registration.
840. Revocation.

830. Membership. The state board of education shall consist of eleven members of which number the governor, state superintendent of public instruction, and attorney-general shall be ex-officio members.

History: En. Sec. 1, p. 158, L. 1893; re-en. Sec. 1510, Pol. C. 1895; re-en. Sec. 642, Rev. C. 1907; re-en. Sec. 100, Ch. 76, L. 1913.

Note.—For California statutes governing public schools, see sections 1517-1891, Political Code.

No retroactive effect will be given to this act; it is not commanded by its context, terms, or manifest purpose. Falligan v. School District, 54 Mont. 177, 179, 169 Pac. 803.

Cited or applied as section 642, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 581, 121 Pac. 784, 1057.

831. Appointment and term. The governor shall appoint by and with the advice and consent of the senate, the remaining eight members of the board. The term of office for members so appointed upon the board shall be four years, and until their successors are appointed and qualified.

History: En. Sec. 2, p. 159, L. 1893; re-en. Sec. 1511, Pol. C. 1895; re-en. Sec. 643, Rev. C. 1907; amd. Sec. 101, Ch. 76, L. 1913.

832. Oaths. The persons so appointed as members of the state board of education shall, before entering upon the duties of their office, take and subscribe the constitutional oath of office prescribed for civil officers, which shall be filed in the office of the secretary of state.

History: En. Sec. 3, p. 159, L. 1893; re-en. Sec. 1512, Pol. C. 1895; re-en. Sec. 644, Rev. C. 1907; re-en. Sec. 102, Ch. 76, L. 1913.

833. Officers. The governor shall be the president of said board and the superintendent of public instruction shall be the secretary thereof. The state treasurer shall be the treasurer of the board.

History: En. Sec. 4, p. 159, L. 1893; re-en. Sec. 1513, Pol. C. 1895; re-en. Sec. 645, Rev. C. 1907; re-en. Sec. 103, Ch. 76, L. 1913.

Cited or applied as section 1513, Political Code, in State ex rel. Koch v. Barret, 26 Mont, 62, 66, 66 Pac. 504; as section 645, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 581, 121 Pac. 784, 1057.

834. Quorum. A majority of said board shall constitute a quorum for the transaction of business.

History: En. Sec. 5, p. 159, L. 1893; re-en. Sec. 1514, Pol. C. 1895; re-en. Sec. 646, Rev. C. 1907; re-en. Sec. 104, Ch. 76, L. 1913.

835. Meetings. The board shall hold quarterly meetings at the state capitol on the first Monday in April, July, September, and December in each year, and may hold special meetings at any time and place they may direct. The president and the secretary of the board may also call special meetings of said board at any time and place, if in their judgment necessity requires it. The members of said board shall receive no compensation for their services, but shall be allowed their actual traveling expenses incurred in attending the meetings of the board, which expense and all other expenses, on the certificate of the secretary of the board, shall be audited and approved by the state board of examiners and paid by warrant of the state auditor on the state treasurer.

History: En. Sec. 6, p. 159, L. 1893; re-en. Sec. 1515, Pol. C. 1895; re-en. Sec. 647, Rev. C. 1907; amd. Sec. 105, Ch. 76, L. 1913; amd. Sec. 1, Ch. 196, L. 1919.

836. Powers and duties. The state board of education shall have power and it shall be its duty:

1. To have general control and supervision of the state university, state normal college, college of agriculture and mechanic arts of Montana, state orphans' home, Montana school of mines, Montana school for the deaf and blind, the Montana state industrial school, and the state vocational school for girls.

2. To adopt rules and regulations, not inconsistent with the constitution and the laws of this state, for its own government, and proper and necessary for the execution of the powers and duties conferred upon it by law.

3. To provide, subject to the laws of the state, rules and regulations for the government of the affairs of the state educational institutions named in this section.

4. To prescribe standards of promotion to the high school department of all public schools of the state, and to accredit such high schools as maintain the standards of work prescribed by the board; provided, that in all examinations which shall be given by this board and shall be conducted by the county board of educational examiners, to determine the scholarship of candidates for promotion to high school, fifty per cent. of the credits required shall be based upon the eighth-grade work completed in any school of this state, and certified to the county superintendent by the principal or teacher of such grade.

5. To grant diplomas to the graduates of all state educational institutions, where diplomas are authorized or now granted, upon the recom-

mendation of the faculties thereof, and may confer honorary degrees upon persons, other than graduates, upon the recommendation of the faculty of such institutions.

6. To adopt and use, in the authentication of its acts, an official seal.

7. To grant state certificates valid for six years and to grant life certificates.

8. To keep a record of its proceedings.

9. To make an annual report on or before the first day of January in each year, which may be printed under the direction of the state board of examiners.

10. To appoint and commission experienced teachers as instructors in county institutes.

11. To have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the institutions and colleges named in this section.

12. To receive from the state board of land commissioners, or other boards, or persons, or from the government of the United States, any and all funds, incomes, and other property to which any of said institutions may be entitled, and to use and appropriate the same for the specific purpose of the grant or donation, and none other; and to have general control of all receipts and disbursements of any of said institutions.

13. To choose and appoint a president and faculty for each of the various state institutions named herein, and to fix their compensation.

14. To confer upon the executive board of each of said institutions such authority relative to the immediate control and management, other than financial, and the selection of the faculty, teachers, and employees, as may be deemed expedient, and may confer upon the president and faculty such authority relative to the immediate control, and management, other than financial, and the selection of teachers and employees, as may by said board be deemed for the best interest of said institutions.

History: Ap. p. Sec. 7, p. 159, L. 1893; re-en. Sec. 1516, Pol. C. 1895; re-en. Sec. 648, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1909; amd. Sec. 106, Ch. 76, L. 1913; Subd. 7, amd. Sec. 2, Ch. 196, L. 1919.

Note.—There has been added by the code commissioner to paragraph 1 of this section the words "and the state vocational school for girls," in order to make the section conform to legislation subsequent to its enactment.

Cited or applied as section 1516, Political Code, before amendment, in State ex rel. Koch v. Barret, 26 Mont. 62, 66, 66 Pac. 504.

837. State certificates, how obtained. A state certificate may be obtained by examination, by endorsement of a diploma or certificate of another state, or by renewal, in the following manner:

1st. By examination. A state certificate may be issued by the state board of education to any person of good moral character who has held for one year and still holds a Montana professional certificate in full force and effect, when such person has passed a satisfactory examination, under the direction of the state board of education, in English literature, history of education, and general history, and has furnished satisfactory evidence of having taught successfully for thirty-five months.

2nd. By endorsement of a state certificate issued by another state. A state certificate may be issued in accordance with regulations established by the state board of education to the holder of a state certificate

issued by another state; provided, that such regulations shall not authorize the issuance of a state certificate to any person whose character, professional qualifications, and experience are not at least substantially equivalent to those prescribed by this act for the issuance of a state certificate by examination.

3rd. By endorsement of a diploma of a Montana institution. A diploma of the Montana state normal college, or of any normal school that may hereafter be established under the control of the state board of education, or a university of Montana certificate of qualification to teach, when accompanied by a diploma either of the Montana state university or of the Montana state college of agriculture and mechanic arts, shall constitute a state certificate good for six years after date; provided, that the rules of the faculties of the state university and of the state college of agriculture and mechanic arts for the issuance of the university of Montana certificate of qualification to teach, as approved by the chancellor of the university of Montana, shall be submitted to the state board of education for its sanction.

4th. By endorsement of a diploma of another institution. A state certificate may be issued by the state board of education to a graduate of any other college or normal school within or without the state in accordance with regulations established by said board; provided, that such regulations shall not authorize the issuance of a state certificate to a graduate of any institution whose requirements for graduation are not substantially the full equivalent of those of the corresponding institution of the university of Montana.

5th. By renewal. Any unexpired state certificate issued by the Montana state board of education may be renewed by the said board for a period of six years from the date of renewal, provided, the holder has taught successfully for twenty-seven months during the life of such certificate, and provided further, that the state board of education may require evidence of the accomplishment of a minimum amount of reading circle work as a requisite for the renewal of a certificate.

History: En. Sec. 108, Ch. 76, L. 1913; amd. Sec. 3, Ch. 196, L. 1919.

Note.—The arrangement of the foregoing section has been changed by the code commissioner.

838. Life certificates, how obtained. A life certificate may be obtained by examination, by endorsement of a life certificate issued by another state, or by endorsement of a diploma, in the following manner:

1st. By examination. A life certificate by examination may be issued by the state board of education upon the same conditions as a state certificate, except that, in addition, the applicant must pass satisfactory examinations and tests under such supervisions and upon such additional subjects as may be prescribed by the state board of education, and must furnish satisfactory evidence of having taught successfully for seventy months; providing, that an applicant who already holds an unexpired Montana state certificate obtained by examination shall be exempt from the examinations required for state certificates.

2nd. By endorsement of a life certificate of another state. A life certificate may be issued in accordance with regulations established by the state board of education to the holder of a life certificate issued by

another state; provided, that such regulations shall not authorize the issuance of a life certificate to any person whose character, professional qualifications, and experience are not at least substantially equivalent to those prescribed by this act for the issuance of a life certificate by examination.

3rd. By endorsement of a diploma from a Montana institution. Any person holding a degree from the Montana state university or from the Montana state college of agriculture and mechanic arts, and any graduate of a course at the Montana state normal college, or at any normal school that may hereafter be established under the control of the state board of education, extending two years beyond the secondary school, shall be entitled to a life certificate on presenting to the state board of education satisfactory evidence of having taught successfully in the public schools of the state for twenty-seven months after graduation; and any graduate of the Montana state normal college, or of any normal school that may hereafter be established under the control of the state board of education, with the degree of bachelor of pedagogy, shall be entitled to a life certificate on presenting to the state board of education satisfactory evidence of having taught successfully in the public schools of the state for eighteen months after graduation.

4th. By endorsement of a diploma of another state institution. A life certificate may be issued by the state board of education to a graduate of any other college or normal school within or without the state in accordance with regulations established by the state board of education; provided, that such regulations shall not authorize the issuance of a life certificate to a graduate of any institution whose requirements for graduation are not substantially the full equivalent of those of the corresponding institution of the university of Montana; and provided, further, that such regulations shall not authorize the issuance of a life certificate to any person who does not present satisfactory evidence of having taught successfully for at least as long a time after graduation as is required of the several institutions of the university of Montana.

History: En. Sec. 108, Ch. 76, L. 1913; amd. Sec. 3, Ch. 196, L. 1919.

Note.—The arrangement of the foregoing section has been changed by the code commissioner.

839. Registration. State and life certificates, before they shall be valid in any county, must be registered in the office of the county superintendent of schools of such county.

History: En. Sec. 108, Ch. 76, L. 1913; amd. Sec. 3, Ch. 196, L. 1919.

840. Revocation. Any state or life certificate may be revoked by the state board of education for incompetency or immoral conduct on the part of the holder thereof, or for any cause that would have required the state board of education to refuse to grant it, if known at the time the certificate was granted; but before any such revocation, the holder shall be served by secretary of the state board of education with a written statement of the charges against him, and shall have an opportunity for defense before the state board of education.

History: En. Sec. 108, Ch. 76, L. 1913; amd. Sec. 3, Ch. 196, L. 1919.

Note.—Earlier acts relative to this subject are Secs. 8 to 11, p. 160, L. 1893; Secs. 1517 to 1519, Pol. C. 1895; Secs. 649 to 652, Rev. C. 1907.

Interference by courts with revocation of school teacher's license, see notes in 15 L. R. A. (N. S.) 1148; 14 Ann. Cas. 298.

CHAPTER 66.

CONTROL OF STATE EDUCATIONAL, CHARITABLE AND REFORMATORY INSTITUTIONS.

Section 841. General Control of State Institutions.
842. Local Executive Boards—Creation, Residence and Powers.
843. Same—Officers—Bond of Treasurer.
844. Same—Term of Office.
845. Same—Meetings.
846. Same—Compensation of Members.
847. Same—Powers and Duties.
848. Same—Reports.
849. Same—Vacancies.
850. Control of Expenditures by the State Board of Examiners.
851. Donations, Grants, Gifts.

841. General control of state institutions. The general control and supervision of the state university, state normal college, college of agriculture and mechanic arts of Montana, state orphans' home, Montana school of mines, Montana school for the deaf and blind, the Montana state industrial school, and the state vocational school for girls are vested in the state board of education.

Note.—New section recommended by code commissioner to state law as it now exists.

842. Local executive boards—Creation, residence and powers. There shall be an executive board, consisting of three members, for each of said institutions named in the preceding section, two of whom shall be appointed by the governor, by and with the advice and consent of the state board of education, and the president of such institution shall be ex-officio member of said board. At least two of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913.

843. Same—Officers—Bond of treasurer. The president of the institution shall be the chairman of the board, and said board shall elect a secretary who may or may not be a member of said board, and who may also act as treasurer, and the treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairmen and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners.

History: En. Sec. 3, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913.

844. Same—Term of office. The ex-officio member of each of said executive boards shall hold his office during his continuance as president of such institution, and the two members appointed by the governor shall hold office for the term of four years from and after the third Monday in

April of the year appointed, unless sooner removed by the governor or by the state board of education. Such members shall qualify by making and filing their oath of office with the state board of education.

History: En. Sec. 10, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913.

845. Meetings. The executive board of each of said institutions shall meet in regular session at least once in each quarter, and monthly, or oftener, if the business of such institutions require it.

History: En. Sec. 5, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913.

846. Same—Compensation of members. The members of each of the executive boards, except the chairman, shall receive such compensation for their services as shall be fixed by the state board of education, not exceeding the sum of five dollars for each day actually spent in the discharge of their official duties, and not exceeding the sum of one hundred and twenty-five dollars in any one year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institutions, all expenses necessarily incurred by them in discharge of their official duties as members of said boards.

History: En. Sec. 11, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913.

847. Same—Powers and duties. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board. Said executive boards shall also have and exercise power and authority in contracting current expenses, and in auditing, paying, and reporting bills for salaries, or other expenses incurred in connection with such institutions; provided, the board of examiners may not limit the power of the executive board in making expenditures or contracts which in no single instance or for any single purpose exceed two hundred and fifty dollars.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913.

848. Same—Reports. Each of said executive boards shall, on or before the first Monday in June of each year, make a detailed statement and report of all its transactions and of the condition of the institutions, including the number of teachers, professors, and employees, with the salary or wages paid to each, and a detailed statement of all expenses and disbursements of such institution, which report shall contain such other information or recommendations as may be required by the state board of examiners, or by the state board of examiners and the state board of education, and the state board of education and the state board of examiners shall have authority to call for a report and statement from such executive boards at any time such board may deem it advisable. All such reports by such boards shall be made in triplicate, one copy shall be retained by such board, one copy shall be filed with the state board of education, and one copy with the state board of examiners.

History: En. Sec. 6, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913.

849. Same—Vacancies. All vacancies occurring in the membership of any of said executive boards shall be filled by appointment by the governor, which appointments shall be referred to the state board of education at its first meeting thereafter for confirmation.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913.

850. Control of expenditures by the state board of examiners. The state board of examiners of the state of Montana shall have supervision and control of all expenditures of all moneys, appropriated or received for the use of said institutions from any and all sources, other than that received under and by virtue of the acts of congress, hereinbefore referred to, and said state board of examiners shall let all contracts, approve all bonds for any and all buildings or improvements, and shall audit all claims to be paid from any moneys, other than that received under and by virtue of the acts of congress herein referred to; but said state board of examiners shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses, and in auditing, paying, and reporting bills for salaries or other expenses incurred in connection with said institutions, as may be deemed by said state board of examiners to be to the best interest of said institution.

History: En. Sec. 13, Ch. 73, L. 1909; re-en. Sec. 110, Ch. 76, L. 1913.

851. Donations, grants, gifts. All donations, grants, gifts, or devises, made to any of the institutions named herein, shall be made to such institution in its legal name, and if made to any officer or boards of such institution, the same shall be immediately transferred by such board or officer to such institution.

History: En. Sec. 111, Ch. 76, L. 1913.
Cited or applied as section 14, Act of 1909, in In re Beck's Estate, 44 Mont. 561, 576, 121 Pac. 784.

CHAPTER 67.

THE UNIVERSITY OF MONTANA.

Section 852. What Institutions Constitute.
853. Control Vested in State Board of Education—Appointment of Employees, Faculty and Chancellor.
854. Diplomas and Degrees.
855. Duties of State Board of Education.
856. Seal of University—Signing and Attestation of Diplomas and Degrees.
857. Local Executive Board.
858. Powers and Duties of Presidents of Several Institutions.
859. No Person to Use the Name of the University of Montana.
860. Refunding Fare to Students.

852. What institutions constitute. From and after the first day of July, 1913, the state university at Missoula, the college of agriculture and mechanic arts at Bozeman, the school of mines at Butte, and the normal college at Dillon, and such departments of said institutions as may hereafter be organized, shall constitute the university of Montana, under the name and style of university of Montana.

History: En. Sec. 1, Ch. 92, L. 1913.

853. Control vested in state board of education — Appointment of employees, faculty, and chancellor. The control and supervision of the university of Montana, as hereinbefore constituted, are vested in the state board of education, which must appoint a president and faculty for each of the various state institutions constituting the university of Montana, and such other officers, agents, and employees for said university of Montana and for its competent state institutions as the state board may deem necessary, including a chancellor of the university of Montana, whose powers and duties shall be such as may be prescribed by the state board

of education. The board shall also prescribe the powers and duties of the president, faculty, officers, agents and employees of said institutions composing said university of Montana, and shall also establish for the government of the university of Montana and for its component institutions, and for the instruction given therein, such rules and regulations, not inconsistent with the laws of the state, as may be necessary for the proper government and control of the university of Montana and its said component institutions.

History: En. Sec. 2, Ch. 92, L. 1913.

854. Diplomas and degrees. The state board of education shall have power, upon the recommendation of the executive board of any of said component institutions, to grant diplomas and to confer the customary degrees on the graduates of all departments of said university, and such degrees and diplomas shall run from the university of Montana, specifying substantially that the graduate has completed the course of study of the university of Montana at the college of science, literature and arts, or the law department thereof, at Missoula, or the college of agriculture and mechanic arts at Bozeman, or the school of mines at Butte, or the normal college at Dillon, as the case may be.

History: En. Sec. 3, Ch. 92, L. 1913.

855. Duties of state board of education. It shall be the duty of the state board of education, in the exercise of its discretion, in the government and control of said university of Montana and its component institutions, as conferred upon it by the constitution of the state, to take such steps and prescribe such rules as may be necessary to prevent unnecessary duplications of courses of instruction in the various educational institutions composing the university of Montana; to investigate carefully the needs of each of said institutions with reference to buildings, equipment, and instruction; to estimate the necessary appropriations required for such needs, and to make recommendations to the legislative assembly accordingly.

History: En. Sec. 4, Ch. 92, L. 1913.

856. Seal of university — Signing and attestation of diplomas and degrees. The state board of education shall adopt and cause to be prepared a seal for the university of Montana, constituted as herein prescribed, which seal shall contain on the face thereof the words "University of Montana," which words shall be arranged on said seal as the state board of education may prescribe. Said seal shall remain in the custody of the secretary of the state board of education, and the same shall be affixed to all diplomas, and all other papers, instruments, and documents executed by the said university of Montana, which from their character or nature may require a seal. If a chancellor of the said university of Montana shall be selected and employed by the state board of education, as herein provided for, such diplomas, papers, instruments, and documents shall be signed by the chancellor of the university and attested by the secretary of the state board of education.

History: En. Sec. 5, Ch. 92, L. 1913.

857. Local executive board. There is also a local executive board for each of the institutions constituting the university of Montana. The

powers and duties of said board are defined by sections 841 to 851 of this code.

Note.—New section recommended by code commissioner.

858. Powers and duties of presidents of several institutions. The presidents of each of the educational institutions constituting the university of Montana, as herein prescribed, in connection with their respective executive boards of the several institutions, as now prescribed by law, shall have the immediate direction, management, and control of their respective institutions, subject to the general supervision, direction and control of the state board of education, as now prescribed by law, and no one of the presidents of any of said institutions shall have any direction, control, management, or authority in or over any of said institutions except his own.

History: En. Sec. 6, Ch. 92, L. 1913.

859. No person to use the name of the university of Montana. The state has the exclusive right to the use of the name "University of Montana," and no other institution of learning, or corporation must use the name of "University of Montana," or "Montana University," or like name, and the attorney-general is required to bring an action in the name of the state against any person, association, or corporation using such or like name, for the purpose of dissolving the corporation, and recovering a sum not exceeding five hundred dollars, nor less than one hundred dollars, which is hereby made the penalty for a violation of the provisions of this section, from the person or association using such name.

History: En. Sec. 1542, Pol. C. 1895; re-en. Sec. 668, Rev. C. 1907.

860. Refunding fare to students. The state board of education, subject to such rules and regulations as said board may hereafter adopt thereon, is authorized to provide for the refund of the amount of necessary fare, less five dollars, paid by any student in regular attendance at any of the institutions of the university of Montana for traveling once each year from his place of residence in the state of Montana by the most direct route of travel to the said institution and return.

History: En. Sec. 1, Ch. 123, L. 1917.

CHAPTER 68.

THE STATE UNIVERSITY—INCLUDING LAW AND FORESTRY SCHOOLS.

Section 861. Establishment and Purpose of the State University.
862. The President—Powers and Duties.
863. Departments of the University.
864. Course of Study.
865. Qualifications of Students—Military Instruction.
866. Charges for Tuition.
867. Endowed Professorships.
868. Appropriations for Support of University.
869. Selection of Site.
870. Biological Station in Flathead County.
871. Mode of Construction and Approval of Claims.
872. Law School at State University.
873. Official Designation of Law School.
874. Powers of State Board of Education Over.
875. Forestry School at State University.
876. Official Designation of Forestry School.
877. Powers of State Board of Education With Reference to.

861. Establishment and purpose of the state university. The state educational institution located at Missoula and heretofore designated as the university of Montana shall hereafter be known and designated as the state university and shall constitute one of the component institutions of the university of Montana. The state university has for its object instruction of young men and women on equal terms in all the departments of science, in literature, the arts and industrial and professional education.

History: En. Sec. 1540, Pol. C. 1895; re-en. Sec. 666, Rev. C. 1907; amd. Sec. 1, Ch. 10, L. 1921.

862. The president—Powers and duties. The president of the university shall be the president of the general faculty, and of the special faculties of the several departments or colleges and the executive head of the institution in all its departments. As such officer he shall have authority, subject to the state board of education to give general direction to the instruction, practical affairs and scientific investigations of the several colleges, and as long as the interests of the institution require it, he shall be charged with the duties of one of the professorships. He shall perform the duties of the corresponding secretary for the university. He shall, annually, on or before the fifteenth day of June in each year, make a report to the state board of education, showing in detail the progress and condition of the university during the previous year, the number of professors and students in the several departments and classes, the nature and results of all important experiments and investigations, and such other matters, relating to the proper government, and educational work of the institution as he shall deem useful. It shall also be the duty of said president to furnish any special report when requested to do so by the state board of education or by the legislature.

History: En. Sec. 5, p. 174, L. 1893; re-en. Sec. 1547, Pol. C. 1895; re-en. Sec. 673, Rev. C. 1907; amd. Sec. 1, Ch. 44, L. 1911.

863. Departments of the university. There shall be established the following colleges or departments of the state university, to-wit:

1. A preparatory department.
2. A department of literature, science, and the arts.
3. Such professional and technical colleges as may, from time to time, be added thereto or connected therewith. The preparatory department may be dispensed with, at such rate and in such wise as may seem just and proper to the state board of education.

History: En. Sec. 6, p. 174, L. 1893; re-en. Sec. 1548, Pol. C. 1895; re-en. Sec. 674, Rev. C. 1907.

Note.—The first paragraph of section 674, Revised Codes 1907, has been omitted in this code, it being a repetition of section 666, Revised Codes 1907 (861).

864. Course of study. Such studies or courses of instruction shall be pursued in the preparatory department as shall best prepare the student to enter any of the regular colleges or departments of the university. The college or department of literature, science, and the arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to the industrial arts; a liberal course of instruction in the languages, literature, history, and philosophy, and such other branches as the state board of education may prescribe. And, as soon as the income of the university will allow, and in such order as the demands of the public seem to require, the said courses of instruction in the

sciences, literature, and the arts shall be expanded into distinct colleges or departments of the university, each with its own faculty and appropriate title.

History: En. Sec. 7, p. 175, L. 1893; re-en. Sec. 1549, Pol. C. 1895; re-en. Sec. 675, Rev. C. 1907.

865. Qualifications of students—Military instruction. The university shall be open to students of both sexes, under such regulations and restrictions as the state board of education may deem proper. All able-bodied male students of the university may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

History: En. Sec. 8, p. 175, L. 1893; re-en. Sec. 1550, Pol. C. 1895; re-en. Sec. 676, Rev. C. 1907.

866. Charges for tuition. Tuition shall ever be free to all students who shall have been residents of the state for one year next preceding their admission, except in the law and medical departments, and for extra studies. The state board of education may prescribe rates for tuition for any student in the law or medical departments, or who shall not have been a resident aforesaid, and for teaching such studies.

History: En. Sec. 9, p. 175, L. 1893; re-en. Sec. 1551, Pol. C. 1895; re-en. Sec. 677, Rev. C. 1907.

867. Endowed professorships. Any person contributing a sum not less than fifteen thousand dollars shall have the privilege of endowing a professorship in the university, or any department thereof, the name and object of which shall be designated by the state board of education.

History: En. Sec. 10, p. 175, L. 1893; re-en. Sec. 1552, Pol. C. 1895; re-en. Sec. 678, Rev. C. 1907.

Cited or applied as section 678, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 582, 121 Pac. 784, 1057.

868. Appropriations for support of university. For the support and endowment of the university there is annually and perpetually appropriated:

1. The university fund income, and all other sums of money appropriated by law to the university fund income.

2. All tuition and matriculation fees.

3. All such contributions as may be derived from public or private bounty.

The entire income of all such funds shall be placed at the disposal of the state board of education, by transfer to the treasurer of said board, and shall be kept separate and distinct from the accounts of the state and all other funds, and shall be used solely for the support of the aforesaid colleges and departments of the university or those connected therewith. But all means derived from other public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designated by the donor.

History: En. Sec. 11, p. 175, L. 1893; re-en. Sec. 1553, Pol. C. 1895; re-en. Sec. 679, Rev. C. 1907.

Cited or applied as section 679, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 582, 121 Pac. 784, 1057.

869. Selection of site. It shall be the duty of the state board of education within ninety days from the date of the passage of this act, if then

organized, but if not organized then within ninety days from the organization of the said board, to select the site for the definite and permanent location of said state university, which site shall be within three miles of the city limits of the city of Missoula; and they shall, at once, take steps or proceedings for procuring the title to the tract or tracts of land so selected by them, and they may, and are hereby empowered to enter into contracts, in the name of the state of Montana, for the purchase of said tract or tracts of land so selected, and may execute such obligations for the payment of the same as will mature when the probable income of the university fund will pay for the same. The state board of education are hereby authorized and empowered to accept, in the name of the state of Montana, such gifts of land and moneys as may be tendered for a university site or to aid in the purchase of said site; and they shall take the proper and necessary conveyances of said tract or tracts of land in the name of the state; provided, that if such gifts consist of money only or money and land, and the land be not sufficient in amount or not appropriate for a university site, then they shall appropriate such gifts to the payment of said site, and if there be a surplus the same to become a part of the university fund; provided, that said tract of land shall not be less than forty acres in extent.

History: En. Sec. 12, p. 176, L. 1893; re-en. Sec. 1554, Pol. C. 1895; re-en. Sec. 680, Rev. C. 1907.

870. Biological station in Flathead county. The sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of constructing a biological station on the land now owned by the state university in Flathead county, Montana.

History: En. Sec. 1, Ch. 137, L. 1911.

871. Mode of construction and approval of claims. Said station shall be constructed under the direction of the officers of said university, in such manner and form as they shall deem best, and all expenditures in connection with such construction shall be approved by the state board of examiners.

History: En. Sec. 2, Ch. 137, L. 1911.

872. Law school at state university. There is hereby created and established in the state and located at the city of Missoula, a law school, as a department of the state university.

History: En. Sec. 1, Ch. 31, L. 1911.

873. Official designation of law school. That said law school shall be known and designated as "The Law Department of the State University."

History: En. Sec. 2, Ch. 31, L. 1911.

874. Powers of state board of education over. The state board of education is hereby empowered and given authority to make all necessary rules and regulations with reference to the conduct and management of the said law school; to map out and provide for the courses of study to be pursued by students attending said law school; to obtain and provide for necessary quarters, equipment, and books therefor, and to retain and hire the necessary professors and instructors to instruct the students therein.

History: En. Sec. 3, Ch. 31, L. 1911.

875. Forestry school at state university. There is hereby created and established in this state and located at the city of Missoula, a forestry school, as a department of the state university.

History: En. Sec. 1, Ch. 131, L. 1913.

876. Official designation of forestry school. That said forestry school shall be known and designated as "The Department of Forestry of the State University."

History: En. Sec. 2, Ch. 131, L. 1913.

877. Powers of state board of education with reference to. The state board of education is hereby empowered and given authority to make all necessary rules and regulations with reference to the conduct and management of the said forestry school; to map out and provide for the courses of study to be pursued by students attending said forestry school; to obtain and provide for necessary quarters, equipment, and books therefor, and to retain and hire the necessary professors and instructors to instruct the students therein.

History: En. Sec. 3, Ch. 131, L. 1913.

CHAPTER 69.

THE SCHOOL OF MINES, INCLUDING THE STATE BUREAU OF MINES AND METALLURGY.

Section 878. School of Mines, Establishment and Objects.
879. Control and Management.
880. Qualifications of Students.
881. Fees of Professors.
882. Establishment of Montana State Bureau of Mines and Metallurgy.
883. Appointment of Mining Engineer, Assistants, and Employees.
884. Objects and Duties of Bureau.
885. Reports to Legislature of Progress and Condition of Bureau.
886. Printing and Distribution of Reports.
887. Disposition of Mineral Specimens.
888. Oath of Office of Director and Assistants.

878. School of mines, establishment and objects. A school of mines of Montana is hereby established and located at Butte, and has for its object instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, drawing, the laws of the United States, and of the state in reference to mining and the rights and duties of citizens in relation thereto.

History: En. Sec. 1570, Pol. C. 1895; re-en. Sec. 689, Rev. C. 1907.

Note.—The latter part of original section omitted to conform to later enactments.

879. Control and management. The control and management of the state school of mines is vested in the state board of education and in a local executive board.

Note.—New section recommended by code commissioner to state the law as it now exists.

880. Qualifications of students. The said school of mines shall be open and free for instruction to all bona fide residents of this state without regard to sex or color, and, with the consent of the state board of education, students from other states or territories may receive an education thereat, upon such terms and at such rates of tuition as the board may prescribe.

History: En. Sec. 8, p. 178, L. 1893; re-en. Sec. 1579, Pol. C. 1895; re-en. Sec. 698, Rev. C. 1907.

881. Fees of professors. It shall be lawful for the professor or president of the school of mines, who shall be appointed by the state board of education, to charge and collect such reasonable fees for any and all assays and analyses made by them, as the said board may prescribe, an account of which shall be kept by said president and paid over monthly to the treasurer of said school of mines, which shall become a part of the school of mines fund.

History: En. Sec. 16, p. 179, L. 1893; re-en. Sec. 1587, Pol. C. 1895; re-en. Sec. 705, Rev. C. 1907.

882. Establishment of Montana state bureau of mines and metallurgy. There is hereby established in the Montana state school of mines a department to be known as the Montana state bureau of mines and metallurgy, which shall be under the direction of the state board of education.

History: En. Sec. 1, Ch. 161, L. 1919.

883. Appointment of mining engineer, assistants, and employees. The state board of education shall have power and it shall be its duty to appoint a qualified mining engineer as the director of the said bureau, and to appoint such assistants and employees as may be necessary, and to fix the compensation of all persons connected with the said bureau.

History: En. Sec. 2, Ch. 161, L. 1919.

884. Objects and duties of bureau. The bureau shall have for its object and duties the following:

1. To collect, to compile, and to publish statistics relative to Montana geology, mining, milling and metallurgy.

2. To collect typical geological and mineral specimens and samples of products; to collect photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana.

3. To collect a library and a bibliography of literature pertaining to or useful for the progress of geology, mining, milling, and smelting in Montana.

4. To study the geological formations of the state, with special reference to their economic mineral resources, both metallic and non-metallic.

5. To examine the topography and physical features of the state with reference to their practical bearing upon the occupation of the people.

6. To study the mining, milling, and smelting operations carried on in the state, with special reference to their improvement.

7. To prepare and to publish bulletins and reports, with necessary illustrations and maps, which shall embrace both a general and a detailed description of the natural resources and geology, mines, mills and reduction plants of the state.

8. To make qualitative examinations of rocks and mineral samples.

9. To consider such other scientific and economic problems as in the judgment of the state board of education are of value to the people of the state.

10. To communicate special information on Montana geology, mining, and metallurgy.

11. To co-operate with the other departments of the university of Montana, with the state mine inspector, and with other departments of the state government as may be mutually beneficial; and to co-operate with

the United States geological survey and with the United States bureau of mines, in accordance with the regulations of those institutions.

History: En. Sec. 3, Ch. 161, L. 1919.

885. Reports to legislature of progress and condition of bureau. The state board of education shall cause to be prepared a report to the legislative assembly before each regular session thereof, showing the progress and condition of the bureau, together with such other information as may be deemed necessary or as the legislative assembly may require.

History: En. Sec. 4, Ch. 161, L. 1919.

886. Printing and distribution of reports. The regular and special reports of the bureau, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

History: En. Sec. 5, Ch. 161, L. 1919.

887. Disposition of mineral specimens. All materials collected, after having served the purposes of the bureau, shall be deposited either in the state museums or in the collections of the state school of mines, and duplicates of representative material shall be distributed to the various educational institutions of the state, in such a manner as to be of the greatest advantage to the educational interests of the state.

History: En. Sec. 6, Ch. 161, L. 1919.

888. Oath of office of director and assistants. The director of the bureau and his assistants shall take an oath to perform all the services required of them under this act, and to guard carefully all confidential information accumulated in the progress of their work; to refrain from any pecuniary speculation or remunerative private work based upon any knowledge of a commercial or economic nature acquired in the pursuit of their duties, until said knowledge or information shall have been fully published and submitted to the people of the state; and to turn in to the bureau as state property all correspondence, notes, illustrations, and data of any kind accumulated by them in performing the work of the bureau.

History: En. Sec. 7, Ch. 161, L. 1919.

CHAPTER 70.

THE COLLEGE OF AGRICULTURE AND MECHANIC ARTS INCLUDING AGRICULTURAL EXPERIMENT STATION.

Section 889. Establishment and Objects.
890. Control and Management.
891. Agricultural Experiment Station.
892. Management of Station.
893. Acceptance of Grant.
894. Designation of Station as Beneficiary.
895. Acceptance of Certain Acts of Congress.
896. Same.
897. Treasurer Executive Board Agricultural College.
898. Establishment of Experimental Substation in Horticulture.
899. Experimental Substation Located in Fergus County.
900. Authority of Governor to Accept Site.
901. Acceptance of Donations of Money and Material.

889. Establishment and objects. The college of agriculture and mechanic arts of the state of Montana is established and located at the city of Bozeman, or within three miles of the corporate limits of said city, upon such tract or tracts of land containing in the aggregate not less than eighty acres, and as much more as shall be selected by the state board of education, as hereinafter provided; and said college has for its leading objects and purposes, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the state board of education, and any subordinate boards by such state board appointed, may prescribe.

History: En. Sec. 1, p. 171, L. 1893; re-en. Sec. 1622, Pol. C. 1895; re-en. Sec. 732, Rev. C. 1907.

Cited or applied as Laws of 1893, p. 171, in In re Beck's Estate, 44 Mont. 561, 582, 121 Pac. 784, 1057.

890. Control and management. The control and management of the college of agriculture and mechanic arts is vested in the state board of education and in a local executive board.

Note.—New section recommended by code commissioner to state the law as it now exists.

891. Agricultural experiment station. There is also located and established on the land selected by the state board of education, in connection with said agricultural college, and under its direction, an agricultural experiment station, to aid in acquiring and diffusing among the people of the state of Montana useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiments respecting the principles and application of agricultural science, which experiment station is established under and by virtue of the authority contained in the act of congress, entitled "An act to establish experimental stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and the said acts supplementary thereto," approved March 2, 1887, and the provisions, donations, and benefits contained in said act of congress, and in all other acts of congress relating to agricultural experimental stations and agricultural colleges, now in force, and all acts supplementary thereto, or amendatory thereof, are by the state of Montana hereby accepted and adopted.

History: En. Sec. 7, p. 172, L. 1893; re-en. Sec. 1628, Pol. C. 1895; re-en. Sec. 738, Rev. C. 1907.

Cited or applied as section 1628, Political Code, in State ex rel. Koch v. Barret, 26 Mont. 62, 64, 66 Pac. 504.

892. Management of station. Said agricultural experiment station is hereby placed under the supervision and control of the state board of education and the executive or subordinate board or authority who may be by the governor, by and with the consent and advice of said state board of education, appointed.

History: En. Sec. 8, p. 173, L. 1893; re-en. Sec. 1629, Pol. C. 1895; re-en. Sec. 739, Rev. C. 1907.

893. Acceptance of grant. That the state of Montana hereby assents to the provisions of an act of congress entitled "An act to provide for

an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof," approved March 16, 1906, and hereby consents to receive the benefits thereof in the manner and form and for the purposes in said act intended and provided.

History: En. Sec. 1, Ch. 64, L. 1907; Sec. 740, Rev. C. 1907.

894. Designation of station as beneficiary. Until otherwise provided by law the agricultural experiment station, now established at Bozeman, Gallatin county, state of Montana, shall be the beneficiary of the funds in said act mentioned, and shall use and disburse said funds only for the purposes and in the manner provided in said act. The treasurer of the executive board of the agricultural college and agricultural experiment station, at said city of Bozeman, is hereby authorized to receive and shall be the custodian of said funds, and he shall account for said funds and make reports to the secretary of agriculture, as required by said act of congress.

History: En. Sec. 2, Ch. 64, L. 1907; Sec. 741, Rev. C. 1907.

895. Acceptance of certain acts of congress. That the state of Montana hereby accepts and assents to the terms and provisions of the act of congress, approved May 8, 1914, entitled: "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an act of congress approved July second, eighteen hundred and sixty-two, and of act supplementary thereto, and the United States department of agriculture."

History: En. Sec. 1, Ch. 19, L. 1915.

896. Same. The president of the agricultural college of the state of Montana is hereby authorized to enter into all necessary agreements with the secretary of agriculture of the United States, relative to the receipt and expenditures of all moneys paid to the state of Montana, or to such agricultural college under the provisions of said act, and to receive and expend such money in accordance with the provisions of said act of congress, and the agreement so made with said secretary of agriculture.

History: En. Sec. 2, Ch. 19, L. 1915.

897. Treasurer executive board agricultural college. The treasurer of the executive board of the college of agriculture and mechanic arts of Montana shall have the authority to receive from the treasurer of the state of Montana the cash appropriation received from the United States by authority of the act of congress of August 30, 1890 (26 Statutes at Large, p. 417), known as the second Morrill Act, and the act of congress of March 4, 1907 (Statutes at Large, p. 1281), known as the Nelson Amendment. And such cash appropriation shall be expended by the executive board of said college, under the general supervision of the state board of education, but only for the purpose for which the same is appropriated by congress.

The treasurer of said executive board of said college shall also have the authority to receive all moneys appropriated by the act of congress of March 16, 1906 (34 Statutes at Large, p. 63), entitled "An act to provide for and increase the annual appropriation for agricultural experiment

stations, and regulating the expenditures thereof," and such money shall be expended by said executive board under the supervision and direction and control of the state board of education in the manner and for the purpose designated in said act of congress, and as required by section 894 of this code. The treasurer of said college shall, on or before the first day of September of each year, make a detailed statement of the amounts received and disbursed under the provisions of the act of congress of March 30, 1890, and of March 4, 1907, and shall report the same to the secretary of agriculture of the United States and to the secretary of the interior of the United States, as required by said acts of congress, and shall file a duplicate thereof with the state board of examiners of the state of Montana on or before the tenth day of September of each year. Said treasurer shall also make a detailed statement of the amounts of money received and disbursed under the act of congress of March 16, 1906, which reports shall be filed with the state board of examiners on or before the tenth day of September of each year, and shall also make such reports to the officers or departments of the United States as are now or may hereafter be required by the laws of the United States.

History: En. Sec. 109, Ch. 76, L. 1913.

898. Establishment of experiment substation in horticulture. The executive board of the Montana college of agriculture and mechanic arts is hereby authorized and directed to establish a substation for the purpose of carrying on experimental work in horticulture, said station to be located at such point in the state of Montana as said board may select; provided, however, that the citizens or county wherein said substation is located shall donate to the state and give in fee simple not less than fifteen acres of suitable land, including a perpetual water-right for the same.

History: En. Sec. 1, Ch. 146, L. 1907; Sec. 756, Rev. C. 1907.

Note.—The horticultural substation located near Corvallis in Ravalli county was established by authority of the foregoing section.

Cited or applied as section 756, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 583, 121 Pac. 784, 1057.

899. Experiment substation located in Fergus county. That there is hereby established, to be located in Fergus county, Montana, on such land as may be donated to the state of Montana and accepted by the governor and secretary of state as suitable for the purpose, a substation of the agricultural experiment station provided for in section 891 of this code. Said substation shall be under the direction of the experiment station of the agricultural college of the state of Montana.

History: En. Sec. 1, Ch. 189, L. 1907; Sec. 763, Rev. C. 1907.

Cited or applied as section 763, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 121 Pac. 784, 1057.

900. Authority of governor to accept site. The governor and secretary of state are hereby authorized to accept, on behalf of the state, donation or donations of land for such purposes, provided such land be conveyed to the state in fee simple, and be free of all incumbrances and the title to the same be good.

History: En. Sec. 2, Ch. 189, L. 1907; Sec. 764, Rev. C. 1907.

901. Acceptance of donations of money and material. The said college is authorized to receive donations of money, implements, building materials, animals, and supplies for the use of said substation.

History: En. Sec. 4, Ch. 189, L. 1907; Sec. 765, Rev. C. 1907.

Cited or applied as section 765, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 583, 121 Pac. 784, 1057.

CHAPTER 71.

THE MONTANA GRAIN INSPECTION LABORATORY.

Section 902. Grain Laboratory Established at Experiment Station.
903. Official Name of Laboratory.
904. Purposes of Laboratory—Samples and Tests of Grains and Reports Made of Results.
905. Germination and Purity Tests of Grain Samples.
906. Supervision and Control of Laboratory.
907. Employment of Assistant and Necessary Help.
908. Fees Chargeable for Making Tests.
909. Tests of Grain Samples to Determine Grade and Dockage.
910. Reports of Tests—Annual Report.
911. Who May Send Samples to Be Tested—Procedure in Case of Disagreement Between Buyer and Seller.
912. Disposition of Fees and Annual Report of Expenditures.

902. Grain laboratory established at experiment station. There is hereby established at the Montana agricultural experiment station a state grain laboratory for the study of the milling and baking quality of wheat raised in Montana, and for the study of the germinating capacity, quality, and purity of field crop seeds grown and sold in the state of Montana, as far as this may be determined. This laboratory shall be known as the Montana grain laboratory.

History: En. Sec. 1, Ch. 119, L. 1913.

903. Official name of laboratory. The name of the Montana grain laboratory as established at the Montana agricultural experiment station is hereby changed to the Montana grain inspection laboratory.

History: En. Sec. 1, Ch. 54, L. 1917.

904. Purposes of laboratory—Samples and tests of grains and reports made of results. The purpose of this laboratory shall be to make the studies necessary to establish the grade and quality of the wheat and other grains grown in the state by scientific and accurate tests, to the end that such facts established by scientific experiments, publicly disseminated, may aid the grain-growers and dealers in the state to establish the full market value of their products in the markets of the world.

Samples of the different kinds of wheat grown under the various conditions existing in the state of Montana shall be collected, and systematic study shall be made of each of these to determine their milling and baking value. Tests shall also be made of samples which may be sent to the laboratory by growers and dealers in the state of Montana, provided postage and transportation charges are prepaid and the method of taking the samples conforms to the regulations prescribed by the director in charge of the laboratory.

The director in charge of the laboratory shall keep an accurate record of all samples submitted, and report the results of all the milling and baking tests which are made in the laboratory to the parties submitting

the samples, as soon as possible after such tests have been completed. The results from all the tests made at the laboratory must be reported in the form of bulletins or pamphlets, whenever the data accumulated shall be sufficient for such publication.

History: En. Sec. 2, Ch. 119, L. 1913.

905. Germination and purity tests of grain samples. Any citizen of the state of Montana, by conforming to the regulations prescribed by the state grain laboratory of the Montana agricultural experiment station and by prepaying postage or transportation charges, may send a sample or samples of seed to the state grain laboratory of the Montana agricultural experiment station, which shall determine the percentage of germination, quality and purity of each sample sent. The results of these determinations shall be reported upon free of charge to the person sending such samples. Such of these tests as are of value to the public shall be reported in bulletin or pamphlet form, at least once a year.

History: En. Sec. 3, Ch. 119, L. 1913.

906. Supervision and control of laboratory. This laboratory shall be under the general supervision of the director of the Montana agricultural experiment station. It shall be directly in charge of the agronomist of the Montana agricultural experiment station, who shall be known as the director in charge of the laboratory, and who, in co-operation with the board of directors of the Montana seed growers' association, shall make such rules and regulations as are necessary to the proper conduct of the laboratory under the purposes as outlined in section 904.

History: En. Sec. 4, Ch. 119, L. 1913.

907. Employment of assistant and necessary help. The director in charge of the laboratory, under the direction of the director of the Montana agricultural experiment station, shall have authority to employ a competent assistant and such help as is needed to properly carry on the laboratory. They shall have authority to incur expenditures for travel, express, freight, postage, etc., necessary to collect samples for study, and to properly carry on the work of the laboratory.

History: En. Sec. 5, Ch. 119, L. 1913.

908. Fees chargeable for making tests. Samples of wheat sent in by individuals, the results from the testing of which samples are of no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees so collected are to be deposited in a fund in charge of the director of the experiment station, to be used in support of the laboratory. Any surplus remaining in this fund at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the state general fund.

History: En. Sec. 7, Ch. 119, L. 1913.

909. Tests of grain samples to determine grade and dockage. In addition to the duties already prescribed by law, this laboratory shall make

thorough and complete tests on grain samples sent in by citizens of the state of Montana and collected by the officials of the laboratory, in order to establish the true grade of such samples and the true amount of dockage contained therein. In the case of wheat samples sent in for grade and dockage tests, the laboratory shall determine the amount and quality of the gluten present, the percentage of moisture, and shall make such other determinations as shall be necessary to accurately show the quality and grade of the grain in sample.

History: En. Sec. 2, Ch. 54, L. 1917.

910. Reports of tests—Annual report. Reports shall be made to those sending samples for grade and dockage determinations, as soon as the tests have been completed and the grade and dockage determined. At the close of each laboratory year there shall be published a report of the work of the year, showing the names of persons from whom samples were received, the kind of grain, the results of the tests conducted, and the grade and dockage as established for each sample tested during the year. The report shall contain such other material as the officials of the Montana grain inspection laboratory may deem relevant and important. Copies of this report shall be sent without charge to citizens of the state who may request them.

History: En. Sec. 3, Ch. 54, L. 1917.

911. Who may send samples to be tested—Procedure in case of disagreement between buyer and seller. Any citizen of the state of Montana, by conforming to the regulations prescribed by the officials of the Montana grain inspection laboratory, by prepaying postage and transportation charges on samples, and by paying any fee which may hereafter be prescribed by the proper authorities, may send grain samples to the Montana grain inspection laboratory. The true grade or the proper amount of dockage as requested by the sender shall be determined and reported to the sender. Whenever the buyer and seller of any lot of grain cannot agree upon the proper grade or dockage of the same, either party may demand that a sample of such grain be sent to the state grain inspector. Such sample shall be taken in the presence of both parties in interest, and shall be sealed and forwarded in the manner required by the inspector. The grade and dockage fixed by the inspector on such grain shall be binding upon both parties, and any balance due either party shall be determined according to the grade and dockage fixed by said inspector; provided, however, that in the case of a bona fide sale of such lot of grain at a terminal market outside the state, the grade and dockage fixed at such terminal market shall not be disturbed, and any balance due between the parties shall be determined according to the grade and dockage that shall have been fixed at such sale.

History: En. Sec. 4, Ch. 54, L. 1917.

912. Disposition of fees and annual report of expenditures. All fees collected by the Montana grain inspection laboratory for the tests conducted shall be deposited in a fund in charge of the director of the laboratory, to be used in the support of the laboratory. A full report

of the expenditures of the laboratory, with a statement of the source of the income, whether from state appropriations or from fees collected, shall be made a part of the annual report. Any surplus remaining at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the general fund of the state.

History: En. Sec. 9, Ch. 54, L. 1917.

Note.—So much of the above section as relates to appropriations for 1918-1919 has been omitted from this code.

CHAPTER 72

THE STATE ENTOMOLOGIST.

Section 913. State Entomologist of Montana.
914. Duties of State Entomologist.
915. Annual Report.
916. Expenses.

913. State entomologist of Montana. The entomologist of Montana agricultural college and experiment station shall be known as the state entomologist of Montana.

History: En. Sec. 1, Ch. 59, L. 1907; re-en. Sec. 1, Ch. 193, L. 1907; Sec. 766, Rev. C. 1907.

914. Duties of state entomologist. It shall be the duty of state entomologist to conduct field investigations of the injurious insects of fruits, vegetables, grains, grasses, forage, crops, including clover and alfalfa, root crops, shade trees, ornamental plants, and any other insects that may become injurious. When it becomes known to the state entomologist that an outbreak of an insect has occurred in any part of the state, it shall be his duty, so far as is possible without conflicting with his other duties, to go to the scene of the outbreak or send a suitably qualified assistant. The state entomologist or said assistant shall determine the extent and seriousness of the outbreak, and, when necessary, publish or make public demonstration of the best remedies to be employed.

History: Ap. p. Sec. 2, Ch. 59, L. 1903; en. Sec. 2, Ch. 103, L. 1907; Sec. 767, Rev. C. 1907.

915. Annual report. The entomologist shall make an annual report to the governor of the state, on or before the first day of January, which report shall be published by the experiment station as one of its regular bulletins, and shall contain a report of his work and expenditures under this act.

History: En. Sec. 3, Ch. 59, L. 1903; re-en. Sec. 3, Ch. 103, L. 1907; Sec. 768, Rev. C. 1907.

916. Expenses. The state entomologist shall receive no compensation for his services other than what he may receive from the college of agriculture and mechanic arts and experiment station, but the actual traveling expenses of himself or assistant, together with such office or laboratory expenses as result from the work contemplated under this act, not to exceed five hundred dollars per annum, shall be paid, and such sum is hereby annually appropriated for the purposes of this act out of any

moneys in the state treasury not otherwise appropriated. Upon the certification of the secretary of the executive board of the college of agriculture and mechanic arts and director of the argicultural experiment station, the state auditor is authorized to issue warrants to cover the traveling expenses of the state entomologist while engaged in carrying out the provisions of this act.

History: En. Sec. 4, Ch. 59, L. 1903; amd. Sec. 4, Ch. 103, L. 1907; Sec. 769, Rev. C. 1907.

CHAPTER 73.

THE NORTHERN MONTANA AGRICULTURAL AND MANUAL TRAINING SCHOOL.

Section 917. Establishment.
918. Control and Supervision.
919. Establishment of Agricultural Experimental Substation.
920. Acceptance of Gifts by State Board of Education.
921. Executive Board.
922. Appointment of President and Faculty.
923. Secretary and Treasurer—Bond.
924. Appropriation to Pay for Lands When Granted.
925. Appropriation for Experimental Substation.

917. Establishment. Whereas, there is now pending in the congress of the United States a certain bill for an act providing, among other things, that if the state of Montana shall agree to establish and maintain an agricultural, manual training, or other educational or public institution, upon a section of land upon which the building at Fort Assiniboine are located, the president of the United States is authorized to grant the lands and buildings to the state on payment of two dollars and fifty cents per acre; and whereas said buildings alone cost almost one million dollars to erect and construct, and delay would result in their deteriorations:

The northern Montana agricultural and manual training school is hereby established, to be located on the Fort Assiniboine military reservation aforesaid. It is hereby declared to be a body politic and corporate with power to sue and be sued, and receive property by gift, purchase, devise or bequest. It has for its object instruction and education in the English language, literature, and mathematics, mechanic arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art, entomology, geology, and such other natural sciences as may be prescribed by the state board of education, political, rural and household economy, agriculture, horticulture, moral philosophy, history, bookkeeping and especially the application of science and the mechanical arts to practical agriculture in the field, and irrigation and use of water for agricultural purposes; also all that relates to an efficient, modern manual training school.

History: En. Sec. 1, Ch. 67, L. 1913.

918. Control and supervision. The control and supervision of such school are vested in the state board of education which may prescribe all

rules and regulations therefor; and which shall take possession and control of the lands and buildings herein mentioned, within ten days after the state of Montana shall become the owner thereof, and proceed to carry out the provisions of this act, so far as it relates to their duties.

History: En. Sec. 2, Ch. 67, L. 1913.

919. Establishment of agricultural experimental substation. There is also established and shall be located on the lands and in the buildings aforesaid in connection with such agricultural school, an agricultural experimental substation to aid in acquiring and diffusing among the people of the state of Montana useful and practical information on subjects connected with field agriculture, and to promote scientific investigation and experiments respecting the principles and application of agricultural science, which experimental substation is established and under the direction of the directors of the Montana agricultural experiment station, located at Bozeman, Montana, and under the general control of the state board of education.

History: En. Sec. 3, Ch. 67, L. 1913.

920. Acceptance of gifts by state board of education. The state board of education is hereby authorized and empowered to accept such gifts of money or other property as may be tendered to aid in repairing such buildings as are now located at Fort Assiniboine, and putting the same in condition to carry out the purposes of this act and for installing the necessary apparatus to initiate the work of said school.

History: En. Sec. 4, Ch. 67, L. 1913.

921. Executive board. The state board of education, by and with the approval of the governor, shall designate and appoint an executive board, consisting of three members, at least two of whom shall be residents of Hill county, and the principal of the school which executive board shall have the immediate direction and control of the affairs of said school, subject only to the general supervision and control of the state board of education. The members of said executive board shall serve during the term of the state board of education, unless sooner removed by the governor, with or without cause.

History: En. Sec. 5, Ch. 67, L. 1913.

922. Appointment of president and faculty. The executive board is authorized to choose and appoint a principal and faculty of said school, who shall serve for such time and receive such compensation as the executive board may prescribe, subject to the approval of the state board of education.

History: En. Sec. 6, Ch. 67, L. 1913.

923. Secretary and treasurer—Bond. The executive board shall appoint a secretary thereof, who may also act as treasurer of said board and who may not be a member thereof, and such secretary and treasurer

shall give bond, with good and sufficient surety or sureties, to be approved by the executive board, for the faithful performance of his duties, and for the faithful accounting for and paying over to the state board of education, to and for the use of said school, all moneys received by him as treasurer, in such sum as said state board of education shall prescribe.

History: En. Sec. 7, Ch. 67, L. 1913.

924. Appropriation to pay for lands when granted. The sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, to pay for the lands herein mentioned to the government of the United States, and the state auditor is authorized to draw his warrant therefor and the state treasurer is hereby authorized and directed to pay for said lands, at the rate of two dollars and fifty cents per acre, whenever the president of the United States shall grant the same to the state of Montana in accordance with the act of congress hereinbefore referred to, the governor is hereby directed to accept said lands when granted by the president.

History: En. Sec. 8, Ch. 67, L. 1913.

925. Appropriation for experimental substation. The further sum of five thousand dollars or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, which money shall be expended under the directions of the state board of education for the equipment and maintenance of an experimental substation of Fort Assiniboine and to take advantage of the offer of the government of the United States, to donate the buildings thereon to the state of Montana.

History: En. Sec. 9, Ch. 67, L. 1913.

CHAPTER 74.

THE STATE NORMAL COLLEGE.

Section 926. Establishment of School; Name.
927. Object of School.
928. Control and Management.
929. Acceptance of Public Lands.
930. Securities, How Paid for.

926. Establishment of school; name. That there be and is hereby established within two miles of the corporate limits of the city of Dillon, Beaverhead county, Montana, a state normal school, which shall be called the "Montana State Normal College."

History: En. Sec. 1, p. 180, L. 1893; amd. Sec. 1652, Pol. C. 1895; amd. Sec. 1, Ch. 29, L. 1903; Sec. 772, Rev. C. 1907.

Cited or applied as Laws of 1893, p. 180, in In re Beck's Estate, 44 Mont. 561, 583, 121 Pac. 784, 1057.

Establishment of normal school as within general power of state to establish schools, see note in Ann. Cas. 1912B, 1365.

What is "normal school," see note in Ann. Cas. 1912B, 1354.

927. Object of school. The object of said normal school shall be the instruction and training of teachers for the public schools of the state.

History: En. Sec. 2, p. 180, L. 1893; re-en. Sec. 1653, Pol. C. 1895; re-en. Sec. 773, Rev. C. 1907.

928. Control and management. The control and management of the state normal college are vested in the state board of education and in a local executive board.

Note.—New section recommended by code commissioner to state the law as it now exists.

929. Acceptance of public lands. The state board of education, herein mentioned, and their successors, shall receive, in the name of the state normal school hereby established, all the benefits, of whatsoever nature, that may be derived from the distribution and selection of lands contemplated in section 17 of an act of congress, approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states."

History: En. Sec. 4, p. 180, L. 1893; re-en. Sec. 1655, Pol. C. 1895; re-en. Sec. 775, Rev. C. 1907.

930. Securities, how paid for. Whenever any securities are purchased with state normal school funds and the same are duly executed and delivered to the president of the state board of land commissioners the board shall direct the state auditor to draw his warrant upon the state treasurer for the amount thereof, specifying the fund upon which, and the person in whose favor the said warrant shall be drawn, whereupon the state auditor shall draw a warrant upon the state treasurer accordingly, which warrant shall be delivered to the president of the state board of land commissioners, and shall be paid by the state treasurer upon the delivery to him of the purchased securities; provided, that the state treasurer shall purchase interest-bearing warrants issued against any fund whenever ordered so to do by the state board of land commissioners.

History: En. Sec. 2, Ch. 47, L. 1903; re-en. Sec. 790, Rev. C. 1907; amd. Sec. 1, Ch. 11, L. 1921.

CHAPTER 75.

THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION.

Section 931. Election, Qualification, Oath and Bond.
932. General Powers.
933. Official Staff.
934. Official Files and Records.
935. Blanks and Laws.
936. Official Records.
937. Official Seal.
938. Printing of School Laws.
939. Report.
940. Publication of Report.

941. Course of Study.
942. Institute and Summer Schools—Rules.
943. County Superintendents.
944. Examinations.
945. Apportionment of School Fund.
946. Libraries.
947. Temporary State Certificates.
948. Other Duties of State Superintendent.
949. Salary.

931. Election, qualification, oath and bond. There shall be chosen by the qualified electors of the state, at the time and place of voting for members of the legislature, a superintendent of public instruction, who shall have attained the age of thirty years at the time of his election, and shall have resided within the state two years next preceding his election, and is the holder of a state certificate of the highest grade, issued in some state, and recognized by the state board of education, or is a graduate of some university, college, or normal school recognized by the state board of education as of equal rank with the university of Montana or the state normal school. He shall hold his office at the seat of government for the term of four years from the first Monday in January following his election, and until his successor is elected and qualified. Before entering upon his duties, he shall take the oath of a civil officer and give bond in the penal sum of ten thousand dollars, with not less than two sureties, to be approved by the governor and attorney-general.

History: En. Sec. 1700, Pol. C. 1895; re-en. Sec. 805, Rev. C. 1907; amd. Sec. 200, Ch. 76, L. 1913.

Note.—See section 464.

932. General powers. He shall have the general supervision of the public schools of the state.

History: Ap. p. Sec. 1702, Pol. C. 1895; re-en. Sec. 807, Rev. C. 1907; amd. Sec. 201, Ch. 76, L. 1913.

933. Official staff. The superintendent of public instruction shall have the power to appoint one deputy, who shall receive an annual salary of twenty-five hundred dollars, one high school supervisor at an annual salary of twenty-five hundred dollars, two rural school supervisors at an annual salary of twenty-five hundred dollars each, one clerk at an annual salary of fifteen hundred dollars, and two stenographers at an annual salary of twelve hundred dollars each. Such deputy, high school supervisor, rural school supervisors, clerk, and stenographers shall perform such duties pertaining to the office as the superintendent may direct.

History: En. Sec. 201, Subd. 2, Ch. 76, L. 1913; amd. Sec. 4, Ch. 196, L. 1919.

934. Official files and records. The superintendent shall preserve in his office all books, maps, charts, works on education, school registers, school reports, and school laws of other states and cities, plans for school buildings, and other articles of educational interest and value which may come into his possession as such officer, and at the expiration of his term shall deliver them, together with the reports, statements, records, and archives of his office to his successor.

History: En. Sec. 1703, Pol. C. 1895; re-en. Sec. 808, Rev. C. 1907; amd. Sec. 202, Ch. 76, L. 1913.

935. Blanks and laws. He shall cause to be printed and furnished to the proper officers or persons all school registers, reports, statements, notices, and blanks for returns needed or required to be used in the schools or by the school officers in the state. He shall furnish through the county superintendent to each trustee and clerk of each district, and to each superintendent or principal of each district, a copy of the school law.

History: En. Sec. 1703, Pol. C. 1895; re-en. Sec. 808, Rev. C. 1907; amd. Sec. 202, Ch. 76, L. 1913.

936. Official records. He shall keep a record of his official acts, and shall file in his office all appeals and papers pertaining to them.

History: En. Sec. 1708, Pol. C. 1895; re-en. Sec. 813, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913.

937. Official seal. He shall provide and keep a seal, which shall be the official seal of the state superintendent of public instruction, and by which all of his official acts may be authenticated.

History: En. Sec. 1710, Pol. C. 1895; re-en. Sec. 815, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913.

938. Printing of school laws. He shall, at least once in four years, cause to be printed the school laws of the state, with such notes and decisions thereon as may seem to him advisable, and shall furnish them as they are needed to the school officers in the state.

History: Sec. 1709, Pol. C. 1895; re-en. Sec. 814, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913.

939. Report. He shall, on or before the first day of December preceding the biennial session of the legislature assembly, make and transmit to the governor a report showing:

(a) The number of school districts, schools, teachers employed, and pupils taught therein, and the attendance of pupils and studies pursued by them.

(b) The financial condition of the schools, their receipts and expenditures, value of schoolhouses and property, cost of tuition, and wages of teachers.

(c) The condition, educational and financial, of the normal and higher institutions connected with the school system of the state, and, as far as it can be ascertained, of the private schools, academies, and colleges of the state.

(d) Such general matters, information, and recommendations relating to the educational interest of the state as he may deem important.

History: En. Sec. 1712, Pol. C. 1895; re-en. Sec. 817, Rev. C. 1907; amd. Sec. 202, Ch. 76, L. 1913.

940. Publication of report. Fifteen hundred copies of the report of the superintendent of public instruction shall be printed biennially, in the month of December preceding the session of the legislative assembly. Two copies shall be furnished to each of the members of the legislative assembly, one copy to each county superintendent of the state, one copy to the clerk of each school board, two to each state officer, one to each state and territorial superintendent; fifty copies shall be filed in the office of the superintendent of public instruction, and ten in the state historical library.

The balance shall be distributed among the various colleges, universities, and other libraries of the United States.

History: En. Sec. 1713, Pol. C. 1895; re-en. Sec. 818, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913.

941. Course of study. He shall prepare, or cause to be prepared, with the co-operation and approval of such educators as may be named by the state board of education, a course of study for all the public elementary and high schools of the state, and shall prescribe to what extent the same is to be used.

History: En. Sec. 1705, Pol. C. 1895; re-en. Sec. 810, Rev. C. 1907; amd. Sec. 202, Ch. 76, L. 1913.

942. Institutes and summer schools—Rules. He shall prescribe, with the approval of the state board of education, rules and regulations for the holding of teachers' institutes, and summer schools for teachers; shall prepare, with the approval of the state board of education, lists of instructors for institutes and summer schools from which county superintendents shall make their appointments. He shall attend and assist at teachers' institutes and summer schools for teachers, and aid and encourage generally teachers in qualifying themselves for the successful discharge of their duties.

History: Ap. p. Sec. 1711, Pol. C. 1895; 816, Rev. C. 1907; amd. Sec. 202, Ch. 76, amd. Sec. 1, p. 129, L. 1897; re-en. Sec. L. 1913.

943. County superintendents. He shall counsel with and advise county superintendents upon all matters involving the welfare of the schools; he shall, when requested, give them written answers to all questions concerning the school law. He shall decide all appeals from the decisions of the county superintendent, and may for such decision require affidavits, verified statements, or sworn testimony as to the facts in issue. He shall prescribe and cause to be enforced rules of practice and regulations pertaining to the hearing and determining of appeals, and necessary for carrying into effect the school laws of the state. He may also call an annual meeting of county superintendents as such times as he may deem advisable.

History: En. Sec. 1707, Pol. C. 1895; 202, Ch. 76, L. 1913; amd. Sec. 5, Ch. 196, re-en. Sec. 812, Rev. C. 1907; amd. Sec. L. 1919.

944. Examinations. He shall, with the approval of the state board of education and with the co-operation of the state board of educational examiners, prepare all questions to be used in the examination of applicants for teachers' certificates, and prescribe the rules and regulations for conducting all such examinations.

History: En. Sec. 1704, Pol. C. 1895; 202, Ch. 76, L. 1913; amd. Sec. 5, Ch. 196 re-en. Sec. 809, Rev. C. 1907; amd. Sec. L. 1919.

945. Apportionment of school fund. He shall, between the first and tenth day of February of each year, apportion the state school fund among the several counties of the state, in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. It shall be the duty of the state board of land commissioners to notify the state auditor on or before the tenth day of January of each year the amount of the state school fund subject to apportionment; and the

said auditor, immediately upon receipt of such notification, shall issue his warrant on the state treasurer for the said amount. Thereupon the state treasurer shall certify said apportionment to the several county treasurers not later than the first Monday in March; provided, that the several county treasurers have fully complied with section 183 of "An act concerning revenue," approved March 6, 1891, in which case the county treasurers, upon receiving notice from the state treasurer of the amounts due their counties from the state school fund, may deduct said amount from the amount found due the state by their counties and remit the balance to the state treasurer. The superintendent of public instruction shall certify to the county superintendent of schools of each county the amount apportioned to that county.

History: En. Sec. 1714, Pol. C. 1895; re-en. Sec. 819, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913.

Note.—Section 183 above referred to was superseded by section 3990, Political Code 1895. See section 2255 of this code.

Cited as section 1714 of the Political Code of 1895, to the effect that the moneys derived from interest on the state school funds, and other sources, controlled by the state, are apportioned to the counties, and the amount falling to each county is made available for school purposes not later than February 10th of each year. Jay v. School District No. 1, 24 Mont. 219, 228, 61 Pac. 250.

Cited or applied as section 1714, Political Code, in State ex rel. Knight v. Cave, 20 Mont. 468, 473, 52 Pac. 200.

946. Libraries. He shall prepare and furnish to school officers, through the county superintendents, lists of publications approved by him as suitable for school libraries; such list shall contain also the lowest price at which such publications can be purchased and the terms. He shall also prescribe rules and instructions for the proper care and use of school libraries, and such other information relative thereto as he shall think needful.

History: En. Sec. 1703, Pol. C. 1895; Sec. 808, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913.

947. Temporary state certificates. The state superintendent may grant a temporary state certificate, at any time, to any teacher whose experience, qualifications, and credentials, in his opinion, entitle such a teacher to either a state or life certificate in Montana. Such temporary state certificate, however, shall be good and valid in any county in the state for a period of one year; provided, however, that the holder of such certificate shall have it duly registered in the office of the county superintendent of schools of the county in which he is employed to teach before he begins teaching; and provided, also, that such teacher shall pay the sum of one dollar into the state teachers' certificate fund of such county.

History: En. Sec. 202, Ch. 76, 1913; amd. Sec. 5, Ch. 196, L. 1919.

948. Other duties of state superintendent. He shall also, as far as he shall find it practicable, address public assemblies on subjects pertaining to public schools, and shall labor faithfully in all practicable ways for the welfare of the public schools of the state, and shall perform such other duties as shall be required of him by law.

History: Ap. p. Sec. 1711, Pol. C. 1895; 816, Rev. C. 1907; amd. Sec. 202, Ch. 76, amd. Sec. 1, p. 129, L. 1897; re-en. Sec. L. 1913.

949. Salary. The annual salary of the superintendent of public instruction for all services now required of him or which may hereafter devolve upon him by law is three thousand six hundred dollars. He shall

also be paid his traveling expenses actually and necessarily incurred in the discharge of his duties, not to exceed two thousand dollars in any one year.

History: **En. Sec. 203, Ch. 76, L. 1913.** Note.—Salary is here given as fixed by chapter 123, Laws of 1919.

CHAPTER 76.

COUNTY SUPERINTENDENT OF SCHOOLS.

Section 950. County Superintendent of Schools—Qualifications.
951. Same—Election.
952. Same—Term of Office.
953. Same—Oath and Bond.
954. Same—Vacancy.
955. General Powers.
956. Duties of County Superintendent, as to State Superintendent.
957. Same—Visiting Schools.
958. Same—Trustees' Meetings.
959. Application for Temporary Certificates.
960. Member County Board Educational Examiners.
961. Preside at Institutes.
962. School Libraries.
963. Truant Officer.
964. Apportionment School Moneys—Warrants.
965. Notify County Treasurer.
966. Controversies.
967. Power to Administer Oaths.
968. Boundaries of School Districts.
969. Creation of New Districts.
970. Attach Contiguous Territory.
971. Census to be Transmitted to Bureau of Labor and Industry.
972. Records.
973. Same—Annual Reports.
974. Same—Office Days.
975. Clerk and Deputy.
976. Publication Annual Financial Statements School Districts.
977. School Trustees to Furnish Information.
978. Cost of Publication.
979. Penalty for Non-Compliance With Act.
980. Expenses.

950. County superintendent of schools — Qualifications. All persons otherwise qualified shall be eligible to the office of county superintendent of common schools without regard to sex.

History: **Ap. p. Sec. 8, p. 621, Cod. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C. 1907; amd. Sec. 300, Ch. 76, L. 1913.**

951. Same—Election. A county superintendent of schools shall be elected in each organized county in this state at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter.

History: **See history of Sec. 950; this section originally a part thereof.**

952. Same—Term of office. The county superintendent shall take office on the first Monday in January next succeeding his election and hold for two years, and until his successor is elected and qualified.

History: **See history of Sec. 950; this section originally a part thereof.**

953. Same—Oath and bond. The person so elected shall take the oath or affirmation of office, and shall give an official bond to the county in a sum to be fixed by the board of county commissioners of said county.

History: **See history of Sec. 950; this section originally a part thereof.**

954. Same—Vacancy. The county commissioners of any county, shall, by appointment, fill any vacancy that may occur in the office of county superintendent until the next general election.

History: See history of Sec. 950; this section originally a part thereof.

955. General powers. The county superintendent shall have the general supervision of the public schools in his county.

History: En. Sec. 1731, Pol. C. 1895; re-en. Sec. 824, Rev. C. 1907; re-en. Sec. 301, Ch. 76, L. 1913.

956. Duties of county superintendent, as to state superintendent. He shall carry into effect all instructions of the state superintendent given within his authority. He shall distribute to the proper officers and to teachers all blanks furnished by the state superintendent and needed by such officers and teachers.

History: En. Sec. 1733, Pol. C. 1895; 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, re-en. Sec. 826, Rev. C. 1907; re-en. Sec. L. 1919.

957. Same—Visiting schools. He shall visit every public school under his supervision at least once each official year, and oftener if he shall deem it necessary to increase its usefulness. He shall at such visits carefully observe the conditions of the school, the mental and moral instruction given, methods employed by the teacher in teaching, training, and drill, the teachers' ability, and progress of the pupils. He shall advise and direct the teacher in regard to the instruction, classification, government, and discipline of the school, and the course of study. He shall keep a record of such visits and by memoranda indicate his judgment of the teacher's ability to teach and govern and the condition and progress of the school, which shall be open to inspection to any school trustee. During his visits to the schools of his county, the county superintendent shall consult with the trustees and clerks of all school districts upon all matters relating to the good and welfare of their schools, and shall instruct them, whenever necessary, in their duties relating to the reports to be made out by them and forwarded to him annually as the law requires.

History: En. Sec. 1732, Pol. C. 1895; Ch. 98, L. 1909; amd. Sec. 302, Ch. 76, L. re-en. Sec. 825, Rev. C. 1907; amd. Sec. 1, 1913.

958. Same—Trustees' meetings. He shall from time to time in convenient places hold trustees' meetings, at which matters relating to the good of the schools shall be discussed. Trustees shall be entitled to mileage not to exceed twenty cents per mile for actual attendance at such trustees' meetings, where the distance necessarily traveled is in excess of three miles. All such claims of trustees shall be paid from district funds.

History: En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919.

959. Application for temporary certificates. He shall make application to the state board of educational examiners, if he deem it proper to do so, for the issuance of temporary certificates, valid until the next regular examination, to persons holding certificates showing their fitness for the profession of teaching; provided, that no person shall be entitled to receive such temporary certificate more than once.

History: En. Sec. 1739, Pol. C. 1895; 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, re-en. Sec. 832, Rev. C. 1907; re-en. Sec. L. 1919.

960. Member county board educational examiners. He shall serve on the county board of educational examiners.

History: En. Sec. 302, Ch. 76, L. 1913.

961. Preside at institutes. He shall preside over all teachers' institutes held in his county, and shall elect suitable persons to instruct therein from the list of teachers commissioned by the state board of education, and recommended by the state superintendent.

History: En. Sec. 302, Ch. 76, L. 1913.

962. School libraries. He shall exercise supervision over the school libraries of the county, and aid in the selection of books for the same.

History: En. Sec. 302, Ch. 76, L. 1913.

963. Truant officer. He shall act as truant officer in districts of the third class when no other provision is made.

History: En. Sec. 302, Ch. 76, L. 1913.

964. Apportionment school moneys—Warrants. The county superintendent shall apportion all school moneys to the school districts in accordance with the provisions of this title quarterly, and he may make apportionments at such other times as may be required or deemed necessary for the convenience of school officers. He shall certify to the several district clerks and county treasurers the amount so apportioned to the several districts, and the trustees shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrant shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district; provided, that school trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied but not collected for the payment of current expenses of schools, but such warrants shall not be drawn in any amount in excess of the sum already levied.

History: En. Sec. 302, Ch. 76, L. 1913.

Under provisions of the school law found in the fifth division of Compiled Statutes of 1887, similar in most respects to those now in force, making it the duty of the district clerk to take annually an exact census of all children residing in the district, children absent from home attending private schools to be included in the census list of the district where their parents reside, and empowering the county superintendent to apportion all school moneys to the school district in proportion to the number of school census children as shown by the return of the district clerk, where certain children were returned by said clerk as of one district, while their fathers resided in another district, and the county superintendent transferred these children to the districts where their fathers resided and apportioned the school moneys accordingly, it was held that the exact census required could not include any person whose legal residence was elsewhere, and the transfer and apportionment were proper. School District No. 7 v. Patterson, 10 Mont. 17, 24 Pac. 698.

Cited as section 1737 of the Political Code of 1895, being the same as the foregoing without the proviso, to the effect that school trustees are prohibited from drawing a warrant to pay any outstanding claim unless there is money in the county treasury to the credit of the district. Jay v. School District No. 1, 24 Mont. 219, 228, 61 Pac. 250.

Cited or applied as section 1737, Political Code, before amendment, in State ex rel. Knight v. Cave, 20 Mont. 468, 473, 52 Pac. 200.

965. Notify county treasurer. He shall notify the county treasurer to withhold payment of warrants issued to teachers not holding valid certificates.

History: En. Sec. 302, Ch. 76, L. 1913.

966. Controversies. He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decision of school officers or boards. An appeal may be taken from his decision, in which case a full written statement of the facts, together with the testimony and his decision in the case, shall be certified to the state superintendent for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the state courts.

History : En. Sec. 1735, Pol. C. 1895; re-en. Sec. 828, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913.

967. Power to administer oaths. The county superintendent shall have power to administer the oath of office to all subordinate school officers, and in case of appeal to him from the decision of school officers or board, or revocation of the certificate of a teacher, or in any other controversy or question brought to or coming before him in the administration of school laws for opinion, order, or decision, he shall have the power to administer oaths to witnesses; but he shall not receive pay for administering such oaths.

History: En. Sec. 1736, Pol. C. 1895; re-en. Sec. 829, Rev. C. 1907; amd. Sec. 302, Ch. 76, L. 1913.

968. Boundaries of school districts. The county superintendent shall inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the board of county commissioners, and keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or are incorrectly described, he shall change, harmonize, and describe them, and make a report of such action to the commissioners; and on being ratified by the commissioners, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. The county superintendent shall furnish the several district clerks with descriptions of the boundaries of their respective districts.

History: En. Sec. 14, p. 622, Cod. Stat. 1871; re-en. Sec. 14, p. 121, L. 1874; re-en. Sec. 1101, 5th Div. Rev. Stat. 1879; re-en. Sec. 1874, 5th Div. Comp. Stat. 1887; re-en. Sec. 1741, Pol. C. 1895; re-en. Sec. 834, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913.

969. Creation of new districts. He shall hear and pass upon all petitions for the creation of new school districts.

History: En. Sec. 302, Ch. 76, L. 1913.

Who may petition in school district, see note in 43 L. R. A. (N. S.) 293.

970. Attach contiguous territory. He shall attach to contiguous districts territory not a part of any district, and shall have power to declare school districts abandoned when no school has been held in such districts for two consecutive years, if in his judgment there is no immediate prospect of the need of a school. All funds of such abandoned districts shall be placed in the general school funds of the county upon the order of the county superintendent after all debts of the district have been paid. The abandoned territory shall be attached to contiguous districts by the county superintendent.

History: En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919.

971. Census to be transmitted to bureau of labor and industry. It shall be the duty of the county superintendent of schools to transmit, within thirty days after he receives the school census from the district clerk, the duplicate copy of the census furnished by the clerk, showing the name, sex, age, and date of birth of each child under twenty-one years of age residing in the county, together with the names of the parents or guardians of such children, to the commissioner of the bureau of labor and industry. No county superintendent shall be paid his salary for the last month in his official year until he presents to the county commissioners the receipt of the commissioner of the bureau of labor and industry for such annual census report.

History: En. Sec. 1, Ch. 17, L. 1907; Sec. 838, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919.

972. Records. He shall keep a record of his official acts. He shall preserve all books, maps, charts, and apparatus sent him as school officer, or belonging to his office. He shall file all reports and statements from teachers and school boards, and shall turn them over to his successor in office. He shall also provide a seal which shall be the official seal of the county superintendent by which his official acts may be authenticated. The superintendent of public instruction shall provide the design of the seal.

History: En. Sec. 1734, Pol. C. 1895; re-en. Sec. 827, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919.

973. Same—Annual reports. He shall, on or before the first day of September of each year, make and transmit an annual report to the superintendent of public instruction, containing such statistics, items, and statements relative to the schools of the county as may be required and prescribed by the state superintendent. Such reports shall be made upon and conform to the blanks furnished by the state superintendent of public instruction for that purpose. He shall not be paid his salary for the last two months in his official year until he presents to the county commissioners the receipt of the superintendent of public instruction for such annual report.

History: En. Sec. 1740, Pol. C. 1895; re-en. Sec. 833, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; amd. Sec. 1, Ch. 81, L. 1917; amd. Sec. 7, Ch. 196, L. 1919.

974. Same—Office days. He shall keep his office open five days in every month and give due notice of the same.

History: En. Sec. 302, Ch. 76, L. 1913.

975. Clerk and deputy. The county superintendent of counties having fifty or more teachers in third-class districts is authorized to appoint one clerk, and the county superintendent of counties having fewer than fifty teachers in third-class districts may, with the permission of the county commissioners, appoint a clerk at a salary to be fixed by the board of county commissioners.

The county commissioners of counties having not fewer than seventy-five public school teachers in districts of the third class shall appoint one deputy, other than the clerk, for every seventy-five teachers in such districts from a list furnished by the county superintendent. Such deputy shall hold a Montana certificate not less in value than a professional grade certificate, and shall be paid a salary of one hundred twenty-five dollars per month and actual traveling expenses.

History: En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 1, Ch. 110, L. 1917; amd. Sec. 1, Ch. 193, L. 1919.

976. Publication annual financial statements school districts. It shall hereafter be the duty of all county superintendents of schools to publish annually within thirty days of the close of the school year a statement of the financial conditions and transactions of all school districts in the county; said report shall be published once in some newspaper of general circulation printed and published in the county, and shall contain the following information:

First.—A statement of all moneys received by such school district in the county, and from what source derived.

Second.—A summary of all the moneys paid out, in each of the school districts of the county, showing the total amount expended in each district for salaries of teachers, for maintenance of schools, for repairs, new equipment, buildings, improvements and any other miscellaneous expense.

History: En. Sec. 1, Ch. 164, L. 1921.

977. School trustees to furnish information. It shall be the duty of all boards of school trustees to furnish to the county superintendent of schools of their county at such times and in such form as may be required by said county superintendents, the information specified in the preceding section with reference to their several school districts.

History: En. Sec. 2, Ch. 164, L. 1921.

978. Cost of publication. The cost of the publication herein required to be made shall be borne by the county and paid out of the general fund thereof.

History: En. Sec. 3, Ch. 164, L. 1921.

979. Penalty for non-compliance with act. The failure to comply with the requirements of this act on the part of any officer charged with the performance of any duty hereunder, shall constitute a misdemeanor and be punishable accordingly.

History: En. Sec. 4, Ch. 164, L. 1921.

980. Expenses. The county commissioners shall furnish the county superintendent with a suitable office. They shall also furnish him or her with all necessary stationery and postage.

History: En. Sec. 1742, Pol. C. 1895; 303, Ch. 76, L. 1913; amd. Sec. 2, Ch. 110, amd. Sec. 1742, p. 122, L. 1901; amd. Sec. L. 1917.

CHAPTER 77.

CITY SUPERINTENDENT OF SCHOOLS.

Section 981. City Superintendent of Schools.
982. Qualifications.
983. Duties.
984. Certain Employment Prohibited.

981. City superintendent of schools. In districts of the first and second class the board of trustees of such districts may appoint a superintendent of schools of the district. He shall be appointed for such term, not exceeding three years, as the board may deem proper, and be paid such salary from the general school fund as is fixed by the board of trustees; provided, that after his second successive employment he shall be deemed elected from term to term of three years each thereafter, unless the board of trustees shall, by a majority of the votes of its members, give notice to such superintendent, on or before the first of February of the

last year of the term of his employment, that his services will not be required for the ensuing term.

History: Ap. p. Sec. 1930, Pol. C. 1895; Ch. 41, L. 1911; amd. Sec. 1500, Ch. 76, re-en. Sec. 989, Rev. C. 1907; amd. Sec. 1, L. 1913.

982. Qualifications. The person appointed to such position shall be the holder of a state certificate of the highest grade issued in some state, or a graduate of some reputable university, college, or normal school, and shall have taught in public schools at least five years if the district is of the first class, or three years if the district is of the second class.

History: En. Sec. 1931, Pol. C. 1895; 1501, Ch. 76, L. 1913; amd. Sec. 29, Ch. re-en. Sec. 990, Rev. C. 1907; re-en. Sec. 196, L. 1919.

983. Duties. The superintendent shall have supervision of the schools of the district under the supervision of the board of trustees. He shall be the executive officer of the board, and shall perform such duties as the board of trustees may prescribe.

History: Ap. p. Sec. 1932, Pol. C. 1895; re-en. Sec. 991, Rev. C. 1907; amd. Sec. 1502, Ch. 76, L. 1913.

984. Certain employment prohibited. No city superintendent shall engage in any work that will conflict with his duties as superintendent.

History: En. Sec. 1933, Pol. C. 1895; re-en. Sec. 992, Rev. C. 1907; re-en. Sec. 1503, Ch. 76, L. 1913.

CHAPTER 78.

SCHOOL TRUSTEES.

Section 985. Qualifications of.
986. Number of.
987. Elections.
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985. Qualifications of. Any person, male or female, who is a qualified voter at any election under this act, shall be eligible to the office of school trustee in such district.

History: En. Sec. 500, Ch. 76, L. 1913.

986. Number of. In districts of the first class, the number of trustees shall be seven, in districts of the second class the number of trustees shall be five, and in districts of the third class the number of trustees shall be three.

History: Ap. p. Sec. 1770, Pol. C. 1895; amd. Sec. 1, p. 136, L. 1897; amd. Sec. 1, Ch. 69, L. 1907; Sec. 850, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1911; amd. Sec. 501, Ch. 76, L. 1913.

987. Elections. An annual election of school trustees shall be held in each school district in the state on the first Saturday in April of each year at the district schoolhouse, if there be one, and if there be none, at a place designated by the board of trustees. In districts of the third class having more than one schoolhouse where school is held, one trustee must be elected from persons residing where such outside schools are located.

History: Ap. p. Sec. 1880, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 243, L. 1891; amd. Sec. 1770, Pol. C. 1895; amd. Sec. 1, p. 136, L. 1897; amd. Sec. 1, p. 57, L. 1899; amd. Sec. 1. Ch. 69, L. 1907; Sec. 850, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1911; amd. Sec. 502, Ch. 76, L. 1913; amd. Sec. 7, Ch. 81, L. 1917.

Note.—The foregoing is the history of the law relating to the annual election of school trustees. The arrangement of the present act is so different from the earlier statutes that exact historical comparison of specific sections cannot be made.

Cited or applied as section 1770, Political Code, before amendment, in State ex rel. Bray v. Long, 21 Mont. 26, 29, 52 Pac. 645.

Power of legislature to define qualifications of voters at school elections, see note in 7 Ann. Cas. 666.

988. Election in districts of second and third class — Nominations. In districts of the second and third class, the names of all candidates for membership on the school board must be received and filed by the clerk and posted at each polling-place at least five days next preceding the election. Any five qualified electors of the district may file with the clerk the nominations of as many persons as are to be elected to the school board at the ensuing election.

History: En. Sec. 502, Ch. 76, L. 1913. See also history of Sec. 987.

989. Conduct of election. In districts of the second and third classes, the election of school trustees shall be held and conducted under the supervision of the board of school trustees. The clerk of the school district must, not less than fifteen days before the election required under this act, post notices in three public places in said district, and in incorporated cities in each ward, which notices must specify the time and place of election, and the hours during which the polls will be open. The trustees must appoint by an order entered in their records three qualified electors of said district, to act as judges at such election, and the clerk of the district shall notify them by mail of their appointment. If the judges named are not present at the time for opening the polls, the electors present may appoint judges, and the judges so appointed shall designate one of their number to act as clerk. The voting must be by ballot, without reference to the general election laws in regard to nominations, form of ballot, or manner of voting, and the polls shall be open for such

length of time as the board of trustees may order; provided, that such polls must be open from two p. m. to six p. m.

History: En. Sec. 502, Ch. 76, L. 1913. See also history of Sec. 987.

990. Election in districts of first class—Nominations and conduct of elections. In districts of the first class, no person shall be voted for or elected as trustee unless he has been nominated therefor by a bona fide public meeting, held in the district at least ten days before the day of election, and at which at least twenty qualified electors were present, and a chairman and secretary were elected, and a certificate of such nomination, setting forth the place where the meeting was held, giving the names of the candidates in full, and if there are different terms to be filled, the term for which such candidate was nominated, duly certified by the chairman and secretary of such meeting, shall be filed with the district clerk at least eight days before the day of the election. The nomination and election of any person shall be void, unless he was nominated at a meeting as above provided at which at least twenty qualified electors were present, and his nomination certified and filed as aforesaid, and the board of trustees acting as a canvassing board shall not count any votes cast for any person, unless he has been so nominated and a certificate thereof filed as herein required.

History: En. Sec. 502, Ch. 76, L. 1913. See also history of Sec. 987.

991. Board of trustees to call election. The board of trustees shall, at least thirty days before the annual election of school trustees, by an order entered upon the minutes of their meeting, designate and establish a suitable number of polling-places and create an equal number of election precincts to correspond, and define the boundaries thereof.

History: En. Sec. 502, Ch. 76, L. 1913. See also history of Sec. 987.

992. Same—Notice of. The district clerk shall, at least fifteen days before the election in districts of the first class, give notice of the election to be held in all such districts, by posting a notice thereof in three public places in the district, and in incorporated cities and towns in each ward, which notices must specify the time and place of election, the number of trustees, and the terms for which they are to be elected, and the hours during which the polls will be open. Whenever, in the judgment of the board of trustees, the best interest of the district will be served by the publication of such notices of election in some newspaper in the county, they may, by an order entered on the minutes of their meeting, direct the district clerk to publish the notice of election required to be given in districts of the first class, in some newspaper in the county.

History: En. Sec. 502, Ch. 76, L. 1913. See also history of Sec. 987.

993. Hours of election. In districts of the first class the polls must be opened at eight o'clock a. m., and kept open until twelve o'clock m., and from one o'clock p. m., until eight o'clock p. m.

History: En. Sec. 6, p. 138, L. 1897; re-en. Sec. 855, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913.

994. Judges. The board of district trustees shall, at least ten days before the day of the annual election of trustees in any district of the first class, appoint three qualified electors of the district for each polling-

place established to act as judges of election, and the district clerk shall notify such persons by mail of their appointment. Such judges shall designate one of their number to act as clerk of such election. If the judges appointed, or any of them, are not present at the time for the opening of the polls, the electors present may appoint judges, who must be qualified electors, to act in the place of those who are absent.

History: En. Sec. 502, Ch. 76, L. 1913.

995. Ballots and method of voting. In districts of the first class, the ballot shall show the name or names of the candidates and the length of time for which they are to be elected. These ballots shall be as near as possible in the following form:

For School Trustees:
For three (3) year term.
Vote for Three:
John Abner
William Brown
Adam Smith
For one (1) year term.
George Davis

History: En. Sec. 9, p. 139, L. 1897; re-en. Sec. 858, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913.

996. Poll and tally-list, certificate of judges, and canvass of votes. At every election held under this act, a poll-list shall be kept by the judges and clerk at each polling-place, and immediately after the close of the polls the judges shall count the ballots, and if there be more ballots than votes cast the judges must draw by lot from the ballots, without seeing them, sufficient number of ballots to make the ballots remaining correspond with the number of votes cast. The clerk shall write down in alphabetical order in a poll-book provided for that purpose the name of every person voting at the time he deposits his ballot. There shall also be provided a tally-list for each polling-place; after the ballots have been counted and made to agree with the poll-list the judges shall proceed to count them. The clerk shall enter in the tally-list the name of every person voted for as trustee, and the term, and tally opposite his name the number of votes cast for him, and at the end thereof set down in a column provided for that purpose the whole number of votes he received. The judges and clerk shall sign a certificate to said tally-list, setting forth the whole number of votes cast for each person or trustee, designating the term, and they shall verify the same as being correct, to the best of their knowledge, before an officer authorized to administer oaths. No informality in such certificate shall vitiate the election, if the number of votes received for each person can reasonably be ascertained from said tally-list. Said books and tally-lists shall be returned to the board of trustees of the district, who shall canvass the vote and cause the clerk of the district to issue a certificate of election to the person or persons elected, designating their term, a copy of which must be forwarded to the county superintendent of schools. School trustees are hereby authorized to administer oaths to judges of election.

History: Ap. p. Sec. 1780; Pol. C. 1895; 860, Rev. C. 1907; amd. Sec. 502, Ch. 76, amd. Sec. 11, p. 142, L. 1897; amd. Sec. L. 1913.

997. Term of office—Vacancy—Oath of trustees. Trustees elected shall take office immediately after qualifying, and shall hold office for the term of three years except as elsewhere expressly provided herein, and until their successors are elected or appointed and qualified.

The clerk of the district shall, at the time of issuing certificate of election to a person elected as trustee, deliver to such person a blank oath of office. Every trustee shall file his oath of office with the county superintendent of schools within fifteen days of the receipt of the certificate of election and blank oath of office from the clerk. Any trustee failing to qualify as herein provided shall forfeit all rights to his office, and the county superintendent of schools shall appoint to fill the vacancy caused thereby.

History: Ap. p. Sec. 1782, Pol. C. 1895; amd. Sec. 13, p. 143, L. 1897; Secs. 862 and 1019, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; amd. Sec. 11, Ch. 196, L. 1919.

Cited or applied as section 1782, Political Code, before amendment, in State ex rel. Bray v. Long, 21 Mont. 26, 29, 52 Pac. 645.

998. Vacancy in school board. A vacancy in the office shall be filled by appointment by the county superintendent of schools; provided, that in districts of the first and second class, such appointment shall be subject to confirmation by a majority of the remaining members of said board, if those remaining constitute a majority of the total number of the board. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a school trustee for the unexpired term. When any vacancy occurs in the office of trustee of any school district by death, resignation, failure to elect at the proper time, removal from the district, or other cause, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the school district, and the county superintendent shall immediately appoint in writing, some competent person, who shall qualify and serve until the next annual school election. The county superintendent shall at the time notify the clerk of the school district of every such appointment; provided, that absence from the school district for sixty consecutive days, or failure to attend three consecutive meetings of the board of trustees without good excuse, shall constitute a vacancy in the office of trustee.

History: Ap. p. Sec. 1782, Pol. C. 1895; amd. Sec. 13, p. 143, L. 1897; Secs. 862 and 1019, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; amd. Sec. 11, Ch. 196, L. 1919.

999. Trustees—How removed. Any school trustee may be removed from office by a court of competent jurisdiction by law for removal of elective civil officers; provided, however, that upon charges being preferred and good cause shown, the board of county commissioners may suspend a trustee until such time as such charges can be heard in the court having jurisdiction thereof.

History: En. Sec. 1982, Pol. C. 1895; re-en. Sec. 1021, Rev. C. 1907; re-en. Sec. 502, Ch. 76, L. 1913.

1000. Vacancy in office of clerk. Should the office of the clerk of the school district become vacant, the board of school trustees shall immediately fill such vacancy by appointment, and the chairman of the board of school trustees shall immediately notify the county superintendent of such appointment.

History: En. Sec. 1981, Pol. C. 1895; re-en. Sec. 1020, Rev. C. 1907; re-en. Sec. 502, Ch. 76, 1913.

1001. Rearrangement of terms to prevent the election of a majority of the trustees. When at any annual school election the terms of a majority of the trustees regularly expire in districts of the first class, three trustees, in districts of the second class, two trustees, in districts of the third class, one trustee, shall be elected for three years, and the remaining trustee or trustees whose terms expire shall hold over for one or two years as may be necessary to prevent the terms of a majority of the board of trustees expiring in any one year; provided, that it shall be determined by lot what trustees shall hold over, and for what term.

History: En. Sec. 502, Ch. 76, L. 1913.

1002. Qualifications of electors. Every citizen of the United States who has resided in the state of Montana for one year, and thirty days in the school district next preceding the election, may vote thereat. Women of the age of twenty-one years and upwards, who are citizens of the United States, and who have resided in the state of Montana one year, and in the school district for thirty days next preceding the day of the election, may vote thereat.

History: En. Sec. 1777, Pol. C. 1895; amd. Sec. 8, p. 138, L. 1897; re-en. Sec. 857, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913.

1003. Challenges—Oath of voters. Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation in substance as follows:

"You do solemnly swear (or affirm), that you are a citizen of the United States; that you are twenty-one years of age; and that you have resided in the state one year, and in this school district thirty days next preceding this election, and that you have not voted this day, so help you God."

If he takes this oath or affirmation, his vote must be received; otherwise rejected. Any person who shall swear falsely before any such judge of election shall be guilty of perjury, and shall be punished accordingly.

History: Ap. S. Sec. 1779, Pol. C. 1895; amd. Sec. 10, p. 141, L. 1897; re-en. Sec. 859, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913.

Cited or applied as section 1779, Political Code, before amendment, in State ex rel. Bray v. Long, 21 Mont. 26, 33, 52 Pac. 645.

1004. Expenses of election. All the expenses necessarily incurred in the matter of holding elections for school trustees shall be paid out of the school funds of the district. Judges of election of districts of the first and second class shall receive not to exceed three dollars per day each for all services connected with the election.

History: Ap. p. Sec. 14, p. 145, L. 1897; re-en. Sec. 866, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913.

1005. Organization. The school trustees shall meet annually the third Saturday in April and organize by choosing one of their number chairman, and a competent person, not a member of the board, as clerk. The chairman shall preside at all the meetings of the board,

and shall perform such duties as usually pertain to such officer, and in accordance with the customary rules of order.

History: Ap. p. Sec. 1793, Pol. C. 1895; amd. Sec. 4, p. 59, L. 1899; re-en. Sec. 871, Rev. C. 1907; amd. Sec. 504, Ch. 76, L. 1913.

Cited or applied as section 871, Revised Codes, before amendment, in Kenyon-Noble Co. v. School District No. 4, 40 Mont. 123, 130, 105 Pac. 551.

1006. Meetings. The board shall hold, in districts of the first class, at least one and not more than five meetings each month for the transaction of its business; and in all districts at least four meetings each year shall be held, to-wit: On the third Saturdays of April, July, October and January, at such places and hours as shall be fixed by the board. A special meeting of the board may be held upon the call of the chairman or any two members of the board; at least forty-eight hours' written notice shall be given to each member of the board of any special meetings, and no business transacted by the board shall be valid unless transacted at a regular or special meeting thereof.

History: Ap. p. Sec. 1794, Pol. C. 1895; amd. Sec. 5, p. 59, L. 1899; re-en. Sec. 872, Rev. C. 1907; amd. Sec. 505, Ch. 76, L. 1913.

1007. Quorum. Except when otherwise authorized by law every school district is under the control of a board of school trustees, consisting of three members, a majority of which constitutes a quorum for the transaction of business.

History: En. Sec. 506, Ch. 76, L. 1913.

Cited or applied as section 1790, Political Code, in Campana v. Calderhead, 17 Mont. 548, 551, 44 Pac. 83, 36 L. R. A. 277.

1008. Power over property. The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names as trustees of the district, to convey by deed all the interest of their district in or to any schoolhouse or lot directed to be sold as hereinafter provided, and all conveyances of real estate made to the district or to the trustees thereof shall be made to the board of trustees of the district and to their successors in office; said board, in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

History: En. Sec. 1801, Pol. C. 1895; re-en. Sec. 881, Rev. C. 1907; re-en. Sec. 507, Ch. 76, L. 1913.

1009. Same—May establish high schools. Whenever the interests of the district require it, a board of trustees may establish a high school, employ a principal teacher and subordinate teachers, and grade the school into departments and classes.

History: En. Sec. 1804, Pol. C. 1895; re-en. Sec. 884, Rev. C. 1907; re-en. Sec. 503, Ch. 76, L. 1913.

1010. Transportation of pupils. That the trustees of any school district in the state of Montana, when they shall deem it for the best interest of all pupils residing in such district, may close their school and send pupils of the district to another district, and for such purpose are hereby empowered to expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their district

to such other district or districts, and for the purpose of paying their tuition. Whenever the trustees of any school district in the state of Montana deem it for the best interest of such district and the pupils residing therein, they may expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their homes to the public school or schools maintained in such district.

History: Ap. p. Sec. 1, Ch. 68, L. 1903; re-en. Sec. 877, Rev. C. 1907; amd. Sec. 1, Ch. 40, L. 1911; amd. Sec. 507, Ch. 76, L. 1913.

Validity and construction of statute or ordinance providing for transportation of pupils to and from school, see note in Ann. Cas. 1912C, 762.

Duty of public to furnish free transportation to pupils, see note in 37 L. R. A. (N. S.) 1110.

Right to use school money for transportation of pupils, see note in 38 L. R. A. (N. S.) 710.

1011. Night schools. The trustees shall have power to organize and maintain outside of the regular school hours special sessions of the public schools, whenever, in their judgment, such sessions are necessary. They shall determine what subjects shall be taught, and shall make all necessary rules and regulations for such sessions, including the terms of admission of pupils. Such schools shall be free to all eligible pupils of the district, and the expense of maintenance shall be paid out of the general school funds of the district.

History: En. Sec. 507, Ch. 76, L. 1913.

1012. Authority to issue warrants before school moneys are collected. School trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied but not collected for the payment of current expenses of schools, but such warrants shall not be drawn in any amount in excess of the sum already levied.

Note.—The above section is a part of section 964 of this code. It is given here because it relates also to the powers of school trustees.

1013. Transfer of apportionment. Any board of trustees must, when pupils belonging in their district are attending school in another district, transfer school moneys due by apportionment to such pupils to the district in which they are attending school, if in the judgment of the county superintendent of schools said children are attending school in another district for a good and sufficient reason.

History: En. Sec. 507, Ch. 76, L. 1913; amd. Sec. 12, Ch. 196, L. 1919.

1014. Call special election. The board of trustees shall have power to call a special election for the purpose of bonding the district for the erection and furnishing buildings and purchase of school sites, and for permission to sell school property; provided, that in districts of the first and second classes boards of trustees shall have power to change or select school sites.

History: En. Sec. 507, Ch. 76, L. 1913.

1015. Duties of trustees. Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision.

2. To employ or discharge teachers, mechanics, or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; not unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher.

3. To determine the rate of tuition of non-resident pupils.

4. To fix the compensation of the clerk.

5. To enforce the rules and regulations of the superintendent of public instruction for the government of schools, pupils, and teachers and to enforce the course of study.

6. To provide for school furniture and for everything needed in the schoolhouse or for the use of the school board.

7. To rent, repair, and insure schoolhouses.

8. To build or remove schoolhouses and to purchase or sell school sites; provided, that in districts of the third class they shall not build or remove schoolhouses, nor purchase, sell, or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three notices in three public places in the district at least ten days prior to such election, which notices shall specify the time, place and purpose of such election.

9. To hold in trust for their district all real or personal property for the benefit of the school thereof.

10. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six years of age where the interest of the school requires such exclusion.

11. To provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed; and to employ a physician to make an examination into the sanitary conditions of the school and the general health conditions of each pupil, and to make a full, detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above-mentioned report as pertains to his child or ward.

12. To require pupils to be furnished with suitable books as a condition of membership in school.

13. To exclude from school and school libraries all books, tracts, papers and other publications of immoral and pernicious nature.

14. To require teachers to conform to the law.

15. To make an annual report, as required by law, to the county superintendent on or before the first day of August in each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

16. To make a report directly to the superintendent of public instruction whenever instructed by him to do so.

17. To determine what branches, if any, in addition to those required

by law, shall be taught in any school in the district, subject to the approval of the county superintendent, in districts of the third class.

18. To visit every school in their district at least once in each term, and to examine carefully into its management, conditions, and needs. This clause applies to each of the trustees.

19. To provide separate privies or outhouses for the use of the sexes at all schoolhouses, where the same do not exist, and to see that the same are kept in good repair, and in a clean condition. Such privies or outhouses must be located and built in such manner as to secure privacy In all cases where there is no fence dividing the play yards of the sexes, the privies or outhouses herein named shall be separate and distinct buildings, and situated at least twenty feet apart, and to require that all teachers and janitors use due care in keeping all toilets in good repair and in clean condition and free from obscenity; provided, that any trustee or trustees, teacher, janitor, or janitors, failing to comply with the provision of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding ninety days, or both such fine and imprisonment in the discretion of the court.

20. To allow pupils residing in other districts to attend school in the district of which they have charge, if in their judgment there is sufficient room.

21. To procure, by purchase or donation, and to cause to be displayed daily in suitable weather, an American flag, with accompanying necessary fixtures, for each and every schoolhouse in their respective districts. Said flags shall be of dimensions not less than four by six feet, and shall be made from durable material. The school trustees are hereby authorized and empowered to use such portion of the school funds as remain in their hands, and which is not otherwise appropriated, for the purchase and erection of fixtures.

22. To close school at their discretion during the annual session of the state teachers' association, and to allow teachers to attend the same without loss of salary.

History: Earlier acts governing the duties of trustees were the following: Sec. 27, p. 625, Cod. Stat. 1871; re-en. Sec. 26, p. 126, L. 1874; re-en. Sec. 1113, 5th Div. Rev. Stat. 1879; amd. Sec. 6, p. 55, L. 1883; amd. Sec. 1885, 5th Div. Comp. Stat. 1887; amd. Sec. 1797, Pol. C. 1895; amd. Sec. 5, p. 130. L. 1897; re-en. Sec. 875, Rev. C. 1907. The above section was enacted as Sec. 508, Ch. 76, L. 1913; subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; subd. 11 amd. by Sec. 1, Ch. 61, L. 1917, and Sec. 13, Ch. 196, L. 1919; subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917 and by Sec. 2, Ch. 81, L. 1917; subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; subds. 19-20-21-22 re-en. Sec. 1, Ch. 61, L. 1917.

In considering a provision similar to subdivision 8 of the above section, found in the Compiled Statutes of 1887 (Comp. Stat. 1887, Div. 5, sec. 1885), the court was of the opinion that the term "schoolhouse," as used therein, does not mean simply the house, but refers to the school plant, including the general equipment, pupils and teachers, so that the board has no authority to remove the school properties and equipment to another district without being directed to do so by a vote of the people. State ex rel. Jay v. Marshall, 13 Mont. 136, 139; 32 Pac. 648.

Where the legislature has failed to make provision for a uniform series of text-books throughout the state, or to devolve the duty of doing so upon some officer or board, the trustees of a shcool district, under the general powers vested in them, and particularly the power of the board "to prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction, for their own government of schools under their supervision," could prescribe what books should be

used, in the schools of the district. Campana v. Calderhead, 17 Mont. 548, 552, 44 Pac. 83, 36 L. R. A. 277.

The provision of section 1797 of the Political Code of 1895, in regard to the removal of schoolhouse and the purchase or sale of school lots when directed by vote of the district, is not only a grant of power to school boards, but also a limitation upon their power, both as to its extent and as to the mode of its exercise, so that they cannot do any of the acts referred to without first obtaining the consent of the electors. State ex rel. Bean v. Lyons, 37 Mont. 354, 362, 96 Pac. 922.

Mandamus is the proper remedy to require the trustees of a school district to determine the location of a site for a schoolhouse, where they arbitrarily remove a school to a site selected by themselves, without consulting the electors; a resident and taxpayer of the school district is a party beneficially interested, and entitled in such case to make the application. State ex rel. Bean v. Lyons, 37 Mont. 354, 365, 96 Pac. 922.

A school board had no power to allow compensation to a teacher for the full period of twelve months, during two and a half months of which time no school work was required and she was left free to engage in other pursuits; a donation of public funds under the pretext of compensation being unlawful. Finley v. School District No. 1, 51 Mont. 411, 414, 153 Pac. 1010.

1016. Letting contracts and furnishing supplies, trustees not to be interested in. It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. No board of trustees shall let any contract for building, furnishing, repairing, or other work, for the benefit of the district, where the amount involved is two hundred and fifty dollars, or more, without first advertising in a newspaper published in the county for at least two weeks, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids.

History: Ap. p. Sec. 1802, Pol. C. 1895; re-en. Sec. 882, Rev. C. 1907; amd. Sec. 1, Ch. 32, L. 1909; amd. Sec. 509, Ch. 76, L. 1913.

1017. Liability. Any board of trustees shall be liable, as trustees, in the name of the district, for any judgment against the district for any salary due any teacher on contract, and for all debts legally contracted under the provisions of this title, and they shall pay such judgments or liabilities out of the school moneys to the credit of such district.

History: En. Sec. 1803, Pol. C. 1895; re-en. Sec. 883, Rev. C. 1907; re-en. Sec. 510, Ch. 76, L. 1913.

Section 1803 of the Political Code of 1895, corresponding to the above, does not authorize the entry of a judgment against a school district for the unpaid salary of a school teacher, where the district admits the claim, and the only reason that it does not pay it is that it has no funds applicable to the purpose, since until it has funds on hand with which to pay, failure or refusal to pay is not a violation of duty. Jay v. School District No. 1, 24 Mont. 219, 229; 61 Pac. 250.

1018. Misdemeanor—Penalty. When any school officer is suspended by election or otherwise, he shall immediately deliver to his successor in office all books, papers, and moneys pertaining to his office, and such officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply any moneys intrusted to him by virtue of his office, shall be guilty

of a misdemeanor, and shall be punished by a fine in the discretion of the court, not exceeding one hundred dollars.

History: En. Sec. 1805; Pol. C. 1895; re-en. Sec. 885, Rev. C. 1907; re-en. Sec. 511, Ch. 76, L. 1913.

1019. Limitation on purchase maps, charts, etc. The board of school trustees in any district of the third class shall not issue any warrant for maps, charts, or other apparatus, unless same is authorized and the warrant countersigned by the county superintendent.

History: En. Sec. 513, Ch. 76, L. 1913; amd. Sec. 1, Ch. 63, L. 1921.

CHAPTER 79.

SCHOOL DISTRICTS.

Section 1020. School District Defined.
1021. Classes—Number of Trustees.
1022. Powers as Body Corporate.
1023. When May Be Created.
1024. Organization of New Districts From Other Districts.
1025. Same—Organization From Part of Existing District.
1026. Selection of Trustees.
1027. Apportionment of Moneys to New District.
1028. Division of District Funds and Property.
1029. Distribution of Indebtedness.
1030. Trustees Issue Interest-Bearing Warrants.
1031. County Commissioners Levy Tax for Interest-Bearing Warrants.
1032. Trustees May Issue Bonds.
1033. District Boundaries.
1034. Consolidated Districts—Procedure in Event of Consolidation.
1035. Joint Districts—Formation, Control, Discontinuance of.
1036. Same—Apportionment of School Money.
1037. Discontinuance as Joint District.
1038. Joint School Districts on Division by Creation of New County.
1039. Maintenance of Schools in Isolated Sections.

1020. School district defined. The term "school district," as used in this title, is declared to mean the territory under the jurisdiction of a single board, designated as "board of trustees," and shall be organized in the form and manner as hereinbefore provided, and shall be known as district No. .... of ..... county; provided, that all school districts now existing, as shown by the records of the county superintendents, are hereby recognized as legally organized districts.

History: En. Sec. 1750, Pol. C. 1895; re-en. Sec. 839, Rev. C. 1907; re-en. Sec. 400, Ch. 76, L. 1913. See note to Sec. 1323.

1021. Classes—Number of trustees. All districts having a population of eight thousand or more are, and hereafter shall be, districts of the first class. All districts having a population of one thousand or more, and less than eight thousand, are, and hereafter shall be, districts of the second class, and all districts having a population of less than one thousand are, and hereafter shall be, districts of the third class. In districts of the first class the number of trustees shall be seven; in districts of the second class the number of trustees shall be five, and in districts of the third class the number of trustees shall be three.

History: En. Sec. 401, Ch. 76, L. 1913.

Validity of statute containing different provisions for classification of different classes of districts, see note in Ann. Cas. 1913E, 1331.

1022. Powers as body corporate. Every school district constituted and formed as provided in this title shall be and is hereby declared to be a body corporate, and under its own proper name or number as such corporate body may sue and be sued, contract and be contracted with, and may acquire, purchase, and hold and use personal or real property for school purposes mentioned in this title, and sell and dispose of the same.

History: En. Sec. 1759, Pol. C. 1895; re-en. Sec. 848, Rev. C. 1907; re-en. Sec. 402, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1575.

School districts are public corporations, but their powers are very limited and they can exercise none except such as are conferred by the law creating them, either expressly or by fair implication. Jay v. School District No. 1, 24 Mont. 219, 232, 61 Pac. 250.

A school district is a body corporate, but does not possess the powers of local legislation and control which are the distinguishing characteristics of a municipal corporation. Hersey v. Neilson, 47 Mont. 132, 141, 131 Pac. 30, Ann. Cas. 1914C, 963.

A school district is a public corporation, but with very limited powers. It may, through its board, exercise only such authority as is conferred by law, either expressly or by necessary implication. Finley v. School District No. 1, 51 Mont. 411, 415, 153 Pac. 1010.

Nature and power of school districts, see 24 R. C. L. 564.

Delegation of taxing power to school districts, see 24 R. C. L. 587.

1023. When may be created. No school district shall be created between the first day of June and the first day of September following each year.

History: En. Sec. 1760, Pol. C. 1895; re-en. Sec. 849, Rev. C. 1907; re-en. Sec. 403, Ch. 76, L. 1913; amd. Sec. 1, Ch. 69, L. 1917.

1024. Organization of new districts from other districts. New school districts may be organized out of portions of two or more existing school districts, or by a division of an existing district, in the manner hereinafter provided and not otherwise.

1. For the purpose of organizing a new school district out of portions of two or more existing school districts, a petition in writing shall be made to the county superintendent, signed by the parents or guardians of at least ten census school children, between the ages of six and twenty-one years, residing within the boundaries of the proposed new districts, and residing at a greater distance than two miles from any schoolhouse owned by any one of such school districts, and in which a school is maintained, which petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing within the boundaries of the proposed new district at the date of presenting said petition. The county superintendent shall give notice to all parties interested by posting, or causing to be posted, at least ten days prior to the time appointed by him for considering said petition, in at least three of the most public places in the proposed new district, and one on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one of the most public places in each of said old districts, notices of a hearing by him upon such petition, and shall on the day fixed in the notice proceed to hear said petition at the place designated in said notice, which must be either at the courthouse of the county, or else at a schoolhouse in one of the school districts affected, unless a protest in writing, signed by at

least a majority of the school electors residing within such proposed school district, shall be filed with the county superintendent of schools before or at the time fixed in the notice for the hearing of said petition, and in that event such new and proposed school district shall not be created. If no such protest be filed, then the county superintendent, upon such hearing, shall, within ten days from the date of such hearing, make an order establishing said new district and describing the boundaries thereof, or make an order denying such petition; and from an order establishing said new district made by the county superintendent of schools, an appeal may be taken by three resident taxpayers of the said proposed new district, or by three resident taxpayers of the remaining portion of an old district, to the board of county commissioners within thirty days, and a hearing had thereon and a decision rendered by said board, which shall be final; provided, that should the county superintendent refuse to make an order establishing said new district, an appeal may be taken by three resident taxpayers of said proposed new district to the board of county commissioners, a hearing had thereon, and a decision rendered by said board, which shall be final; provided, that no school district shall be established which does not contain property of an assessed valuation of at least ten thousand dollars as shown by the last official assessment-roll of the county in which said proposed school district is located; provided, further, that there shall be at least ten census school children left in the remaining portion of each of the original districts, and also a property valuation, as shown by the last official assessment-roll of the county, of at least fifteen thousand dollars. The appeals mentioned in this section shall be in writing, subscribed by the parties taking the appeal, and shall recite sufficient facts to show their rights to appeal hereunder, and that it is an appeal from the decision rendered, and such appeal shall be filed with the county superintendent within thirty days from the date of the order establishing such new district or denying such petition. The county superintendent shall, within twenty days from the filing of such notice of appeal (transmit to the board of county commissioners, and file in the office of the county clerk, the notice of appeal and all petitions, plats, and papers in his possession pertaining to the petition for the creation of such new school district. The county clerk shall forthwith, upon receipt of such notice of appeal and other papers, give notice to all parties interested, by causing to be posted at least ten days prior to the date of the next regular meeting of the board of county commissioners, in at least three of the most public places in the proposed new district, and one on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one of the most public places in each of said old districts, notices to the effect that the board of county commissioners will, at its office in the courthouse upon a certain date, specifying the same in such notices, which date shall be during the next regular session of the board, finally hear and determine said appeal and said petition for the creation of such new district.

History: Ap. p. Sec. 1751, Pol. C. 1895; re-en. Sec. 840, Rev. C. 1907; amd. Sec. 1, Ch. 82, L. 1911; amd. Sec. 404, Ch. 76, L. 1913; amd. Sec. 8, Ch. 196, L. 1919.

A petition for the creation of a new school district under sections 1026 et seq. is not a pleading, the contents of which are subject to critical legal analysis to

determine its sufficiency; but is sufficient to confer jurisdiction upon the board of school trustees if it clearly indicates the desire of a majority of the school electors residing in the proposed new district for segregation, and describes its boundaries. State ex rel. Hall v. Peterson et al., 55 Mont. 355, 177 Pac. 245.

Who may petition in relation to organization of school district, see note in 43 L. R. A. (N. S.) 293.

Who may maintain quo warranto to test validity of organization of school district, see note in 21 L. R. A. (N. S.) 685.

Meaning of term "adjacent" in statute providing for annexation of territory to school district, see note in Ann. Cas. 1913B, 171.

1025. Same—Organization from part of existing district—Incorporated cities not included. For the purpose of organizing a new school district entirely out of a portion of an existing school district, in case such existing school district has a schoolhouse owned by the district and in which school is maintained, a petition in writing shall be made to the board of trustees of said school district, signed by a majority of the school electors of that portion of said school district out of which they desire to create a new school district, which petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing within the boundaries of the proposed new district at the date of presenting such petition, and such petition shall be delivered in person to the clerk of the school district out of which it is proposed to organize such new district. Immediately upon receipt of such petition, the district clerk shall call a special meeting of the board of trustees for the purpose of considering such petition, and shall notify them by mail of the time, place, and purpose of such meeting, and shall immediately give notice to all parties interested, by posting or causing to be posted at least ten days prior to the date of such meeting, in at least three of the most public places in the proposed new district, and one on each schoolhouse door in the district, and in three of the most public places in the remaining portion of the old district, notices stating the time, place, and purpose of such special meetings of the board of trustees, which meeting of the board of trustees shall be not less than twenty days from date of the receipt by the clerk of such petition. The board of trustees of said district at such special meeting shall approve or deny the said petition, and shall enter their approval or denial upon the records of the district within ten days from the date of such meeting; and shall forthwith transmit the original petition, together with a certified copy of the minutes of said meeting, to the county superintendent of schools. If the board of trustees of said school district shall approve of the division of said school district, and no appeal is taken from their decision as herein provided, the county superintendent of schools may thereupon make an order establishing such new district, defining its boundaries. Any three resident taxpayers of either the proposed new district, or the remaining portion of the original district, may within thirty days appeal from the decision of the said board of trustees, granting or denying said petition, to the county superintendent of schools, and may within thirty days appeal from any decision or order made by the county superintendent of schools to the county commissioners, whose decision shall be final. An appeal from the decision of the board of trustees shall be in writing, subscribed by the parties taking the appeal, and recite sufficient facts to show their rights to appeal hereunder, and

that it is an appeal from the decision of the board of trustees, and such appeal shall be filed with the county superintendent within the above-mentioned time allowed for appeal. In the event of such appeal to the county superintendent, or in the event of an appeal from the decision or order made by the county superintendent to the county commissioner, notices shall be given by the county superintendent, or by the county clerk, in the same manner provided in the preceding section.

No territory within the corporate limits of any incorporated city or town shall be included in any new school district formed or created under the provisions of this act.

History: Ap. p. Sec. 1751, Pol. C. 1895; Ch. 82, L. 1911; amd. Sec. 404, Ch. 76, re-en. Sec. 840, Rev. C. 1907; amd. Sec. 1, L. 1913; amd. Sec. 8, Ch. 196, L. 1919.

1026. Selection of trustees. When a new district is organized, such trustees of the old district as reside within the limits of the new one shall be trustees in the new district, and the county superintendent must appoint the remaining trustees for the new and old districts, who shall hold office until the next annual election.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919.

1027. Apportionment of moneys to new districts. No new district, organized as provided in sections 1024 and 1025, shall be entitled to any share of public money belonging to the old district until school has actually been taught one month in the new district; and unless within eight months from the order of the county superintendent granting such new district a school is opened, the action making a new district shall be void, and all elections or appointments of trustees or clerks made in consequence of such action, and all rights and office of parties so elected or appointed, shall cease and determine.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919.

1028. Division of district funds and property. When a new district is formed from one or more old ones, the school funds remaining to the credit of the old district, after providing for all outstanding debts, except debts incurred for building and furnishing schoolhouses, shall be divided as follows: The basis for the division of the school fund shall be the school population, as shown by the last school census before the division of the district or districts occurred, and shall apply to such funds as remain to the credit of said old district or districts at the time of the organization of said new district, and said district shall receive funds in proportion to its per cent. of census. In case of division, each district shall own and hold all permanent property, such as sites, schoolhouses, and furniture situated within its boundaries. All division of funds under this provision shall be made by the county superintendent, and when there are unpaid special taxes on the county tax-book belonging to a district at the date of its division, the county treasurer, upon being notified of such division by the county superintendent, shall retain all moneys received in payment of such special tax until the same shall be apportioned by the county superintendent, whose duty shall be to apportion said money quarterly between the fractions of the divided dis-

trict according to the location of the property on which said tax was levied. At the first apportionment after the organization of a new district, the county superintendent shall apportion to such district its per capita proportion of the general fund, but no money, either from the general or special fund, shall be paid out of the county treasury on account of such district, until a school shall have been taught therein one month; provided, that any new district shall be entitled to its apportionment, where the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least four months.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919.

Effect of change of boundaries on property and debts, see 24 R. C. L. 566.

Real property rights affected by alteration of boundaries of school district, see note in 20 Ann. Cas. 89; 26 L. R. A. (N. S.) 486.

1029. Distribution of indebtedness. If, at the time such new district is created, there is any indebtedness against such old school district, then the county superintendent of the county in which such districts are located shall apportion such indebtedness between said districts, by first deducting from said indebtedness the amount of all moneys in the treasury belonging to the sinking fund of said old district, and then apportioning the remainder of the indebtedness between the respective districts in proportion to the value of the school property in the new district.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919.

1030. Trustees issue interest-bearing warrants. That upon the adjustment of such indebtedness, it shall be the duty of the board of trustees of such new district to cause to be made out, issued, and delivered to the trustees of such old district, warrants equal to the amount of such indebtedness apportioned to such new districts, which warrants, upon presentation, shall be indorsed by the treasurer of the county, "not paid for want of funds," and shall thereafter draw interest at the rate of six per cent. per annum.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919.

Liability of district on paper executed by school district, see note in 21 L. R. A. (N. S.) 1078.

School districts as subject to garnishment, see notes in 51 A. S. R. 120, Ann. Cas. 510.

Right of school district to waive immunity from garnishment, see note in 2 L. R. A. 1586.

1031. County commissioners levy tax for interest-bearing warrants. Until said warrants are paid, it shall be the duty of the board of county commissioners of said county to annually levy a tax upon the taxable property of such new school district sufficient to pay the interest on said warrants, and the money realized from the levy of such taxes shall be, by the county treasurer, kept in a special fund to be used solely for the purpose of paying the interest and principal of said warrants.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919.

1032. Trustees may issue bonds. The school trustees of such new school district shall have, and are hereby given the power and authority, to issue on the credit of their district coupon bonds, and sell and dispose

of the same for the purpose of providing the necessary funds to pay such warrants. Such bonds shall be issued and disposed of upon the conditions and in the manner provided in section 1235 of this code, except that said bonds shall recite in the body of each bond that "This bond is issued for the purpose of providing funds to pay outstanding warrants."

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919.

1033. District boundaries. The boundaries of any district cannot be changed, save in forming new districts, except as herein provided. A majority of the resident freeholders residing in territory which is a part of any organized school district may present a petition in writing to the county superintendent, asking that such territory be transferred to or included in any other organized district to which said territory is contiguous. The petition shall prescribe the territory which it is proposed to transfer or include, and shall also state the reason for desiring such change, and the number of children of school age, if any, residing in the territory to be transferred or included.

The county superintendent shall file said petition in his office immediately on receipt thereof, and shall give notice to the parties interested by posting notices at least ten days prior to the time appointed for considering said petition, one of which shall be in a public place in the territory which is proposed to be transferred or included, and one on the door of each schoolhouse in each district affected by the change, or if there be no schoolhouse in such district, then in some public place in such district or districts, and at the time stated in said notice for the consideration of such petition, which shall not be less than ten days nor more than thirty days after the date of filing such petition, he shall proceed to hear such petition, and if he deem it advisable and for the best interests of the territory proposed to be transferred or included, he shall grant said petition and make an order fixing the boundaries of the districts so changed, which order shall be final, unless an appeal be taken to the board of county commissioners of the county wherein such districts are located within thirty days thereafter, and upon hearing thereof the decision of said board shall be final. All the papers, documents, and records in the case shall be certified by the county superintendent to the county commissioners for their determination of the matter on appeal; provided, that lands lying contiguous to a district and not attached to any district shall be attached to an adjacent district by the county superintendent of his own motion, and provided, further, that all districts shall consist of contiguous territory.

History: Ap. p. Sec. 1752, Pol. C. 1895; 406, Ch. 76, L. 1913; amd. Sec. 1, Ch. 112, re-en. Sec. 841, Rev. C. 1907; amd. Sec. L. 1915. Cal. Pol. C. Sec. 1577.

1034. Consolidated districts—Procedure in event of consolidation—Bonded debts. Two or more school districts may be consolidated, either by the formation of a new district, or by the annexation of one or more districts to an existing district, as hereinafter provided.

Whenever the county superintendent of schools receives a petition signed and acknowledged by a majority of the resident freeholders of each district affected, qualified to vote at school elections, praying for

consolidation, he shall within ten days cause a ten days' posted notice to be given by the clerk in each district, such notice to be posted in three public places, in each district, of an election in such district at a time and place specified in each notice to vote on the question of consolidation.

The votes at such election shall be by ballot, which shall read "For Consolidation" or "Against Consolidation." The presiding officer at such election shall, within ten days thereafter, certify the result of the vote to the county superintendent of the county in which the district mainly lies.

If the majority of the votes cast in each district be for consolidation, it carries, and the superitendent, within ten days thereafter, shall make proper orders to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder of each county in which any part of any district lies, and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the name and number of such district, and he shall appoint three trustees to serve until the first Saturday in April succeeding.

At the regular election succeeding there shall be elected by the regularly qualified electors three trustees, one of whom shall serve for one year, one for two years, and one for three years. The election of trustees and terms shall be the same as for other districts under the general school laws.

In case of annexation of any district or districts to any existing district, as herein provided, the proper officers of the annexed districts, within ten days from the receipt of a copy of such order, shall turn over to the proper officers of the district to which they are annexed, all records, funds, and effects of such annexed district. In case of the formation of a new district, the proper officers of the discontinued districts in like manner, within ten days after the organization of the new district, shall turn over the records, funds, and effects of such old districts to the proper officers of the new districts.

In case of consolidation of districts by annexation, the title to schoolhouses and sites of the separate districts shall vest in the new consolidated district, and the officers of the old district shall continue to exercise their duties until the officers of the new consolidated district have been elected and have qualified.

Consolidated school districts shall be governed by the general school laws of the state.

Bonded indebtedness of any districts merged by consolidation shall be assumed by the consolidated district.

History: En. Sec. 407, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1577.

1035. Joint districts—Formation, control, discontinuance. Joint districts (districts lying partly in one county and partly in another) may be formed in the same manner as other new districts are formed, except that the petition herein provided for must be made to the county superintendent of each county affected; but in the case of joint districts, all of the provisions herein enumerated for the formation of a new district must be by concurrent action of the superintendent of each county affected.

History: En. Sec. 408, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1577.

1036. Same—Apportionment of school money. Whenever a district lies partly in one county and partly in another, the county superintendent must apportion to such district such proportion of the school money to which such district is entitled as the number of school census children residing in that portion of the district situated in his county bears to the whole number of school census children in the whole district. The trustees and teachers of joint districts must make to the superintendent of each county in which the district is located the reports which other trustees and teachers are required to make, and also the number of pupils attending the school from each county, and all other acts which from their nature should be separately kept and done, as if each portion of said joint district belonging to each county were an entire district in the respective counties. The teachers of such joint district shall have certificates from the superintendent of the county in which the schoolhouse is located.

History: En Sec. 1755, Pol. C. 1895; re-en. Sec. 844, Rev. C. 1907; re-en. Sec. 408, Ch. 76, L. 1913.

1037. Discontinuance as joint district. Whenever the county superintendents of two or more counties having a joint district are agreed that there is no good and sufficient reason for the continuance of such district as a joint district, they may, after holding a hearing with the trustees of the district, certify in writing to the county commissioners of the several counties concerned, their reasons for desiring to discontinue such district as a joint district, who shall, within thirty days of receiving notice from the county superintendent, inform the county superintendent of their own county whether, in their judgment, the district should be discontinued as a joint district. If the several boards of county commissioners are agreed to the discontinuance of the district as a joint district, then the several county superintendents, each for her own county, shall proceed, either to organize a new district or districts, under the provisions of section 1024 or 1025, as the same may require, or to attach abandoned territory to adjacent district of the same county, under the provisions of section 1033.

History: En. Sec. 10, Ch. 196, L. 1919.

1038. Joint school districts on division by creation of new county. That all school districts in the state of Montana which have heretofore, or that may be hereafter divided by the creation of a new county under and by virtue of the provisions of chapter 112, laws of the twelfth legislative assembly, or chapter 133, laws of the thirteenth legislative assembly, or chapter 139, laws of the fourteenth legislative assembly, or chapter 226, laws of the sixteenth legislative assembly (4390-4407) shall be joint school districts and shall be subject to all laws of the state of Montana, relating to the management and control of joint school districts.

History: En. Sec. 1, Ch. 110, L. 1921.

1039. Maintenance of schools in isolated sections. In districts in which there may be an isolated section or sections where not less than four children reside, which sections are situated not less than five miles from the established school in such district, in which isolated section or

sections is maintained for not less than three months a school presided over by a regular qualified teacher for the benefit of all children of such section, the board of trustees of such district shall pay to the teacher of such school the apportionment of the school moneys for the census children so attending said school, and such other moneys as many be necessary for at least a four months' school; provided, in the judgment of the county superintendent of schools, the district has sufficient funds to support such school.

History: En. Sec. 608, Ch. 76, L. 1913; amd. Sec. 17, Ch. 196, L. 1919.

CHAPTER 80.

RURAL SCHOOL DISTRICTS.

Section 1040. Definition of Terms.
1041. Formation of Rural School Districts.
1042. County Unit System—Petition for Adoption—Election.
1043. Qualifications and Election of Trustees—Petitions for Nomination and Election.
1044. Powers and Duties of Trustees—Budget—Taxes—Bonds.
1045. Sinking Fund of Third-class Districts—Assumption of Indebtedness.
1046. Creation of Second-class Districts—Procedure.
1047. Annual Meeting of Trustees—Other Meetings—Traveling Expenses—Failure to Attend.
1048. Dissolution of Rural School Districts—Procedure to Effect.

1040. Definition of terms. The following terms shall be construed to mean:

The "rural school district" shall mean the territory obtained by the uniting of all third-class districts and parts of first or second-class districts as are not contiguous to main body of such districts.

"Subdivision" shall mean one of the five parts into which the "rural school district" is divided for purposes of election of trustees.

"Subdistrict" shall mean the local third-class district as constituted by chapter 76 of the session laws of the thirteenth legislative assembly. (See section 1021 of this code.)

History: En. Sec. 1, Ch. 211, L. 1919.

1041. Formation of rural school districts. In any county of Montana which shall elect to accept the provisions of this act, all school districts and parts of school districts of the third class, and minor portions of any district of the first and second class which are not contiguous to the main body of such districts, as herein provided, shall, for the purpose set forth in this act, from and after the first day of July next following the acceptance of this act, together constitute a single district to be known as the "Rural School District" of the county in which it is situated. Such rural school district shall be a unit for the purpose of taxation and issuance of bonds and such other purposes as are hereinafter provided, and shall be divided into subdivisions for the selection of trustees, and consist of subdistricts for the purposes of local management, local control, and custody of property. The boundaries of the subdivisions shall be determined by the board of county commissioners, who shall divide that portion of the county to be included in the rural school district of the county into five parts, which shall be known as subdivisions, each having as near as may be one-fifth of the total area of the rural school

district, and making the boundaries of these parts coincide with the boundaries of the subdistricts. All portions of first and second-class districts, which become a part of the rural school district as herein provided, shall be attached to adjacent subdistricts in the manner provided by law.

History: En. Sec. 2, Ch. 211, L. 1919.

1042. County unit system—Petition for adoption—Election. Any county in the state may adopt the county unit system for rural schools provided in the succeeding sections of this act, on the conditions hereinafter prescribed, as follows:

Whenever, between the first day of January and the first day of May in any year, three hundred electors residing in third-class school districts of any county shall petition the board of county commissioners, requesting that the county unit system for rural schools be established in such county, the county commissioners shall call an election to be held in all third-class districts of the county, and minor portions of districts of the first and second class which are not contiguous to the main body of such districts, within ninety days, and in any event not later than the tenth day of June following. The county commissioners shall appoint precinct judges and clerks, and the election shall be conducted in accordance with the general election law of the state, and the judges and clerks of such election shall serve without compensation. The place of election in each precinct shall be the established polling-place in each precinct. All registered electors residing in the proposed rural school district, and whose names appear upon the registration books of the county upon the day of calling such election, shall be entitled to vote upon such election. The polling-books of any precinct shall not contain the names of any registered electors residing in the main portion of any district of the first and second class. The county clerk shall give twenty days' notice of such election by publication in the official paper of the county, that the question of adopting the county unit system for rural schools will be submitted to the qualified electors in all third-class districts of the county, and in minor portions of districts of the first and second class which are not contiguous to the main body of such districts, at the time designated. It shall not be necessary to give notice of closing the registration books of the county in elections held pursuant to the provisions of this act. But the registration books of the county for such election shall automatically close upon the day of calling such election. The qualified electors of the proposed rural school district shall vote by ballot for or against the adoption of the county unit system for rural schools. An elector desiring to vote for such adoption shall do so by marking "X" on his ballot before the phrase "For the County Unit"; an elector desiring to vote against such adoption shall do so by marking "X" on his ballot before the phrase "Against the County Unit."

After the election the ballots shall be counted and the votes canvassed in the manner prescribed in the general election laws, and if a majority of the votes cast at the election is in favor of the county unit, the board of county commissioners shall make and enter an order creating such rural school district and establish the boundaries of each subdivision, and this act shall become effective in so far as the county is concerned.

If a majority of the votes cast at such election are against organization of the rural school district, another election upon the question of organizing a rural school district cannot be held until after the expiration of two years.

As soon as the board of county commissioners has for the first time established the boundaries of the subdivisions as hereinbefore provided, the said board of county commissioners shall thereupon appoint one elector from among the residents of each of the five subdivisions of the rural school district to constitute a board of trustees for the rural school district of the county. Of these five trustees so appointed, two shall serve until the first regular school election after their appointment, two until the second regular school election after their appointment, and one until the third regular school election after his appointment, the terms of trustees so appointed to be determined by lot.

History: En. Sec. 3, Ch. 211, L. 1919.

1043. Qualifications and election of trustees—Petitions for nomination and election. These trustees shall be electors of subdivision of the rural school district of the county in which they are to serve. Except as hereinbefore provided, such trustees shall be elected at the annual school election and shall serve for three years, and until their successors are elected or appointed and qualify.

On or before fifteen days prior to the annual school election, there may be filed with the secretary of the board of trustees of the rural school district, petitions signed by at least twenty-five qualified electors of each subdivision of the rural school district in which the term of a trustee is about to expire, nominating candidates for trustees to be voted for at the ensuing election, and if any trustees are to be elected to complete unexpired terms, as hereinafter provided, such petition shall state whether the persons nominated therein are nominated for such unexpired terms or for full terms of three years. The board of trustees shall cause the names of all candidates for trustees of the rural school district to be printed and sent to the clerk of each subdistrict of the part in which a trustee is to be elected, to be posted at each polling-place at least five days preceding the election. The election of school trustees shall be held and conducted under the supervision of the trustees of the local subdistrict, who shall, not less than fifteen days before the annual election, post notices in three public places in their subdistricts, which notices must specify the time and place of election and hours during which the polls will be open. The local trustees must appoint, by an order entered in their records, three qualified electors of said subdistricts to act as judges at said election, and the local clerk shall notify them by mail of their appointment. If the judges are not present at the time of opening the polls, the electors present may appoint judges, and the judges so appointed shall designate one of their number to act as clerk. The voting must be by ballot without reference to the general election laws in regard to nominations forms of ballots, or manner of voting, and the polls shall be open for such time as the board of trustees may order; provided, that such polls must be open between two p. m. and six p. m. It shall be the duty of the judges of the election to canvass the votes cast in their respective subdistricts for trustees, and make returns of

the same to the county clerk in the manner and form as may be prescribed by the general election law of the state, in so far as the same may be applicable to school elections. The returns shall be canvassed and the result declared by the county commissioners, and certificates of election issued by the county clerk in the same manner as may be prescribed by the general election laws of the state, in so far as the same may be applicable thereto; provided, that in the election of said board of trustees the votes cast in each of the five subdivisions of the rural school district shall be canvassed separately, and the candidate receiving the largest number of votes in any one subdivision shall be elected as the trustee for such subdivision; provided, further, that no one shall be eligible as trustee who is not at the time of his election or appointment a bona fide resident and elector of the subdivision of the rural school district for which he is elected.

Persons elected or appointed as trustees shall qualify by taking an oath to perform their duties according to law. Their oaths may be administered by the county superintendent, or any other officer authorized by law to administer oaths, and must be filed with the clerk of the board of trustees within fifteen days after the election or appointment, and said duly elected trustees shall begin their term of service on the third Saturday in April next following their election. The board of county commissioners shall appoint trustees to fill vacancies in the board of rural school district trustees; provided, that such appointment is confirmed by the majority of the remaining members of such board. Trustees so appointed shall serve till the next regular school election, at which election successors shall be elected to serve for the unexpired balance of the term if any.

History: En. Sec. 4, Ch. 211, L. 1919.

1044. Powers and duties of trustees—Budget—Taxes—Bonds. The board of trustees of every rural school district shall have only the powers and shall perform only the duties enumerated in this act. The board of trustees of each subdistrict of the rural school district shall have all the powers and perform all the duties imposed upon trustees of school districts according to the provisions of chapter 76 of the session laws of the thirtieth legislative assembly, and acts amendatory thereof and supplementary thereto, except as modified by the terms of this act.

The board of trustees of each subdistrict of the rural school district shall, on or before the regular annual meeting of the board of trustees of the rural school district held on the first Thursday in July, prepare and certify to the board of trustees of the rural school district, a budget containing an estimate of all the different items of expenditures for operation and maintenance to be incurred by such subdistricts for the ensuing school year. Such budget shall explain in detail the several items of estimated expenditures, together with an explanation of the necessity therefor. Such budget shall also be accompanied by a full and complete report of the school facilities of the subdistrict, and of the educational opportunities afforded to each child in such subdistrict.

For any extraordinary expenditure or expenditures for any purpose other than operation and maintenance to be incurred by a subdistrict, not included in the budget for such subdistrict as adopted by the board

of trustees of the rural school district, the board of trustees of such subdistrict may cause to be levied upon the property in the subdistrict a special tax pursuant to the provisions of section 1203 of this code.

The board of trustees of the rural school district shall, at its regular annual meeting on the first Thursday in July, examine the budgets certified to it by the trustees of the several subdistricts, and from such budgets shall prepared a complete budget for the rural school district, which shall provide for the furnishing of reasonable educational facilities to every child in the rural school district, including the payment of the board or rent or both, and transportation of children from isolated sections, in cases where the same is more expedient than maintaining a school in such isolated sections, and also including any other reasonable item of expenditure not herein enumerated, and necessary for carrying out the provisions of this act. Such budget shall contain the detailed estimated expenditures for each subdistrict.

The board of trustees of the rural school district shall, on or before the first Monday in August in each year, certify to the board of county commissioners the total amount of money to be raised by taxation for the rural school district pursuant to the budget adopted by the board, and the board of county commissioners shall cause to be levied, at the time of the levy of taxes for state and county purposes, a sufficient levy upon all of the taxable property within the rural school district, a tax sufficient to raise the amount of money so certified by the board of trustees of the rural school district, after allowing a deduction of ten per cent. on account of delinquencies. The board of trustees of the rural school district shall, at its regular meeting held on the second Thursday in December, apportion to the several subdistricts their proportionate part of the taxes then collected, such proportionate part to be determined in accordance with the budget as above mentioned.

The board of trustees of any rural school district is hereby vested with the power and authority to issue and negotiate, on the credit of the rural school district, coupon bonds for any one or more of the purposes authorized in section 1224 of this code. The question of such bond issues shall be submitted to the electors of the rural school district in the same manner provided by said section. The clerk of the board of trustees of the rural school district, upon the passing of the resolution by the board submitting to the electors of the rural school district the question of the issuance of bonds, shall furnish the clerk of each subdistrict with three copies of the notice of election of such bond issue. The clerk of each subdistrict shall, not less than fifteen days before the date specified in such notices for such election, post notices in three public places in said district, one of which shall be at the place of election designated in such notice. The ballots shall be substantially in the form provided in section 1225 of this code, and the votes shall be canvassed by the trustees in each subdistrict, who shall certify the result of the election in each subdistrict to the secretary of the board of trustees of the rural school district. If a majority of the votes cast in such rural school district are in favor of the issuance of bonds, the board of trustees shall thereupon proceed to issue and sell the bonds in accordance with the provisions of sections 1225 and 1226 of this code. The

county superintendent of schools shall be ex-officio secretary of the board, and it shall be his duty to enforce the rules, regulations, and orders of the board, but shall not be entitled to vote.

History: En. Sec. 5, Ch. 211, L. 1919.

1045. Sinking fund of third-class districts—Assumption of indebtedness. All maintenance money or sinking funds on hand as a surplus or credit to the various third-class districts in any county, prior to and on July first, of the year in which the provisions of this act shall be accepted in such county, as hereinabove provided, shall become a part of the corresponding maintenance or sinking funds of the rural school district of the county.

All the existing indebtedness of the various third-class districts in any county, prior to and on July first of such year, whether for maintenance or bonded indebtedness, or otherwise, shall become the indebtedness of and shall be assumed and paid by the rural school district of that county, such payments being made from the corresponding respective and proper funds. Said board of trustees in the rural school districts is authorized and empowered to issue bonds of the rural school district to take up and cancel such bonded indebtedness.

History: En. Sec. 6, Ch. 211, L. 1919.

1046. Creation of second-class districts—Procedure. Second-class districts may be created from the territory embraced in any rural school district, within the discretion of the board of trustees of such rural school district; provided, that such proposed district has an assessed valuation of not less than six hundred thousand dollars. Such district shall be created only upon the petition of one hundred qualified electors residing in the proposed district, setting forth in the petition the assessed valuation and the boundaries of the proposed district. In the event of the creation of such district, the county superintendent of schools shall, upon notice received from the board of trustees of the rural school district, appoint five trustees for the newly created district, who shall serve until the next regular election.

All school property situated in the new district shall become the property of the new district, and the remainder of the property of the rural school district shall continue to be the property of the rural school district.

If, at the time such new district is created, there is any indebtedness against the rural school district, then the board of county commissioners of the county in which such districts are located shall, at its first regular meeting after the order creating said new district is made, apportion such indebtedness between said districts, by first deducting from said indebtedness the amount of all moneys in the treasury belonging to the sinking fund of said rural school district, and then apportioning the remainder of the indebtedness between the respective districts in proportion to the value of the school property remaining in the rural school district to the value of the school property in the new district. Upon the adjustment of such indebtedness, it shall be the duty of the board of trustees of such new district to cause to be made out, issued, and delivered to the trustees of such rural school district, war-

rants equal to the amount of such indebtedness apportioned to such new district, which warrants, upon presentation, shall be indorsed by the treasurer of the county, "Not paid for want of funds," and shall thereafter draw interest at the rate of six per cent. per annum until such time as funds may be available for their payment.

Until said warrants are paid, it shall be the duty of the board of county commissioners of said county to levy annually a tax upon the taxable property of such new school district, sufficient to pay the interest on said warrants, and the money realized from the levy of such taxes shall be, by the county treasurer, kept in a special fund to be used solely for the purpose of paying the interest and principal of said warrants.

The school trustees of such new district shall have, and are hereby given the power and authority to issue, on the credit of their district, coupon bonds and to sell and dispose of the same for the purpose of providing the necessary funds to pay such warrants. Such bonds shall be issued and disposed of upon condition and in the manner provided in section 1235 of this code, except that said bonds shall recite in the body of such bond that "This bond is issued for the purpose of providing funds to pay outstanding warrants."

History: En. Sec. 7, Ch. 211, L. 1919.

1047. Annual meeting of trustees—Other meetings—Traveling expenses—Failure to attend. The regular annual meeting of the board of trustees of the rural school district shall be held on the first Thursday in July. At this meeting new members elected shall take office, a president shall be elected for the ensuing year by the board from among its own membership, and the executive officers of the board shall make their annual reports. Another regular meeting shall be held on the second Thursday in December, and special meetings may be called by the president, or by three other members of the board. Each member of the board of trustees of the rural school district shall be paid his necessary traveling expenses in attending regular meetings, but not to exceed two special meetings, and an honorarium of fifty dollars per year. Failure to attend two regular meetings in succession, unless excused on account of sickness, shall work a forfeiture of the office.

History: En. Sec. 8, Ch. 211, L. 1919.

Meaning of "necessary travel" as applied to mileage expenses of public officers, see note in Ann. Cas. 1918D, 934.

1048. Dissolution of rural school districts—Procedure to effect. A rural school district organized under the provisions of this act may be dissolved after the expiration of four years from the date of its organization, in the following manner, to-wit:

Whenever, between the first day of January and the first day of March in any year, three hundred registered electors in a rural school district shall petition the board of trustees of the rural school district requesting the dissolution of such school district, the board of trustees of the rural school district shall submit the question of such dissolution to the electors at the annual school election. Notices of election shall be posted in the same manner as for the election of trustees in the subdistricts, and the election shall be conducted and the votes canvassed in the manner provided in the election of school trustees. If a majority of

votes cast at such election shall be in favor of the dissolution of the rural school district, the board of trustees of the rural school district shall make an order to that effect and certify the same to the board of county commissioners, and on and after July first the rural school district shall be dissolved, and the several subdistricts shall thereupon become school districts of the third class. The board of county commissioners shall distribute funds of the rural school district, and apportion the indebtedness of the rural school district in the following manner: Each school district (formerly a subdistrict) shall thereupon become the owner of the property of the rural school district located within its boundaries. The county commissioners shall apportion to each school district that portion of the funds of the rural school district other than sinking funds, which is in proportion to the number of school census children within the school district. The county commissioners of the county shall continue to levy the taxes upon all the property located within the territory which formerly constituted the rural school district, until the interest and the principal of all bonds issued by the rural school district shall have been paid in full.

History: En. Sec. 9, Ch. 211, L. 1919.

CHAPTER 81.

CLERKS OF SCHOOL DISTRICTS.

Section 1049. Clerk—Duties of.
1050. Same—Accounts of Expenditures.
1051. Duty to Make School Census.
1052. Same—Report of Expenditures.

1049. Clerk—Duties of. The duties of the district clerk shall be as follows:

To attend all meetings of the board of trustees; but if he shall not be present, the board of trustees shall select one of their number as clerk, who shall certify the proceedings of the meeting to the clerk of the district to be recorded by him. He shall keep his record in a book to be furnished by the board of trustees, and he shall preserve a copy of all reports made to the county superintendent, and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successors.

History: Ap. p. Sec. 1830, Pol. C. 1895; amd. Sec. 6, p. 131, L. 1897; re-en. Sec. 899, Rev. C. 1907; amd. Sec. 1, Ch. 102, L. 1911; amd. Sec. 512, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1650.

The presentation of a claim to a clerk of a district is nugatory, and his assurance that the same would be paid does not bind the board. Kenyon-Noble Lumber Co. v. School District No. 4, 40 Mont. 123, 129, 105 Pac. 551.

1050. Same—Accounts of expenditures. To keep accurate and detailed accounts of all receipts and expenditures of school moneys. At each annual school meeting the district clerk shall present his record-book for public inspection, and shall make a statement of the financial condition of the district and the action of the trustees, and such record must always be open for public inspection.

History: Ap. p. Sec. 1830, Pol. C. 1895; amd. Sec. 6, p. 131, L. 1897; re-en. Sec. 899, Rev. C. 1907; amd. Sec. 1, Ch. 102, L. 1911; amd. Sec. 512, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1650.

1051. Duty to make school census. The clerk of the school district shall make annually, between the first day of September and the first day of October of each year, an exact census of all the children and youths between the age of six and twenty-one years residing in the district, and shall specify the sex, age, and date of birth of such children. He shall take the name of each child, the same to be spelled out in full, the Christian and surname of both parents, or guardians, and including initials of all middle names, together with the place of residence of said parents or guardians, specified by street and number, if living in city or town; or, if living in any other than a city, or town, the postoffice address of said parents or guardians must be given. In case families change residence from one district to another during September, children shall be listed in the district in which they will attend school. He shall take specifically and separately a census of all children under the age of six years as in the manner aforesaid. All children under twenty-one years of age who may be absent from home for any cause shall be included by the district clerk in the census list of the city, town, or district in which their parents reside. He shall make under oath two full reports for the county superintendent thereof on blanks furnished for this purpose to the county superintendent, within fifteen days after the completion of the census, and deliver a copy to the school trustees. Failure to make such report as specified shall constitute a misdemeanor, and shall be punished by a fine of not less than ten dollars nor more than fifty dollars. For taking the census the district clerk shall be paid by the board of trustees from the county school money, to the credit of the district, in the same manner as other contingent expenses are paid, at a rate not exceeding ten cents for each child's name returned by him. He shall receive such other compensation for other services as may be allowed by the board of trustees. In case any district clerk shall fail to take the census provided in this act at a proper time, and if through such neglect the district fail to receive its apportionment of school moneys, said school clerk shall be individually liable to the district for the full amount so lost, and it may be recovered on a suit brought by any citizen of such district in the name and for the benefit of the district.

History: Ap. p. Sec. 28, p. 626, Cod. Stat. 1871; re-en. Sec. 27, p. 127, L. 1874; re-en. Sec. 1114, 5th Div. Rev. Stat. 1879; re-en. Sec. 1886, 5th Div. Comp. Stat. 1887; amd. Sec. 1830, Pol. C. 1895; amd. Sec. 6, p. 131, L. 1897; amd. Sec. 5, p. 122, L. 1901; amd. Sec. 1, Ch. 97, L. 1907; re-en. Sec. 899, Rev. C. 1907; amd. Sec. 1, Ch. 102, L. 1911; re-en. Sec. 512, Ch. 76, L. 1913; amd. Sec. 14, Ch. 196, L. 1919.

A school census kept as required by law is a public record, and admissible in evidence as prima facie evidence of the facts therein stated. State v. Vinn, 50 Mont. 27, 39, 144 Pac. 773.

Conclusiveness of school census enumeration made by proper authorities, see note in Ann. Cas. 1913B, 1270.

1052. Same—Report of expenditures. The clerk of the school district shall make annually, between the first and twentieth days of July of each year, an exact detailed and itemized statement of all moneys expended by or in behalf of the school district, which statement shall show all receipts and disbursements made on behalf of the school district from July first of the preceding year to July first of the current year. In districts where the annual expenditures are less than five thousand dollars per annum, the clerk shall prepare and file with the board

a detailed and itemized statement of all moneys expended, showing the number of warrants, together with the date thereon, to whom such warrant was paid, the amount of such warrant, and the purpose for which such warrant was drawn, and shall post a copy of such statement in three conspicuous places in the district, one of which shall be on the schoolhouse of the district, and in all districts disbursing annual amounts exceeding five thousand dollars he shall file with the county superintendent a copy of said statement not later than the first week in August.

History: En. Sec. 4, Ch. 102, L. 1911; amd. Sec. 512, Ch. 76, L. 1913; amd. Sec. 15, Ch. 196, L. 1919.

CHAPTER 82.

GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS.

Section 1053. School Defined.
1054. Course of Study in Elementary Schools.
1055. Sectarian Publications Prohibited.
1056. Who May Attend.
1057. Kindergarten Free.
1058. High Schools.

1053. School defined. A public school is hereby defined to be one that is maintained at the public expense in each school district, and under the supervision of the board of trustees, and shall comprise the elementary grades, and may comprise in addition, at option of the board, the kindergarten and high school grades.

History: Ap. p. Sec. 32, p. 627, Cod. Stat. 1871; re-en. Sec. 31, p. 128, L. 1874; re-en. Sec. 1118, 5th Div. Rev. Stat. 1879; re-en. Sec. 1890. 5th Div. Comp. Stat. 1887; re-en. Sec. 1860, Pol. C. 1895; re-en. Sec. 911, Rev. C. 1907; amd. Sec. 600, Ch. 76, L. 1913.

1054. Course of study in elementary schools. All public schools shall be taught in the English language, and instruction shall be given in the following branches, viz.: Reading, penmanship, written arithmetic, mental arithmetic, orthography, geography, English grammar, physiology and hygiene, with special reference to the effect of alcoholic stimulants and narcotics on the human system, civics (state and federal), United States history, the history of Montana, and elementary agriculture.

History: Ap. p. Sec. 33, p. 627, Cod. Stat. 1871; re-en. Sec. 32, p. 128, L. 1874; re-en. Sec. 1119, 5th Div. Rev. Stat. 1879; re-en. Sec. 1891, 5th Div. Comp. Stat. 1887; amd. Sec. 1861, Pol. C. 1895; amd. Sec. 1, Ch. 23, L. 1903; re-en. Sec. 912, Rev. C. 1907; amd. Sec. 601, Ch. 76, L. 1913; amd. Sec. 1, Ch. 127, L. 1917. Cal. Pol. C. Secs. 1664-1665.

Studies and text-books in public schools, see 24 R. C. L. 633.

1055. Sectarian publications prohibited. No publication of a sectarian, partisan, or denominational character shall be used or distributed in any school, or be made a part of any school library; nor shall any sectarian or denominational doctrines be taught therein.

History: Ap. S. Sec. 35, p. 628, Cod. Stat. 1871; re-en. Sec. 34, p. 129, L. 1874; re-en. Sec. 1121, 5th Div. Rev. Stat. 1879; re-en. Sec. 1893, 5th Div. Comp. Stat. 1887; amd. Sec. 1863, Pol. C. 1895; re-en. Sec. 914, Rev. C. 1907; re-en. Sec. 609, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1672.

Religious exercises or instruction in public schools, see notes in 105 A. S. R. 152, 16 L. R. A. (N. S.) 860, L. R. A. 1915D, 941.

Wearing by teacher of sectarian religious garb in public school, see notes in 6 Ann. Cas. 435, Ann. Cas. 1912A, 428, 7 L. R. A. (N. S.) 403.

1056. Who may attend. Every public school not otherwise provided for by law shall be open to the admission of all children between the age of six and twenty-one years residing in the school district, and the board of trustees shall have the power to admit children not residing in the district as hereinbefore provided; provided, however, that trustees may establish continuation schools, part-time and night schools for persons over twenty-one years of age; provided, that none of the funds apportioned under section 202, subdivision 12 of this act (section 945 of this code) shall be expended for such purposes.

History: Ap. p. Sec. 911, Rev. C. 1907; amd. Sec. 16, Ch. 196, L. 1919. Cal. Pol. C. Sec. 1662. its history to that time is the same as that of Sec. 1053; re-en. Sec. 604, Ch. 76, L. 1913;

1057. Kindergarten free. The school board of any school district in the state shall have power to establish and maintain free kindergartens in connection with the public schools of said district, for the instruction of children between three and six years residing in said district, and shall establish such course of training, study, and discipline, and such rules and regulations governing such preparatory or kindergarten schools, as said board may deem best; provided, that nothing in this act shall be construed to change the law relating to the taking of the census of the school population or the apportionment of state and county school funds among the several counties and districts in the state; provided, further, that the cost of establishing and maintaining such kindergartens shall be paid from the school funds of said district, and the said kindergartens shall be a part of the public school system and governed, as far as practicable, in the manner and by the same officers as is now or hereafter may be provided by law for the government of the other public schools of the state; provided, further, that the teachers of kindergarten schools shall pass such examination on kindergarten work as the kindergarten department of the state normal school may direct; provided, that a certificate from a kindergarten teacher's institute of recognized standing shall be recognized by the state normal school.

History: En. Sec. 1, p. 64, L. 1899; re-en. Sec. 916, Rev. C. 1907; amd. Sec. 602, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1662.

1058. High schools. Boards of trustees have power to establish a high school as hereinbefore provided.

History: En Sec. 603, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1669.

CHAPTER 83.

SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—PIONEER AND ARBOR DAY.

Section 1059. School Day.
1060. School Month—Legal Holiday.
1061. School Year.
1062. Legal Holidays.
1063. Pioneer Day—How Observed.
1064. Exercises in Public Schools.
1065. Pioneer Medal.
1066. Copies of Essays to Be Deposited With State Historical Library.
1067. Courses of Exercises.
1068. Arbor Day—Date of.
1069. Arbor Day Exercises.
1070. Course of Exercise.

1059. School day. The school day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees in any district having a population of five hundred or more may fix as the school day a less number of hours than six; provided, that it be not less than four hours, except in the lowest primary grades, where the pupils may be dismissed after an attendance of three hours.

History: Ap. p. Sec. 36, p. 628, Cod. Stat. 1871; re-en. Sec. 35, p. 129, L. 1874; re-en. Sec. 1122, 5th Div. Rev. Stat. 1879; re-en. Sec. 1894, 5th Div. Comp. Stat. 1887; amd. Sec. 1862, Pol. C. 1895; amd. Sec. 7, p. 132, L. 1897; re-en. Sec. 913, Rev. C. 1907; re-en. Sec. 605, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1673.

1060. School month—Legal holiday. In every contract between any teacher and board of trustees, a school month shall be construed as twenty school days, or four weeks of five days each, and no teacher shall be required to teach school on a legal holiday, except as hereinafter provided, and no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be a legal holiday. Any contract made in violation of this section shall have no force or effect as against the teacher.

History: Ap. p. Sec. 40, p. 629, Cod. Stat. 1871; re-en. Sec. 39, p. 131, L. 1874; re-en. Sec. 1126, 5th Div. Rev. Stat. 1879; re-en. Sec. 1898, 5th Div. Comp. Stat. 1887; re-en. Sec. 1843, Pol. C. 1895; re-en. Sec. 904, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1909; amd. Sec. 807, Ch. 76, L. 1913; amd. Sec. 1, Ch. 240, L. 1921. Cal. Pol. C. Sec. 1697.

Cited or applied as Laws of 1909, p. 33, before amendment, in Finley v. School District No. 1, 51 Mont. 411, 414, 153 Pac. 1010.

Right of school teacher to salary on holiday, see notes in 50 L. R. A. 374, 38 L. R. A. (N. S.) 514.

Right of teacher to compensation while school is closed, see note in 6 L. R. A. 742.

1061. School year. The school year shall begin on the first day of July and end on the thirtieth day of June; provided, that in districts of the third class, the schools shall be in session not less than four months in any school year, and in districts of the first and second classes the schools shall be in session not less than nine months during any school year; provided, further, that any school district of the third class which shall fail to maintain a free school for four months during the next preceding school year, and any district of the first or second class which shall fail to maintain a free school for at least nine months during the next preceding year, or any school district that shall fail to make its annual report to the county superintendent as provided by law, on or before August first of each year, shall not be entitled to receive any apportionment of any school moneys. Any and all such moneys thus forfeited by any school district shall be apportioned by the county superintendent to other school districts of his county.

History: Ap. p. Sec. 1864, Pol. C. 1895; re-en. Sec. 915, Rev. C. 1907; amd. Sec. 607, Ch. 76, L. 1913; amd. Sec. 4, Ch. 81, L. 1917. Cal. Pol. C. Sec. 1878.

Cited or applied, before amendment, in Finley v. School District No. 1, 51 Mont. 411, 413, 153 Pac. 1010.

1062. Legal holidays. No school shall be in session on the following holidays: New Year's day, Memorial day (May 30th), Independence day (July 4th), Labor day (first Monday in September), Thanksgiving day, or Christmas day; provided, however, that in school districts

where the school building must be used for election purposes, state and national election day shall be deemed a legal holiday under the provisions of this act. No school shall be dismissed on the following holidays, but appropriate exercises as a part of the day's program shall be held in each school when school is in session, on each of the said holidays, and where such holidays fall on Saturday or Sunday such exercises shall be conducted on the Friday preceding such holiday: Lincoln's Birthday (February 12th), Washington's Birthday (February 22d), Arbor day (second Tuesday of May), Flag day (June 14th), Columbus day (October 12th), Pioneer day (November 1st), Armistice day (November 11th), and such other days as may hereafter be designated as legal holidays by the legislature or governor.

History: En. Sec. 1300, Ch. 76, L. 1913; amd. Sec. 2, Ch. 240, L. 1921.

1063. Pioneer day, how observed. The first Monday of November of each year shall be designated and known as Pioneer day in the state of Montana.

History: En. Sec. 1, Ch. 88, L. 1903; Ch. 35, L. 1909; amd. Sec. 1400, Ch. 76, re-en. Sec. 1025, Rev. C. 1907; amd. Sec. 1, L. 1913.

1064. Exercises in public schools. On said Pioneer day in the public schools the afternoon thereof shall be devoted to the study and discussion of pioneers and pioneer history of the region of country now comprising the state of Montana.

History: En. Sec. 2, Ch. 88, L. 1903; re-en. Sec. 1026, Rev. C. 1907; amd. Sec. 1400, Ch. 76, L. 1913.

1065. Pioneer medal. The state board of education is hereby authorized to award annually its pioneer medal to the student of the public schools or state institutions who shall, on said day deliver the best essay on such subject of pioneer history, having regard to historical research and literary merit.

History: En. Sec. 3, Ch. 88, L. 1903; re-en. Sec. 1027, Rev. C. 1907; re-en. Sec. 1400, Ch. 76, L. 1913.

1066. Copies of essays to be deposited with state historical library. Copies of such essays shall be filed by the said state board of education with the librarian of the historical and miscellaneous department of the state library.

History: En. Sec. 4, Ch. 88, L. 1903; Ch. 35, L. 1909; re-en. Sec. 1400, Ch. 76, re-en. Sec. 1028, Rev. C. 1907; amd. Sec. 1, L. 1913.

1067. Courses of exercises. The superintendent of public instruction shall have power and it shall be its duty to prescribe from year to year a suitable course of exercises to be observed in the public schools of the state on Pioneer day.

History: En. Sec. 5, Ch. 88, L. 1903; Ch. 35, L. 1909; amd. Sec. 1, Ch. 51, L. re-en. Sec. 1029, Rev. C. 1907; amd. Sec. 1, 1911; re-en. Sec. 1400, Ch. 76, L. 1913.

1068. Arbor day—Date of. The second Tuesday of May in each year shall be known throughout the state of Montana as Arbor day.

History: En. Sec. 2040, 5th Div. Comp. Stat. 1887; amd. Sec. 1990, Pol. C. 1895; amd. Sec. 1, Ch. 11, L. 1907; re-en. Sec. 1022, Rev. C. 1907; amd. Sec. 1, Ch. 83, L. 1909; re-en. Sec. 1401, Ch. 76, L. 1913. Related section: 3634.

1069. Arbor day exercises. In order that the children in our public schools shall assist in the work of adorning the school grounds with trees, and to stimulate the minds of the children toward the benefit of preservation and perpetuation of our forests and the growing of timber, it shall be the duty of the authorities in every public school district in the state to assemble the children in their charge on the above day in the school building or elsewhere, as they may deem proper, and to provide for and conduct under the general supervision of the city superintendent, county superintendent, teachers and trustees or other school authorities having the general charge and oversight of the public schools in each city or district such exercises as shall tend to encourage the planting, preservation and protection of trees and shrubs, and an acquaintance with the best methods to be adopted to accomplish such results.

History: En. Sec. 1991, Pol. C. 1895; re-en. Sec. 1023, Rev. C. 1907; re-en. Sec. 1401, Ch. 76, L. 1913.

1070. Course of exercise. The superintendent of public instruction shall have power to prescribe from year to year a course of exercises and instruction in the subject hereinbefore mentioned, which shall be adopted and observed by the said public school authorities on Arbor day.

History: En. Sec. 1992, Pol. C. 1895; re-en. Sec. 1024; Rev. C. 1907; re-en. Sec. 1401, Ch. 76, L. 1913.

CHAPTER 84.

INSTRUCTION IN FIRE DANGERS AND PREVENTION OF COMMUNICABLE DISEASES.

Section 1071. Fire-Drills.
1072. Instruction in Fire Dangers and Prevention Thereof.
1073. Prevention of Communicable Diseases.

1071. Fire-drills. In all schools of the state, either public or private, in which thirty or more children are enrolled it shall be the duty of the teacher or teachers therein employed to instruct the children under their immediate control and charge once each week during school terms in "fire-drill" as hereinafter provided.

A fire-alarm shall be given by striking a gong, and immediately upon such alarm the children shall be required to form immediately in line and leave the building in an orderly manner, through the exit and exits that will most expeditiously clear the building. There shall be no certain day of the week or hour of the day for giving such alarm, and it shall be given without previous warning to the children.

It shall be the duty of the trustees or directors, or other persons having control and management of any school building of the class mentioned herein, to provide one or more gongs therefor, to be placed in such a manner that any teacher may give an alarm without leaving the room, or that such alarm could be given from the basement. Each member of any board of trustees or directors, or any other person whose duty it is to install said gongs as herein provided, who fails or refuses so to do, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars.

Any teacher who fails or refuses to instruct in said fire-drill in the manner provided for in this chapter, after the installation of gongs, as

above provided, shall be deemed guilty of a misdemeanor, and shall upon conviction be fined not less than five nor more than twenty-five dollars.

History: En. Sec. 610, Ch. 76, L. 1913.

1072. Instruction in fire dangers and prevention thereof. Every teacher or instructor in every public, private, or parochial school of elementary grade, consisting of more than ten pupils, shall devote not less than ten minutes in each week during which school is in session to the instruction of pupils in fire dangers.

For the purpose of such instruction it shall be the duty of the commissioner of insurance to prepare a book, conveniently arranged in chapters or lessons, such chapters or lessons to be in number sufficient to provide a different chapter or lesson for each week of the maximum school year, one of such lessons to be read by the teachers in such school each week; provided, that if it is advisable, and found possible, to secure such lessons as may have been prepared for this purpose, or in use in another state, the same may be used in this state.

This book shall be published at the expense of the state from the amount appropriated for public printing, under the direction of the state superintendent of public instruction, and shall be distributed in quantities sufficient to provide a copy for each teacher required by the provisions of this chapter to give the instruction herein provided for; the distribution to be made by the state superintendent of public instruction.

Wilful neglect by any principal, or other person in charge of any public, private, or parochial school of the elementary grades to comply with the provisions of this chapter, shall be a misdemeanor, punishable for each offense by a fine of not less than five dollars nor more than twenty dollars.

History: En. Sec. 1, Ch. 24, L. 1911; re-en. Sec. 611, Ch. 76, L. 1913.

1073. Prevention of communicable diseases. There shall be taught in every year in every public school of elementary grade in Montana the principal modes by which each of the dangerous communicable diseases spread, and the method for the restriction and prevention of each such diseases as smallpox, diphtheria, scarlet fever, measles, tuberculosis, chicken-pox, and such other diseases as may be named and attention called to the same by the board of health of this state.

School boards shall annually send to the public school superintendents and teachers throughout the state printed data and statements which will enable them to comply with the provisions of this chapter.

School boards are hereby required to direct superintendents and teachers to give oral and blackboard instruction, using the data and statements supplied by the state board of health.

Neglect or refusal on the part of any superintendent or teacher to comply with the provisions of this chapter shall be considered a sufficient cause for dismissal from the school by the school board.

Any member of any school board who shall wilfully neglect or refuse to comply with any provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be subject to punishment by a fine not exceeding one hundred dollars.

History: En. Sec. 1, Ch. 27, L. 1909; amd. Sec. 612, Ch. 76, L. 1913.

CHAPTER 85

TEACHERS—CERTIFICATE OF QUALIFICATION—POWERS AND DUTIES.

Section 1074. Certificate of Qualification.
1075. Tenure of Office of Teachers.
1076. Powers.
1077. Duties.
1078. Reports.
1079. Moral and Civic Instruction.
1080. Care of School Grounds, etc.
1081. Corporal Punishment.
1082. Abuse of Teachers by Parents and Others.
1083. Disturbance of Public Schools.
1084. Undue Punishment of Pupils.
1085. Dismissal—Appeal.
1086. Normal Training Required for Teachers' Certificates.
1087. Suspension of Teachers' Certificates.

1074. Certificate of qualification. No certificate to teach in the public schools of Montana shall be granted to any person who is not a citizen, or has not declared his intention of becoming a citizen; provided, that when such certificate to teach in the public schools in the state shall be issued to any person who shall not within seven years become a citizen, such certificate shall be automatically revoked and such person shall be ineligible to receive a certificate until he becomes a full citizen.

No person is eligible to teach in any public school in this state, or to receive a certificate to teach, who has not attained the age of eighteen years, and who has not secured a health certificate from a reputable physician.

No person shall be accounted a qualified teacher, within the meaning of the school law, who has not first secured from the state board of educational examiners a certificate setting forth his qualifications; or who has not secured a temporary certificate from the state board of educational examiners; or who has not a certificate indorsed by the county superintendent of schools; or who has not a state or life certificate issued by the state board of educational examiners; or who has not a temporary state certificate issued by the state superintendent; or who does not hold a certificate from the state normal college; or who has not a university certificate of qualification to teach. Upon the request of any board of school district trustees, or its representatives, or any county superintendent of schools, the state board of educational examiners may grant, without examination, a special certificate valid only in the district requesting the same, in music, drawing, elocution, physical culture, penmanship, manual training, domestic science, agriculture, commercial and kindred subjects, first three-year primary and kindergarten grades to any teacher who presents satisfactory evidence of special proficiency for teaching the above subjects, as shown by any certificate or credentials held by such teacher; provided, that such special certificates shall be valid for only one year, and on the payment of one dollar into the state teachers' certificate fund shall entitle the holder to teach only such special subjects as are stated in said certificate; provided, that if the applicant continues teaching in the same district more than one year, upon the renewed application to the state board of educational examiners, and upon the payment of a fee of three dollars into the state teachers' certifi-

cate fund, said special certificate may become valid during the term of service in the same district; and provided that all certificates before they shall be valid in any county must be registered in the office of the county superintendent within ten days after the term of service of any teacher begins; and not more than ten days' salary shall be paid any teacher for services rendered previous to the registration of such certificate.

History: Ap. p. Secs. 901 and 959, Rev. C. 1907; amd. Sec. 800, Ch. 76, L. 1913; amd. Sec. 18, Ch. 196, L. 1919.

Power of local school authorities to prescribe qualifications or conditions of employment of teachers, other than those prescribed by statute, see note in L. R. A. 1917E, 1073.

1075. Tenure of office of teachers. After election of any teacher or principal for the second consecutive year in any district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter unless the board of trustees shall, by a majority vote of its members on or before the first day of May, give notice in writing to such teacher or principal that his services will not be required for the ensuing year; provided, that in case of principals in charge of school systems such notice shall be given on or before February first.

History: En. Sec. 801, Ch. 76, L. 1913.

Where a school teacher was re-employed for the second time before the enactment of the general school code of 1913, the court under this section properly sustained a general demurrer to her complaint in an action against the school board for breach of contract. Falligan v. School District, 54 Mont. 177, 179, 169 Pac. 803.

Appointment or employment of teacher for period extending beyond term of trustees, see note in 16 L. R. A. 257.

1076. Powers. Every teacher shall have power to hold every pupil to a strict accountability in school for any disorderly conduct on the way to or from school, or during intermission or recess, and to suspend from school any pupil for good cause; provided, that suspension shall be reported to the trustees as soon as practicable for their decision; provided, further, that in school districts employing a superintendent or principal, the power of suspension shall be vested in the superintendent or principal as directed by the rules of the board.

History: Ap. p. Sec. 41, p. 629, Cod. Stat. 1871; re-en. Sec. 40, p. 132, L. 1874; re-en. Sec. 1127, 5th Div. Rev. Stat. 1879; re-en. Sec. 1899, 5th Div. Comp. Stat. 1887; amd. Sec. 1844, Pol. C. 1895; re-en. Sec. 905, Rev. C. 1907; amd. Sec. 802, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1696.

Power to expel or suspend pupil from school, see notes in 102 A. S. R. 540, 15 Ann. Cas. 404, Ann. Cas. 1918A, 400.

Grounds for suspension or expulsion of pupil, see note in 65 A. S. R. 330.

Parent's right to sue for damages for expulsion of pupil, see note in 12 Ann. Cas. 406.

1077. Duties. Teachers shall faithfully enforce in school the course of study and regulations prescribed, and if the teacher shall refuse or neglect to comply with such regulations, then the board of trustees shall be authorized to withhold any warrant for salaries due until such teacher shall comply therewith.

It shall be the duty of the teacher of every public school in this state to keep, in a neat and businesslike manner, a daily register in such form and upon such blanks as shall be prepared by the superintendent of public instruction, and no board of trustees shall draw any warrant for the salary of any teacher for the last month of his services in the school at the end of any term or year, until they shall have received a certificate

from the district clerk that the said register has been properly kept, the summaries made, and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done.

History: Ap. p. Sec. 39, p. 629, Cod. Stat. 1871; re-en. Sec. 38, p. 131, L. 1874; re-en. Sec. 1125, 5th Div. Rev. Stat. 1879; re-en. Sec. 1897, 5th Div. Comp. Stat. 1887; amd. Sec. 1842, Pol. C. 1895; re-en. Sec. 903, Rev. C. 1907; amd. Sec. 803, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1696.

1078. Reports. Every teacher employed in any public school shall make an annual report to the county superintendent on or before the tenth day of July next after the close of the school year, in the form and manner and on the blanks prescribed by the superintendent of public instruction. A copy of such report shall be furnished to the district clerk. Any teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close of such term, and any teacher who may be teaching any school at the close of the school year shall in his annual report include all statistics from the school register for the entire school year, notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as shall be required in pursuance of law by the superintendent of public instruction. No board of trustees shall draw any order or warrant for the salary of any teacher, for the last month of his services until the reports herein required shall have been made and received; provided, that in all schools acting under the direction of a city superintendent, teachers shall be required to report to such superintendent, whose report shall be accepted by the county superintendent and by the trustees in lieu of the teachers' reports; and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teachers' reports.

History: Ap. p. Sec. 38, p. 628, Cod. Stat. 1871; re-en. Sec. 37, p. 130, L. 1874; re-en. Sec. 1124, 5th Div. Rev. Stat. 1879; re-en. Sec. 1896, 5th Div. Comp. Stat. 1887; amd. Sec. 1841, Pol. C. 1895; re-en. Sec. 902, Rev. C. 1907; amd. Sec. 803, Ch. 76, L. 1913; amd. Sec. 5, Ch. 81, L. 1917. Cal. Pol. C. Sec. 1696.

1079. Moral and civic instruction. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood; to instruct them in the principles of free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship.

History: En. Sec. 42, p. 630, Cod. Stat. 1871; re-en. Sec. 41, p. 132, L. 1874; re-en. Sec. 1128, 5th Div. Rev. Stat. 1879; re-en. Sec. 1900, 5th Div. Comp. Stat. 1887; re-en. Sec. 1845, Pol. C. 1895; re-en. Sec. 906, Rev. C. 1907; re-en. Sec. 803, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1667.

1080. Care of school grounds, etc. It shall be the duty of the teacher to exercise due diligence in the care of school grounds and buildings, furniture, apparatus, books, and supplies.

History: En. Sec. 803, Ch. 76, L. 1913.

1081. Corporal punishment. Whenever it shall be deemed necessary to inflict corporal punishment on any student in the public schools, such punishment shall be inflicted without undue anger and only in the presence of teacher and principal, if there be one, and then only after notice to the parent or guardian; except that in cases of open and flagrant

defiance of the teacher or the authority of the school, corporal punishment may be inflicted by the teacher or principal without such notice.

History: En. Sec. 803, Ch. 76, L. 1913.

Right of school teacher to inflict corporal punishment on pupil, see notes in 31 Am. Dec. 491, 102 A. S. R. 537, 12 Ann. Cas. 353, 1 B. R. C. 718.

1082. Abuse of teachers by parents and others. Any parent, guardian, or other person, who shall insult or abuse a teacher in the presence of the school, or anywhere on the school grounds or school premises, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than ten dollars nor more than one hundred dollars.

History: Ap. p. Sec. 57, p. 634, Cod. Stat. 1871; re-en. Sec. 56, p. 137, L. 1874; re-en. Sec. 1143, 5th Div. Rev. Stat. 1879; re-en. Sec. 1915, 5th Div. Comp. Stat. 1887; amd. Sec. 2022, Pol. C. 1895; re-en. Sec. 1038, Rev. C. 1907; amd. Sec. 803, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1867.

Related section: 11527.

1083. Disturbance of public schools. Any person who shall wilfully disturb any public school or any public school meeting, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than ten dollars nor more than one hundred dollars.

History: En. Sec. 58, p. 634, Cod. Stat. 1871; re-en. Sec. 57, p. 138, L. 1874; re-en. Sec. 1144, 5th Div. Rev. Stat. 1879; re-en. Sec. 1916, 5th Div. Comp. Stat. 1887; re-en. Sec. 2023, Pol. C. 1895; re-en. Sec. 1039, Rev. C. 1907; re-en. Sec. 803, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1868.

School session as a meeting within purview of offense of disturbing meeting, see note in 30 L. R. A. (N. S.) 832.

Intent as element of offense of disturbing meeting, see note in Ann. Cas. 1914B, 741.

1084. Undue punishment of pupils. Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars.

History: En. Sec. 1846, Pol. C. 1895; re-en. Sec. 907, Rev. C. 1907; re-en. Sec. 804, Ch. 76, L. 1913.

Liability of teacher for personal injury to pupil in inflicting corporal punishment, see notes in 102 L. R. A. 540, 65 L. R. A. 891.

1085. Dismissal—Appeal. In the case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and board of trustees for alleged immorality, unfitness, incompetence, or violation of rules, the teacher may appeal to the county superintendent; and if the superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal.

History: En. Sec. 1848, Pol. C. 1895; re-en. Sec. 909, Rev. C. 1907; re-en. Sec. 805, Ch. 76, L. 1913. Cal. Pol. C. Sec. 1698.

Right of teacher to appeal to courts to interfere with revocation of license, see note in 14 Ann. Cas. 298, 15 L. R. A. (N. S.) 1148.

1086. Normal training required for teacher's certificate. After July first, 1920, no person shall be given a regular certificate to teach, who has not had at least twelve weeks of normal training work.

History: En. Sec. 8, Ch. 114, L. 1917.

1087. Suspension of teachers' certificates. Should any teacher employed by the board of school trustees for a specified time, leave the

school before the expiration of such time, without the consent of the trustees in writing, said teacher shall be guilty of unprofessional conduct, and the state board of educational examiners may, upon receiving notice of such fact, suspend the certificate of such teacher for the period of six months, if said teacher is a holder of a second-grade, first-grade, or professional certificate. Should such teacher be the holder of a state or life certificate, the county superintendent shall report the delinquency of the teacher to the state board of educational examiners, who may suspend said certificate for the period of one year.

History: En. Sec. 1849, Pol. C. 1895; 806, Ch. 76, L. 1913; amd. Sec. 19, Ch. 196, re-en. Sec. 910, Rev. C. 1907; amd. Sec. L. 1919.

CHAPTER 86.

STATE AND COUNTY EXAMINATIONS AND CERTIFICATES.

Section 1088. State Board of Educational Examiners.
1089. State Teachers' Certificate Fund.
1090. Examination of Teachers.
1091. Grading of Papers.
1092. County Board of Educational Examiners.
1093. Qualifications of County Board of Educational Examiners.
1094. Duties of County Board of Educational Examiners.
1095. Compensation of Board of Examiners.
1096. Certificates—Second and First Grade, Professional and Temporary.
1097. Fees for Certificates.
1098. Re-Canvass of Papers on Appeal.
1099. Revocation of Certificates.
1100. Renewals.
1101. Higher Grade Certificate, How Secured.
1102. University Credits Acknowledged.
1103. Existing Certificates Validated.
1104. Principals' and High School Teachers' Certificates.

1088. State board of educational examiners. There is hereby created a state board of educational examiners, whose duty it shall be, subject to the regulations of the state board of education, to provide rules for the issuance of all teachers' certificates, prepare questions for teachers' examinations, and oversee the marking and grading of papers, both county and state.

This board of educational examiners shall be composed of the superintendent of public instruction, who shall be ex-officio chairman of the board, one member from the faculty of one of the component institutions of the university of Montana, one county superintendent of schools, one high school principal, and one district superintendent, all four to be elected by the state board of education upon the nomination of the superintendent of public instruction at the June meeting of the board. All appointments shall be for two years except two of the first appointments, which two shall be for one year. All vacancies shall be filled for the unexpired term. The members shall serve without pay except for necessary expenses, and any bills incurred by them must be paid out of the moneys received as fees for certificates.

History: Ap. p. Sec. 900, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919.

1089. State teachers' certificate fund. All fees for certificates shall be deposited with the state treasurer and kept in a fund to be known as the state teachers' certificate fund, and no claims shall be paid from this fund except on warrants drawn by the state auditor upon claims approved by

the state board of examiners and the state superintendent of public instruction.

History: Ap. p. Sec. 900, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919.

1090. Examination of teachers. The county board of educational examiners shall hold public examinations of all persons over eighteen years of age offering themselves as candidates for teachers of public schools at the county seat, on the first Thursday and Friday of June and December of each year, and, when necessary, such examinations may be continued on the following day, at which time the board shall examine such candidates by a series of written or printed questions, according to rules prescribed by the state board of educational examiners. The questions prepared by the state board of educational examiners, when received by the county superintendent, shall not be opened or the seal thereof broken until the day of the examination, and then in the presence of the applicants. And the county superintendent is prohibited from furnishing or giving to any person or persons any information concerning the questions prepared by the state board of educational examiners. Upon the completion of the examination, all papers written by the several applicants, together with statements covering such points in the candidates' preparation and experience as the state board of educational examiners may require, and personal information or recommendations by the county board of educational examiners, shall be forwarded at once to the state board of educational examiners for grading.

If the attendance upon any examination of teachers at the county seat shall work a great hardship to any teacher in the county, the county superintendent, upon the approval of the state superintendent, may provide for such teachers to take the examination at some convenient place, and the county superintendent may appoint some suitable person to conduct such examination, under the rules and regulations prescribed by the state board of educational examiners.

History: Ap. p. Sec. 900, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919.

1091. Grading of papers. If the percentage of correct answers is not less than seventy per cent. in any one branch, with a general average of eighty per cent., and other evidence disclosed by the examination, including particularly the state board's knowledge and information of the candidate's scholarship and successful experience, indicates that the applicant is a person of good moral character, and possesses ability to manage, and fitness to teach in the public schools of the state the various branches required by law, said state board shall grant to such applicants a certificate of qualification.

History: Ap. p. Sec. 900, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919.

1092. County board of educational examiners. In each county there shall be a board of county examiners, composed of the county superintendent of schools, who shall be ex-officio chairman of the board, and two competent persons to be appointed by the board of county commissioners, who, at the time of their appointment, shall be residents of the county and shall have been actively engaged in teaching for a period of at least eighteen months. Two members of this board shall constitute a quorum for the transaction of business. If vacancies occur in these positions

during the terms for which their incumbents were appointed, their successors shall be appointed to serve during their unexpired terms only. Upon the expiration of the regular terms of either of these examiners his successor shall be appointed to serve for two years.

History: En. Sec. 1, Ch. 47, L. 1907; Sec; 954, Rev. C. 1907; amd. Sec. 901, Ch. 76, L. 1913. Cal. Pol. C. Secs. 1768-1778.

1093. Qualifications of county board of educational examiners. Such examiners, at the time of their appointment, must be holders of Montana professional county certificates, or state certificates, or life diplomas, or diplomas from the state university, state normal college, or state college of agriculture and mechanic arts, or holders of diplomas as graduates from some reputable university, college, or normal school, other than those of Montana. These examiners shall qualify for their positions in the same form and manner required for the qualification of all county superintendents.

History: Ap. p. Sec. 3, Ch. 47, L. 1907; Sec. 956, Rev. C. 1907; amd. Sec. 902, Ch. 76, L. 1913.

1094. Duties of county board of educational examiners. The duties of these two examiners shall be to meet jointly and equally with the county superintendent in the matter of conducting the examination of teachers, when requested so to do by the county superintendent. This board of examiners shall also conduct all eighth-grade examinations in their respective counties, when requested to do so by the state board of education under their rules and regulations; and it shall be empowered to grant eighth-grade diplomas or common-school certificates to all examinees successfully passing such examinations.

History: En. Sec. 4, Ch. 47, L. 1907; Sec. 957, Rev. C. 1907; amd. Sec. 903, Ch. 76, L. 1913.

1095. Compensation of board of examiners. The compensation of these examiners shall be their actual traveling expenses from their residences to and from the county seat or other point in the county where the examinations are held, and such further compensation per diem as the board of county commissioners may deem just and sufficient for their services, basing such compensation upon the actual quantity of work performed by them and the actual time required to perform it. Such claims shall have the approval of the county superintendent of schools.

History: En. Sec. 2, Ch. 47, L. 1907; Sec. 955, Rev. C. 1907; amd. Sec. 904, Ch. 196, L. 1913.

1096. Certificates—Second and first grade, professional, and temporary. To secure a second-grade certificate no experience is required. Applicants for this grade must present evidence of good moral character and physical health, and shall pass an examination in the following branches, or such additional branches as may hereafter he prescribed by the state board of education: Reading, writing, arithmetic, spelling, grammar, geography, physiology and hygiene, United States history, civics (state and federal), and theory and practice of teaching. This certificate shall be valid for a period of twenty-four months, and on being endorsed and registered in the office of the county superintendent shall be valid in any county in the state.

To secure a first-grade certificate, the applicant must present evidence of good moral character and physical health, must have had twelve months' successful experience as a teacher, and must, in addition to the branches required for a second-grade certificate, take an examination in American literature, physical geography, elementary psychology, and school management, or such other branches as may be prescribed by the state board of education. This certificate shall be issued for a period of three years, and shall be valid in any county on being indorsed and registered in the office of the county superintendent.

To secure a professional certificate, the applicant must present evidence of good moral character and physical health, must have had at least eighteen months' successful experience as a teacher, and, in addition to the branches required for a first-grade certificate, must pass an examination in Montana school law, educational psychology, principles of education, or such other branches as may be prescribed by the state board of education. This certificate shall be issued for a period of four years, and shall be valid in any county on being indorsed and registered in the office of the county superintendent of schools.

The state board of educational examiners may grant a temporary certificate to teach until the next regular examination to any person applying at any other time than at a regular examination, and who has previously held a valid certificate to teach, or who has had training beyond high school graduation, but such temporary certificate shall not be granted more than once to any person; provided, that when it is impossible, because of sickness or other valid reasons, for such teacher to attend the next regular examination, such teacher shall certify the facts to the state board of educational examiners, together with the approval of the county superintendent of schools, and this board may issue a second permit valid until the next regular examination; provided, further, that when a teacher shows special fitness to teach and passes at the examination seventy per cent. or above in all subjects, but fails to make an average of eighty per cent., or secures an average of eighty per cent. for all branches, but fails to make seventy per cent. in one or two branches, such teacher may, at the discretion of the state board of educational examiners, be issued a permit to teach until the next regular examination; and at such examination no teacher shall be required to be examined in any branch in which she has obtained a grade of eighty per cent. Such a permit shall not issue to any teacher more than once.

History: En. Sec. 905, Ch. 76, L. 1913; amd. Sec. 23, Ch. 196, L. 1919.

1097. Fees for certificates. Every applicant for a certificate shall pay one dollar to the county superintendent, which shall be forwarded by him to the state board of educational examiners, to be deposited in the state teachers' certificate fund.

History: En. Sec. 905, Ch. 76, L. 1913; amd. Sec. 23, Ch. 196, L. 1919.

1098. Re-canvass of papers on appeal. Any candidate thinking an injustice has been done, by paying a fee of two dollars into the teachers' state certificate fund and by notifying both county and state superintendent of the same, shall have his papers re-examined by the state board of educational examiners. The county superintendent shall, upon receipt

of such notice from said complaining candidate, notify the state superintendent of public instruction, who shall have the state board of educational examiners re-examine the same, and if the answers warrant it, the state board of educational examiners shall issue to such complaining candidate a certificate of proper grade, and the state superintendent shall return the appeal fee of two dollars to the teacher.

History: En. Sec. 905, Ch. 76, L. 1913; amd. Sec. 23, Ch. 196, L. 1919.

1099. Revocation of certificate. The state board of educational examiners is authorized and required to revoke and annul, at any time any certificate granted by the state board of educational examiners, or any certificate issued previous to the passage of this law, for any cause which would have authorized or required the board to refuse to grant it if known at the time it was granted, and for incompetency, immorality, intemperance, physical inability, crime against the state law, refusal to perform his duty, or general neglect of the business of the school. The revocation of the certificate shall terminate the employment of such teacher in the school in which he may at the time be employed, but the teacher must be paid up to the time of receiving notice of such revocation.

History: En. Sec. 905, Ch. 76, L. 1913; amd. Sec. 23, Ch. 196, L. 1919.

Interference by courts with revocation of school teacher's license, see notes in 14 Ann. Cas. 298, 15 L. R. A. (N. S.) 1148.

1100. Renewals. Before the expiration of any professional or first-grade certificate, such certificate shall be renewed by the state board of educational examiners, upon the proper fee being paid into the state teachers' certificate fund, as provided for in the case of examination; provided, that no professional or first-grade certificate shall be renewed unless the applicant has taught successfully, as shown by two or more testimonials, at least twelve months during the life of such certificate; and provided, further, that the state board of educational examiners may require evidence of the accomplishment of a minimum amount of reading circle work as a requisite for the renewal of a certificate. Said professional or first-grade certificate shall be renewed by the state board of educational examiners by indorsement thereon.

History: En. Sec. 906, Ch. 76, L. 1913; amd. Sec. 24, Ch. 196, L. 1919.

1101. Higher grade certificate, how secured. Whenever application is made by a holder of an unexpired first-grade or second-grade certificate for examination for any higher grade certificate, and it shall be made to appear to the state board of educational examiners that such applicant has been engaged in teaching successfully, as shown by two or more testimonials, in any of the public schools of the state for a period of twelve months or more, the said applicant shall be entitled to be credited on such higher certificate in all subjects in which he has received eighty per cent. or above, as shown on the said unexpired certificate, and shall not be required to be examined in any studies except the additional ones prescribed for such certificates, and such other studies in which he may not have secured eighty per cent. on his unexpired certificate.

History: En. Sec. 907, Ch. 76, L. 1913; amd. Sec. 25, Ch. 196, L. 1919.

1102. University credits acknowledged. Any applicant for any grade of certificate who has completed at any of the institutions of the university

of Montana any branch for such certificate, shall, upon filing with the state board of educational examiners a statement from the president of said institution to that effect, have such grade credited without examination on such certificate.

History: En. Sec. 908, Ch. 76, L. 1913; amd. Sec. 26, Ch. 196, L. 1919.

1103. Existing certificates validated. Any person now holding a professional, a first-grade, or a second-grade certificate, shall be permitted to teach thereunder during the life of such certificate; and any person now holding a professional or first-grade certificate may have the same renewed by the state board of educational examiners upon the proper fee being paid into the state teachers' certificate fund, as provided for in the case of examination; provided, that there shall be no limit to the possible number of such renewals. No such certificate shall be renewed unless the applicant has taught at least twelve months during the life of such certificate. Whenever application is made by any person now holding an unexpired first-grade or second-grade Montana certificate for examination for any higher grade certificate provided for in this act, and it shall be made to appear to the state board of educational examiners that such applicant has been engaged in teaching in any of the public schools of the state for a period of one year or more, said applicant shall be entitled to be credited with the percentage on his last examination for said first or second-grade certificate, as the case may be, and shall not be required to be examined in any studies except the additional ones prescribed for such certificate, and such other studies as the applicant may not have secured the required percentage on previous examination; provided, that to excuse any person now holding a certificate from taking the examination upon any branch of any grade, he or she must have secured upon such branch, at his or her last previous examination, at least eighty per cent.

History: En. Sec. 909, Ch. 76, L. 1913; amd. Sec. 27, Ch. 196, L. 1919.

1104. Principals' and high school teachers' certificates. No person shall be employed as a teacher in a high school or as the principal teacher of a school of more than three departments who is not the holder of a professional county certificate or a Montana state or life certificate, or who is not a graduate of some reputable university, college, or normal school recognized by the state board of education.

History: En. Sec. 910, Ch. 76, L. 1913.

CHAPTER 87.

TEACHERS' INSTITUTES AND SUMMER SCHOOLS.

Section 1105. Teachers' Institutes to Be Held Yearly.
1106. Length of Session.
1107. Institute Instructors.
1108. Teachers Must Attend.
1109. High School Teachers Exempt.
1110. Institute and Summer School Fund.
1111. Summer Schools.
1112. Expenses of Institutes and Summer Schools.

1105. Teachers' institutes and summer schools—Teachers' institutes to be held yearly. The county superintendent in every county must hold one teachers' institute in each year at the county seat, except as hereinafter provided, and every teacher employed in a public school in the county must attend the institute and participate in its proceedings except as

hereinafter provided; provided, that whenever the state superintendent and two or more county superintendents deem it advisable, a joint institute, consisting of the teachers of two or more counties, may be held at any convenient place within such counties, to be selected and agreed upon by their superintendents.

History: Ap. p. Sec. 1959, 5th Div. Comp. Stat. 1887; amd. Sec. 1900, Pol. C. 1895; amd. Sec. 1, Ch. 148, L. 1907; Sec. 946, Rev. C. 1907; re-en. Sec. 1000, Ch. 76, L. 1913. Cal. Pol. C. Secs. 1560-1565.

1106. Length of session. Each session of the institute must continue not less than four nor more than ten days.

History: En. Sec. 8, p. 132, L. 1897; re-en. Sec. 948, Rev. C. 1907; amd. Sec. 1001, Ch. 76, L. 1913.

1107. Institute instructors. The instructors for the county institutes and summer schools shall be selected by the county superintendent from a list recommended upon the approval of the state board of education by the state superintendent. No instructor shall receive any compensation unless he is the holder of an institute instructor's license issued by the state board of education.

History: En. Sec. 1002, Ch. 76, L. 1913.

1108. Teachers must attend. The county superintendent shall confer with the state superintendent, and on his approval, appoint a time for holding the teachers' institute in his county. It shall be his duty to give written notice of the time and place in his county, and to all the teachers of the county, at least thirty days before the opening of such institute. It shall be the duty of all boards of school trustees, through their clerks, to notify each and all of the teachers within their districts of the time and place of holding the institute, and to direct each and all of their teachers to close their several schools for the purpose of attending the institute. Each and every teacher engaged in teaching a term of school in any district during the time of the institute shall close his school during such time, and shall attend the institute and take active part in the same except as hereinafter provided, without loss of salary for the actual time spent in attending the institute and for the actual time spent in going to and returning from the same. The county superintendent shall, in all cases, keep and preserve a record of the actual time spent by each teacher of his county at the institute, and shall furnish both to each teacher and to his board of school trustees a certificate of the time spent by said teachers at the institute. Wilful failure on the part of any teacher to attend the institute, except as hereinafter provided, shall be considered sufficient cause for the revocation of such teacher's certificate by the county superintendent; provided, however, that the county superintendent may, in his discretion, excuse any teacher from attending the institute who could not attend the same without great and excessive inconvenience, cost, expense, and loss of time. Wilful failure on the part of the board of school trustees of any school district to close their schools during the time of the holding of the institute, as herein required, shall be considered sufficient cause for withholding the public moneys to which such district would otherwise be entitled; provided, however, that, in the case of boards of school trustees, as in the case of teachers, the great distance of any school district from the place of holding the institute, excessive loss of time, inconvenience,

and cost shall be considered good grounds on which the county superintendent, under authority and direction from the state superintendent, may excuse any board of school trustees from closing their school at such times, and from observing the above requirements.

History: Ap. p. Sec. 1903, Pol. C. 1895; amd. Sec. 9, p. 133, L. 1897; amd. Sec. 1, Ch. 60, L. 1905; re-en. Sec. 949, Rev. C. 1907; amd. Sec. 1003, Ch. 76, L. 1913.

Cited or applied as section 949, Revised Codes, before amendment, in Finley v. School District No. 1, 51 Mont. 411, 415, 153 Pac. 1010.

1109. High school teachers exempt. All high school teachers are hereby exempt from the requirements of this chapter.

History: En. Sec. 2, Ch. 60, L. 1905; re-en. Sec. 950, Rev. C. 1907; re-en. Sec. 1004, Ch. 76, L. 1913.

1110. Institute and summer school fund. For the purpose of defraying the expenses of the institute, there shall be a fund created as follows:

1. All moneys received from the issuance of teachers' certificates by the county superintendent.

2. Moneys received from appropriations by boards of county commissioners; and every board of county commissioners in each county in which a teachers' institute or summer school may be held is hereby authorized and directed to appropriate for said fund as follows:

Counties of the first class not less than two hundred and fifty dollars nor more than four hundred and fifty dollars. Counties of the second class not less than two hundred and fifty dollars nor more than four hundred dollars. Counties of the third, fourth, fifth and sixth classes not less than two hundred dollars nor more than three hundred and fifty dollars. Counties of the seventh and eighth classes, not less than one hundred and fifty dollars nor more than three hundred dollars.

History: Ap. p. Sec. 1904, Pol. C. 1895; amd. Sec. 10, p. 133, L. 1897; amd. Sec. 2, Ch. 148, L. 1907; re-en. Sec. 951, Rev. C. 1907; amd. Sec. 1005, Ch. 76, L. 1913.

1111. Summer schools. In any county or counties of the state, the county superintendent or superintendents, by mutual agreement of such superintendents, acting with the advice and consent of the state superintendent, may hold a summer school for teachers, not less than three weeks in length, for such county or counties in lieu of an institute or institutes for such year, and the board of county commissioners of each county shall appropriate for such summer school support in like sum as is hereinbefore provided for in the case of teachers' institutes.

It shall be the duty of the state superintendent to prepare and prescribe a course of study for use in such summer schools.

Students of summer schools may have such work as is satisfactorily done credited on their certificates. Any teacher presenting a certificate of attendance on any summer school within or without the state, approved by the county superintendent, may be excused from institute attendance within the county where he may be teaching.

History: En. Sec. 1006, Ch. 76, L. 1913.

1112. Expenses of institutes and summer schools. The county superintendent must keep an accurate account of the actual expenses of summer schools or institutes, with vouchers for the same, and present the bill to the county commissioners, who shall allow the same; provided, that such amount shall not exceed the sum specified as hereinbefore provided.

History: En. Sec. 1007, Ch. 76, L. 1913.

CHAPTER 88.

TEACHERS' RETIREMENT SALARY FUND.

Section 1113. Retirement Salary Fund and Permanent Fund.
1114. Retirement Salary Fund, to Consist of What.
1115. Duty of State Treasurer With Respect to.
1116. Monthly Contributions to Permanent Fund.
1117. Conditions for Obtaining Benefits of Law.
1118. Retirement Salary Fund Board—Membership.
1119. Powers and Duties of Board.
1120. Meetings and Business of Board.
1121. Place of Meeting—Additional Help—Stationery, etc.
1122. Rules and Regulations, Scope of.
1123. Additional Rules and Regulations for Execution of Law.
1124. Duty of County and State Superintendents—Warrants.
1125. Persons Entitled to and Amount of Retirement Salary.
1126. Retirement by Reason of Bodily or Mental Infirmity.
1127. Determination of School Year for Purposes of Computation.
1128. Law Binding Upon Whom.
1129. Law Binding Upon Future Teachers Employed in State.
1130. Suspension of Retirement Salary—Deductions When Incapacitated Teacher Returns to Service.
1131. Limitation Upon Retirement Salary—Exception.
1132. Effect of Invalidity of Portion of Act.

1113. Retirement salary fund and permanent fund. There are hereby established two funds in the state treasury to be known, respectively, as the public school teachers' retirement salary fund, and the public school teachers' permanent fund. The public school teachers' permanent fund shall be made up of all moneys received from the following sources or derived in the following manner:

1. All contributions made by teachers as hereinafter provided.

2. The income and interest derived from the investment of all the moneys contained in such fund.

3. All donations, legacies, gifts, and bequests which shall be made to such fund, and all moneys which shall be obtained or contributed for the same purposes from other sources.

4. Appropriations made by the state legislature from time to time to carry into effect the purposes of this act.

History: En. Sec. 1, Ch. 95, L. 1915.

This statute is not a local or special act, but is a valid enactment; it does not violate the requirements of the constitution relative to uniform taxation; it does not take property without due process of law; it does not deny the equal protection of the laws; nor does it violate any other provision of the constitution; it is therefore enforceable. Trumper v. School District No. 55, 55 Mont. 90, 93, 173 Pac. 946.

Constitutionality of teachers' pension laws, see note in L. R. A. 1918A, 526.

Power of legislature to require municipality to pension teachers, see note in 34 L. R. A. (N. S.) 609.

1114. Retirement salary fund, to consist of what. The public school teachers' retirement salary fund shall be made up of such moneys as shall be transferred from time to time, under authority of this act, from the public school teachers' permanent fund.

History: En. Sec. 2, Ch. 95, L. 1915.

1115. Duty of state treasurer with respect to. It shall be the duty of the state treasurer, when notified by the public school teachers' retirement salary fund board, or by the state superintendent of public instruction,

under authority of this act, to make such transfers of such amounts from the public school teachers' permanent fund to the public school teachers' retirement salary fund, as will be sufficient to meet the claims which may be legally drawn against said public school teachers' retirement salary fund.

History: En. Sec. 3, Ch. 95, L. 1915.

1116. Monthly contributions to permanent fund. There shall be deducted from the salary of every teacher, subject to the provisions of this act, one dollar from the compensation paid to such teacher for every month for which such teacher receives compensation, and every official whose duty it is to pay such teacher's salary shall make said deduction at the time of payment, and shall at the end of each quarter draw a warrant in favor of the state treasurer for the amounts deducted. The amounts thus deducted shall be deposited in the state treasury to the credit of the public school teachers' permanent fund, and shall constitute a part thereof.

History: En. Sec. 4, Ch. 95, L. 1915.

Cited or applied as section 4, chapter 95, Laws of 1915, in Trumper v. School District No. 55, 55 Mont. 90, 91, 173 Pac. 946.

1117. Condition for obtaining benefits of law. No person shall be eligible to receive the benefits of this act who shall not have paid into said public school teachers' permanent fund an amount equal to twelve dollars for each year of service, up to and including twenty-five years; provided, however, that the difference between the amount actually paid by such teacher of twenty-five years' service and three hundred dollars may be paid into said fund by such teacher at the time of retirement, with the same effect as if the full sum of three hundred dollars had been paid at the rate of twelve dollars per year before retirement; or the sum of twenty dollars per month be withheld from such teacher's retirement salary until the amount so withheld shall equal the difference between the said sum of three hundred dollars and the amount theretofore paid into said fund by such teacher.

History: En. Sec. 5, Ch. 95, L. 1915.

Cited or applied as section 5, chapter 95, Laws of 1915, in Trumper v. School District No. 55, 55 Mont. 90, 91, 173 Pac. 946.

1118. Retirement salary fund board—Membership. The superintendent of public instruction, the treasurer, and the attorney-general of the state of Montana, shall constitute the public school teachers' retirement salary fund board.

History: En. Sec. 6, Ch. 95, L. 1915.

1119. Powers and duties of board. The public school teachers' retirement salary fund board, subject to the provisions of this act, shall have power and it shall be its duty:

1. To approve and allow retirement salaries to public school teachers and certain school officers entitled to the same under the provisions of this act.

2. Through one of its members designated by it for that purpose, to certify all claims and demands against the public school teachers' permanent fund and the public school teachers' retirement salary fund, including

all retirement salary demands, to the state board of examiners, who shall audit same and direct the state auditor to draw his warrant therefor upon the state treasurer, payable out of said fund; provided, that no demand shall be allowed except after resolution duly passed at a meeting of the board by a majority of its members, which adoption shall be attested by the secretary.

3. To require the boards of education, school trustees, and other public authorities, and all officers having duties to perform in respect to the contributions by teachers to said permanent fund, to report to the board from time to time as to such matters pertaining to the payment of such contributions as it may deem advisable.

4. To invest the moneys in the permanent fund in securities, and to collect the income therefrom and interest and dividends thereon; to deposit such securities with the state treasurer, and to make sale of such securities when, in its judgment, such sale will be advisable; provided, that none of the moneys in the public school teachers' permanent fund shall be invested in any securities except such as are legally designated for investment in the public school fund.

All bonds, mortgages, and other securities shall be deposited with and remain in the custody of the state treasurer, who shall collect all interest due thereon, and all the income therefrom, as the same shall become due and payable. The state auditor is authorized to draw his warrant upon the public school teachers' permanent fund in payment of duly audited claims arising out of the investment of the moneys in such fund.

5. To appoint a secretary from the office force of the state superintendent of public instruction, and prescribe the duties of such secretary.

6. To conduct investigations in all matters relating to the operation of this act, and to subpoena witnesses and compel their attendance to testify before it in respect to such matters.

History: En. Sec. 7, Ch. 95, L. 1915.

1120. Meetings and business of board. Said public school teachers' retirement salary fund board shall meet at least once every three months, and at such quarterly meeting shall make a list of all persons entitled to payment out of the fund established by this act, and enter said list in a book to be kept by the board for that purpose, to be known as the "Public School Teachers' Retirement Salary Fund Record." Said list shall be certified as correct by the chairman and secretary of the board, and shall always be open to public inspection. In the performance of the duties of the board, each member and secretary thereof may administer oaths and affirmations to witnesses and others transacting business with the board.

History: En. Sec. 8, Ch. 95, L. 1915.

1121. Place of meeting—Additional help, stationery, etc. The said public school teachers' retirement salary fund board shall hold its meetings at the office of the state superintendent of public instruction. It shall be entitled to the use of the offices of the said state superintendent, who is empowered to employ such additional help and make such expenditures for stationery, stamps, etc., as may be necessary for the creation, maintenance, and enforcement of this act, for which the legislature shall be requested to make such appropriations as may from time to time be deemed necessary.

History: En. Sec. 9, Ch. 95, L. 1915.

1122. Rules and regulations, scope of. The board shall make rules and regulations not inconsistent with the provisions of this act, which shall have the force and effect of law. Such rules and regulations shall:

1. Provide for the conduct and regulation of the meetings of the board and the operation of the business thereof.

2. Provide for the enforcement and carrying into effect of the provisions of this act.

3. Establish a system of accounts showing the condition of the public school teachers' permanent fund and the public school teachers' retirement salary fund, and receipts and disbursements for and on account of said funds.

4. Prescribe the form of warrants, vouchers, receipts, reports and accounts to be used in respect to said funds.

5. Regulate the duties of boards of education, school trustees, and other school authorities, imposed upon them by this act, in respect to the contribution by teachers to the public school teachers' permanent fund, and the deduction of such contributions from the teachers' salaries.

History: En. Sec. 10, Ch. 95, L. 1915.

1123. Additional rules and regulations for execution of law. In addition to the powers hereinabove enumerated, said board shall make and enforce all necessary and proper rules and regulations for the method or methods of applying for and obtaining retirement salaries provided for in this act, and for the method or methods of determining the right of each applicant to such retirement salary; provided, however, that in all cases legal proof of all necessary facts shall be required and kept on file.

History: En. Sec. 11, Ch. 95, L. 1915.

1124. Duty of county and state superintendent—Warrants. The county superintendent shall report to the state superintendent of public instruction, before the fifteenth day of July of each year, the names of all persons claiming, and the amount that will be required during the current fiscal year to pay, the retirement salaries to be paid in such district or county, and said state superintendent of public instruction shall determine from said reports the entire amount required to pay said retirement salaries during said current fiscal year. He shall report the amount required to make such payments to the public school teachers' retirement salary fund board, and thereupon, after verifying or correcting same, said board shall notify the state treasurer, and by resolution, duly adopted, shall direct him to make transfer of the needed amount from the public school teachers' permanent fund to the public school teachers' retirement salary fund. It shall be the duty of the state treasurer thereupon to make such transfer. When claims for payment of retirement salaries have been duly audited under the provisions of this act, the state auditor shall draw his warrant therefor upon said public school teachers' retirement salary fund; provided, that no retirement salary, under the provisions of this act, shall be paid on or before the first day of January, 1919.

History: En. Sec. 12, Ch. 95, L. 1915.

1125. Persons entitled to and amount of retirement salary. Every public, state, or county school teacher, who shall have served as a legally qualified teacher in public, state or county, day or evening schools, or

partly as such teacher and partly as state or county or city superintendent, or supervising executive, or educational administrator, for at least twenty-five school years, at least fifteen of which shall have been in the schools, as hereinbefore specified, of this state, including the last ten years of actual service, unless leave of absence shall have been granted by proper school authorities, shall be entitled to retirement, no time included in such leave of absence to be reckoned as time of service. Upon retirement, such teacher shall be entitled to receive during life an annual retirement salary of six hundred dollars, payable in instalments quarterly by warrants drawn as provided in this act; provided, the teachers in the service of the state at the time of the passage of this act, who shall have served in states other than this, shall, at the end of twenty-five years' service, the last ten of which shall be in this state as hereinbefore provided, be entitled to the benefits of this act.

History: En. Sec. 13, Ch. 95, L. 1915.

Cited or applied as section 13, chapter 95, Laws of 1915, in Trumper v. School District No. 55, 55 Mont. 90, 91, 173 Pac. 946.

Vested right of teacher in pension, see notes in Ann. Cas. 1915C, 751, 50 L. R. A. (N. S.) 1021.

1126. Retirement by reason of bodily or mental infirmity. Any legally qualified public state, or county school teacher, who shall have served as such or in the capacity of school officer, as hereinbefore specified, for at least fifteen school years in the public schools or school offices as specified above, of this state, and who shall, by reason of bodily or mental infirmity, have become physically or mentally incapacitated for further school service, shall be entitled to retire, or may, by the board of education, school trustees, or other school authorities employing such teacher, be compelled to retire. Upon such retirement, voluntary or involuntary, such teacher shall be entitled to receive, during the period of such disability, an annual retirement salary, which shall bear the same proportion to six hundred dollars as is borne by the number of years of said teacher's time of service to twenty-five years.

History: En. Sec. 14, Ch. 95, L. 1915.

Cited or applied as section 14, chapter 95, Laws of 1915, in Trumper v. School District No. 55, 55 Mont. 90, 91, 173 Pac. 946.

1127. Determination of school year for purposes of computation. In counting the actual time of service for the purpose of this act, the public school teachers' retirement salary fund board shall determine what constitutes a school year.

History: En. Sec. 15, Ch. 95, L. 1915.

Cited or applied as section 15, chapter 95, Laws of 1915, in Trumper v. School District No. 55, 55 Mont. 90, 91, 173 Pac. 946.

1128. Law binding upon whom. This act shall be binding upon all such teachers employed in the public state or county schools of this state, at the time of the approval of this act, as shall on or before January 1, 1916, sign and deliver to the superintendent of public instruction, or to the county superintendent, a notification that said teachers agree to be bound by and avail themselves of the benefits of this act.

History: En. Sec. 16, Ch. 95, L. 1915.

Cited or applied as section 16, chapter 95, Laws of 1915, in Trumper v. School District No. 55, 55 Mont. 90, 91, 173 Pac. 946.

1129. Law binding upon future teachers employed in state. This act shall be binding upon all teachers elected or appointed to teach in the public schools of this state after the approval of this act, who, not being in the service of the public schools at the time of the approval of this act, were not competent to sign or deliver the notification specified in the preceding section.

History: En. Sec. 17, Ch. 95, L. 1915.

Cited or applied as section 17, chapter 95, Laws of 1915, in Trumper v. School District No. 55, 55 Mont. 90, 91, 173 Pac. 946.

1130. Suspension of retirement salary—Deductions when incapacitated teacher returns to service. If any teacher retired under the provisions of this act, shall be re-employed in the public schools of this or of any other state, such teachers' retirement salary shall not be paid for or during such period of employment; and if any teacher, having qualified under section 1126 of this code, returns to service in the public schools of the state and thereafter qualifies under this act, there shall be deducted from the retirement salary, payable to such teacher under the provisions hereof, the amount of retirement salary theretofore actually received by such teacher under the provisions hereof, such amounts to be so deducted in equal quarterly installments until the whole amount so received shall have been deducted; provided, however, that the amount of such deductions to be made quarterly shall not exceed thirty-five dollars.

History: En. Sec. 18, Ch. 95, L. 1915.

Cited or applied as section 18, chapter 95, Laws of 1915, in Trumper v. School District No. 55, 55 Mont. 90, 91, 173 Pac. 946.

1131. Limitation upon retirement salary—Exception. No one shall be permitted to draw from the state, directly or indirectly, more than one retirement salary. Nothing in this act shall be so construed, however, as to prevent local communities or bodies of teachers from supplementing the retirement salary received from the state.

History: En. Sec. 19, Ch. 95, L. 1915.

1132. Effect of invalidity of portion of act. Should the courts declare any section of this act unconstitutional or unauthorized by law, or in conflict with any other provision of this act, then such decision shall affect only the section or provision so declared to be unconstitutional or void, and shall not affect any other section or part of this act.

History: En. Sec. 20, Ch. 95, L. 1915.

Effect of partial invalidity of statutes relating to schools, see note in 1916D, 86.

CHAPTER 89.

PUPILS—DISCIPLINE—PROHIBITION AGAINST SECRET FRATERNITIES.

Section 1133. Discipline.
1134. Secret Fraternities Prohibited—Powers of Trustees Concerning—Soliciting—Penalty.

1133. Discipline. All pupils who may be attending public schools shall comply with the regulations established in pursuance of law for the government of such schools, shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and wilful disobedience and open defiance of the authority of the teacher shall constitute good cause for expulsion from school. Any pupil who shall, in any way, cut, deface, or otherwise injure any schoolhouse, fur-

niture, fences, or outbuildings thereof, or any book belonging to other pupils, or any books belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damages, on complaint of the teacher or any trustee and upon proof of the same.

History: En. Sec. 37, p. 628, Cod. Stat. 1871; re-en. Sec. 36, p. 130, L. 1874; re-en. Sec. 1123, 5th Div. Rev. Stat. 1879; re-en. Sec. 1895, 5th Div. Comp. Stat. 1887; re-en. Sec. 1870, Pol. C. 1895; re-en. Sec. 917, Rev. C. 1907; re-en. Sec. 700, Ch. 76, L. 1913. Cal. Pol. C. Secs. 1684-1686.

1134. Secret fraternities prohibited—Powers of trustees concerning—Soliciting—Penalty. It shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join or become a member of any secret fraternity or society, wholly or partially formed from the membership of pupils attending any such schools, or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the trustees of such schools.

The trustees of all such schools shall enforce the provisions of this section, and shall have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of this section.

The trustees of such schools shall have full power and authority, pursuant to such rules and regulations made and adopted by them, to suspend or dismiss any pupil or pupils of such school therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such trustees, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of this section, or who are guilty of violating any rule, rules, or regulations adopted by such trustees for the purpose of governing such schools or enforcing this section.

It is hereby made a misdemeanor for any person not a pupil of such schools to be upon the school grounds, or to enter any school building for the purpose of "rushing" or soliciting while there any pupil or pupils of such schools to join any fraternity, society, or association organized outside of said schools.

All persons convicted of violating the provisions of this section shall be punished by a fine of not less than five dollars nor more than twenty-five dollars.

History: En. Sec. 701, Ch. 76, L. 1913.

Validity of statutory or other prohibition against secret societies among students, see notes in Ann. Cas. 1916E, 527, 7 L. R. A. (N. S.) 352, L. R. A. 1915D, 588.

CHAPTER 90.

COMPULSORY ATTENDANCE—EMPLOYMENT OF CHILDREN—TRUANT OFFICERS.

Section 1135. Compulsory Attendance—Excuses.
1136. Employment of Children Under Sixteen.
1137. Truant Officers, Powers and Duties.
1138. Duties of Principals, Teachers, and Clerks.
1139. Prosecution of Truants.
1140. Pauper Children.

1135. Compulsory attendance—Excuses. All parents, guardians, and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, language, English grammar, geography, history and civics, physiology and hygiene, and arithmetic. Every parent, guardian, or other person, having charge of any child between the ages of eight and sixteen years, shall send such child to a public, private, or parochial school, for the full time that the school attended is in session, which shall in no case be for less than sixteen weeks during any current year; provided, however, that children fourteen years of age or over who have successfully completed the school work of the eighth grade, or whose wages are necessary to the support of the family of such child, may be employed during the time that the public schools are in session upon making the proof and securing the age and schooling certificate provided for in the following section. School attendance shall begin within the first week of the school term, unless the child is excused from such attendance by the superintendent of the public schools, in city and other districts having such superintendent, or by the clerk of the board of trustees in districts not having such superintendent, or by the principal of the private or parochial school, upon satisfactory showing either that the bodily or mental condition of the child does not permit of its attendance at school, or that the child is being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, to teach the branches named in this section; provided, that the county superintendent may excuse children from attendance upon such schools where, in his judgment, the distance makes such attendance an undue hardship. In case the county superintendent, city superintendent, principal, or clerk refuses to excuse a child from attendance at school, an appeal may be taken from such decision to the district court of the county, upon giving a bond, within ten days after such refusal, to the approval of said court, to pay all costs of the appeal; and the decision of the district court in the matter shall be final. Any parent, guardian or other person having the case or custody of a child between the ages of eight and sixteen years, who shall fail to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty dollars.

History: Ap. p. Sec. 1921, 5th Div. Comp. Stat. 1887; amd. Sec. 1920, Pol. C. 1895; amd. Sec. 1, Ch. 45, L. 1903; re-en. Sec. 965, Rev. C. 1907; amd. Sec. 1100, Ch. 76, L. 1913; amd. Sec. 1, Ch. 75, L. 1921.

Cited or applied as section 965, Revised Codes, before amendment, in Flaherty v. Butte Electric Ry. Co., 42 Mont. 89, 95, 111 Pac. 348; as section 1100, Laws of 1913, in Thien v. Wiltse, 49 Mont. 189, 194, 141 Pac. 146.

Compulsory attendance at public schools, see notes in Ann. Cas. 1912A, 373, Ann. Cas. 1915C, 555.

What instruction constitutes compliance with compulsory education statute, see note in 41 L. R. A. (N. S.) 95.

Expulsion or exclusion of child from school as excuse or justification for non-compliance with compulsory education law, see note in L. R. A. 1915D, 223.

1136. Employment of children under sixteen. No child under sixteen years of age shall be employed or be in the employment of any person, firm, company or corporation during the school term, and while the public schools are in session in the district in which such child lives, unless such

child shall present to such persons, firm, company, or corporation an age and schooling certificate. Such certificate shall be issued by the city superintendent of schools or principal of schools, or by some person duly authorized by him, and in districts not having a city superintendent or principal, by the county superintendent of schools upon satisfactory proof that such child is of the age of fourteen years or over, and has successfully completed the eighth grade as the same is designated and determined by the state board of education; provided, also, that in case the wages of any child over fourteen years of age are necessary to the support of the family of such child, the city superintendent of schools, or principal of schools, or county superintendent, as the case may be, may, upon production of satisfactory evidence that the wages of such child are necessary to the support of the family, issue a certificate permitting the employment of such child, even though the said child may not have completed said eighth grade work. The age and schooling certificate shall be formulated by the superintendent of public instruction, and blank certificates shall be furnished by the clerk of the board of trustees. Every person, firm, company, or corporation employing any child under sixteen years of age shall exact the age and schooling certificate, or the certificate permitting the employment of such child, prescribed in this section, and shall, upon the request of the truant officer or other authorized person by school trustees, permit him to examine such certificates. When, however, employment of such child ceases, the employer shall promptly return to the city superintendent of schools, or principal of schools, or county superintendent of schools of such district where said child resides, the age and schooling certificate or certificate permitting the employment of such child. Any person, firm, company, or corporation employing any child contrary to the provisions of this chapter shall be fined not less than twenty-five dollars nor more than fifty dollars for each and every offense; provided, however, that nothing in this act shall be construed to interfere with the employment of a child during the time school is not actually in session.

History: En. Sec. 2, Ch. 45, L. 1903; re-en. Sec. 966, Rev. C. 1907; amd. Sec. 1101, Ch. 76, L. 1913; amd. Sec. 1, Ch. 43, L. 1919; amd. Sec. 2, Ch. 75, L. 1921.

Validity and construction of child labor acts, see notes in 9 Ann. Cas. 1108, 15 Ann. Cas. 473, Ann. Cas. 1913E, 339, Ann. Cas. 1918E, 730.

1137. Truant officers, powers and duties. To aid in the enforcement of this act, truant officers shall be appointed and employed as follows: In districts of the first and second classes, the board of trustees shall appoint and employ one or more truant officers; in districts of the third class, the trustees shall appoint, if they deem it advisable, a constable or other person as truant officer; in districts not appointing a truant officer, it shall be the duty of the county superintendent to act as truant officer. The compensation of the truant officer shall be fixed and paid by the board appointing him. The truant officer shall be vested with police powers, the authority to serve warrants, and have authority to enter workshops, factories, stores, and all other places where children may be employed, and do whatever may be necessary, in the way of investigation or otherwise, to enforce the provisions of this chapter. He is also authorized and it shall be his duty to take into custody the person of any youth between eight and sixteen years of age who is not attending school or who is not regularly employed and the holder of an age and schooling, or other

lawful certificate permitting such employment or who has not a proper certificate excusing such attendance. The truant officer shall conduct said youth to the school he has been attending, or which he should rightfully attend. The truant officer shall institute proceedings against any officer, parent, guardian, person or corporation violating any provisions of this chapter, and perform such other services as the superintendent of schools, or the board of trustees may deem necessary to preserve the morals and secure the good conduct of school children, and to enforce the provisions of this chapter. The truant officer shall keep a record of his transactions for the inspection and information of the superintendent of the schools and the board of trustees; and he shall make daily reports to the superintendent of schools during the school term in districts having superintendents, and to the clerk of the board of trustees in districts not having superintendents, as often as required by him. Suitable blanks for the use of the truant officer shall be provided by the clerk of the board of trustees.

History: Ap. p. Sec. 1924, Pol. C. 1895; 969, Rev. C. 1907; amd. Sec. 1103, Ch. 76, amd. Sec. 5, Ch. 45, L. 1903; re-en. Sec. L. 1913; amd. Sec. 3, Ch. 75, L. 1921.

1138. Duties of principals, teachers, and clerks. It shall be the duty of all principals, and teachers of all schools, public, private, and parochial, to report to the clerk of the board of trustees of the district in which the schools are situated, the names, ages, and residence of all pupils in attendance at their schools, together with such other facts as said clerk may require, in order to facilitate the carrying out of the provisions of this chapter, and the clerk shall furnish blanks for such purpose, and such report shall be made during the last week of each month from September to June, inclusive, of each year. It shall be the further duty of such principals and teachers to report to the truant officer, the superintendent of public schools, or the clerk of the board of trustees, as the case may be, all cases of truancy or incorrigibility in their respective schools, as soon after these offenses have been committed as practicable.

History: En. Sec. 6, Ch. 45, L. 1903; Re-en. Sec. 970, Rev. C. 1907; amd. Sec. 1104, Ch. 76, L. 1913.

1139. Prosecution of truants. On request of the superintendent of schools or the board of trustees, or when it otherwise comes to his notice, the truant officer shall examine into any case of truancy or non-attendance within his district, and warn said truant or non-attendant and his parent, guardian, or other person in charge, in writing, of the final consequence of truancy or non-attendance if persisted in. When any child of an age at which attendance at the public schools is enjoined by the laws of this state is not attending school, or is not lawfully employed or lawfully excused from such attendance, the truant officer shall notify the parent, guardian, or other person in charge of such child, of the fact, and require such parent, guardian, or other person in charge to cause the child to attend some recognized school within two days from the date of the notice; and it shall be the duty of the parent, guardian, or other person in charge of the child so to cause its attendance at some recognized school. Upon failure to do so, the truant officer shall make complaint against the parent, guardian, or other person in charge of the child, in any court of competent jurisdiction in the district in which the offense occurs for such failure, and upon such conviction, the parent, guardian, or other person

in charge shall be fined not less than five dollars nor more than twenty dollars; or the court may, in its discretion, require the person so convicted to give bond in the penal sum of one hundred dollars, with sureties, to the approval of the court, conditioned that he or she will cause the child under his or her charge to attend some recognized school within two days thereafter, and to remain at such school during the term prescribed by law; and upon failure or refusal of any parent, guardian or other person to pay said fine and costs, or furnish said bond, according to the order of the court, then said parent, guardian, or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days.

History: En. Sec. 6, Ch. 45, L. 1903; 1105, Ch. 76, L. 1913; amd. Sec. 4, Ch. 75, re-en. Sec. 971, Rev. C. 1907; amd. Sec. L. 1921.

1140. Pauper children. When any truant officer is satisfied that any child compelled to attend school by the provisions of this chapter is unable to attend school because absolutely required to work at home or elsewhere, in order to support itself, or help support or care for others legally entitled to its services, who are unable to support or care for themselves, or who are unable to attend school because of some physical ailment, the truant officer shall report the case to the authorities charged with the relief of the poor, and it shall be the duty of said officers to afford such relief as will enable the child to attend school the time each year required under the provisions of this chapter. Such child shall not be considered or declared a pauper by reason of the acceptance of the relief herein provided for. In case the child or its parents or guardians refuses or neglects to take advantage of the provisions thus made for its instruction, such child may be committed to the industrial school hereinafter provided for. In all cases where relief, including books, medical aid, and clothing, is necessary, it shall be the duty of the board of trustees to furnish such aid free of charge, and said board of trustees may furnish any further relief it may deem necessary, the expense incident to furnishing said books, medical aid, clothing, and further relief to be paid from the general fund of the school district.

History: Ap. p. Sec. 6, Ch. 45, L. 1903; re-en. Sec. 973, Rev. C. 1907; amd. Sec. 1108, Ch. 76, L. 1913.

CHAPTER 91.

PART-TIME SCHOOLS.

Section 1141. Establishment Part-Time Schools.
1142. Schools to Provide Education for Whom.
1143. Eligibility of Children for Admission.
1144. Excusing Establishment Part-Time Schools.
1145. School Hours.
1146. Rules, Regulations and Expenditures.
1147. Hours of Attendance—Legal Employment.
1148. Duty Parents as to Attendance of Children.
1149. Penalty for Failure Parents to Comply With Act.
1150. Penalty for Employers Failing to Permit Attendance of Children.
1151. Enforcement of Act—Duty of Officers.
1152. Reimbursement for Expenditures Salaries of Teachers.
1153. Private School Attendance.
1154. Duty First-Class Districts to Maintain Part-Time Schools.
1155. School Census and Report.
1156. Scope of Act.

1141. Establishment part-time schools. Any school district, or any district of the first class in which a county high school is located, in which

said district there shall reside or be employed, or both, not fewer than fifteen children over fourteen years of age and less than eighteen years of age, who have entered upon employment, shall establish part-time schools or classes for such employed children.

History: En. Sec. 1, Ch. 242, L. 1921.
Note.—Earlier acts were chapter 133, Laws of 1919.

1142. Schools to provide education for whom. A part time school or class established in accordance with the terms of this act shall provide an education for children who have entered employment, which shall be either supplemental to the work in which they are engaged, continue their general education or promote their civic or vocational intelligence.

History: En. Sec. 2, Ch. 242, L. 1921.

1143. Eligibility of children for admission. All children of first-class districts of the state shall attend school until the age of eighteen, unless they are excused from school to enter employment, in accordance with sections 1135 and 1136 of this code, or unless they shall have completed a high school course.

History: En. Sec. 3, Ch. 242, L. 1921.

1144. Excusing establishment part-time schools. Whenever any district or county high school board shall deem it inexpedient to organize part-time schools or classes for employed minors, it shall state the reasons for such inexpediency in a petition to the state board of education, and when the state board of education shall judge such reasons as valid. the district or county high school board shall be excused from the establishment of such part-time schools or classes.

History: En. Sec. 4, Ch. 242, L. 1921.

1145. School hours. Part-time schools or classes established in accordance with the provisions of this act shall be in session not less than four hours a week between the hours of eight a. m. and six p. m. during the weeks which other public schools are maintained in the district or county establishing such part-time schools or classes.

History: En. Sec. 5, Ch. 242, L. 1921.

1146. Rules, regulations and expenditures. The state board of education shall establish rules and regulations governing the organization and administration of part-time schools and classes, and shall expend from funds appropriated for the promotion of vocational education such sums of money as are necessary for the proper enforcement of this act.

History: En. Sec. 6, Ch. 242, L. 1921.

1147. Hours of attendance—Legal employment. Whenever the number of hours for which a child over fourteen years and less than eighteen years of age may be employed shall be fixed by the federal or state law, the hours of attendance upon the part-time school or class organized in accordance with the terms of this act shall be counted as a part of the number of hours fixed for legal employment by federal or state laws.

History: En. Sec. 7, Ch. 242, L. 1921.

1148. Duty of parents as to attendance of children. Every parent, guardian or other person in the first-class school district in the state of

Montana having control of any child or children between and including the ages of fifteen and seventeen, who have entered upon employment, shall be required to send such child or children to a part-time school or class whenever there shall have been such part-time school or class established in the district where the child resides or may be employed.

History: En. Sec. 8, Ch. 242, L. 1921.

1149. Penalty for failure parents to comply with act. In case any parent, guardian or other person in first-class school districts in the state of Montana having control or charge of any child or children between and including the ages of fifteen and seventeen shall fail to comply with the provisions of this act he shall be deemed guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not less than five dollars nor more than twenty dollars for each separate offense.

History: En. Sec. 9, Ch. 242, L. 1921.

1150. Penalty for employers failing to permit attendance of children. Any person, firm or corporation employing a child between the ages of fourteen and eighteen shall permit the attendance of such child upon a part-time school or class whenever such part-time school or class shall have been established in the first-class district where the child resides or may be employed, and any person, firm or corporation employing any child over fourteen and less than eighteen years of age contrary to the provisions of this act shall be subject to a fine of not less than twenty-five dollars nor more than fifty dollars for each and every offense.

History: En. Sec. 10, Ch. 242, L. 1921.

1151. Enforcement of act—Duty of officers. The officers charged by law with the responsibility for enforcement of attendance upon regular public schools of children over eight years of age shall also be charged with the responsibility for the enforcement of attendance upon part-time schools or classes of minors over fourteen years and less than eighteen years of age, in accordance with terms of this act.

History: En. Sec. 11, Ch. 242, L. 1921.

1152. Reimbursement for expenditures for salaries of teachers. Whenever any part-time schools or classes shall have been established in accordance with the provisions of this act, and the rules and regulations established by the state board of education, and shall have been approved by the state board of education, the first-class district or county high school shall be entitled to reimbursement for the expenditures made for the salaries of teachers and co-ordinators of such part-time schools or classes of fifty per cent. of the moneys so expended, such reimbursement to be made from federal and state funds available for the promotion of vocational education.

History: En. Sec. 12, Ch. 242, L. 1921.

1153. Private school attendance. Attendance upon private schools of an established reputation in the district in which said part-time school is held for a period of at least four hours per week shall be accepted in lieu of attendance at a district part-time school, provided, however, that only those schools shall be deemed schools of an established reputation which have been accredited by the state department of public instruction.

History: En. Sec. 13, Ch. 242, L. 1921

1154. Duty first-class districts to maintain part-time schools. Any school district of the first class in which there shall reside or be employed, or both, not fewer than fifteen children over fourteen years of age and less than eighteen years of age, who have entered upon employment shall establish and maintain part-time schools or classes for such employed children. When a county high school is located in a district of the first class, and functions in place of a district high school, such county high school shall establish part-time schools or classes and share equally in maintenance for such classes with the district in which such high school is located.

History: En. Sec. 14, Ch. 242, L. 1921.

1155. School census and report. Every school district of the first or second class, or county high school maintaining a high school in a school district of the first and second classes, shall take each year a continuing part-time school census of all boys and girls between the ages of fourteen and eighteen years and render a report of the same to the state superintendent of public instruction, on or before February first of each year. Such report shall show the total number of school census children and the distributions of school census children as follows: Number attending school, number at work, number idle, number graduated from high school.

History: En. Sec. 15, Ch. 242, L. 1921.

1156. Scope of act. This act shall be in full force and effect on and after the first day of June, 1921, and shall refer only to the establishment of part-time schools or classes for minors under eighteen years of age who are issued permits to enter upon employment after that date.

History: En. Sec. 17, Ch. 242, L. 1921.

CHAPTER 92.

INDUSTRIAL SCHOOLS.

Section 1157. Industrial Schools, Where Established.
1158. Purchase of Site and Building.
1159. Employment and Regulation of Teachers.
1160. Parents to Provide Clothing.
1161. Rules and Regulations of School.
1162. Paroled Children.
1163. Recommitment of Paroled Children.
1164. Incorrigibles.
1165. Industrial Schools in Small Districts.
1166. Receiving Pupils From Other Districts.
1167. Penalties and Fines for Neglect of Official Duty.
1168. Penalties for Repeated Violation of the Chapter.
1169. Duty of Trustees to Provide Sufficient Accommodations.
1170. Cost of Prosecutions.

1157. Industrial schools, where established. In school districts having a population of twenty-five thousand or more, there shall be maintained an industrial school for the purpose of affording a place of confinement, discipline, instruction, and maintenance of children of compulsory school age, who may be committed thereto according to the provisions of section 1172 of this code.

Note.—The law relating to industrial schools was first enacted by chapter 45, Laws of 1903, appearing as sections 974 to 988, inclusive, Revised Codes 1907. It is here given as amended by chapter 76, Laws of 1913.

History: En. Sec. 1900, Ch. 76, L. 1913.

1158. Purchase of site and building. For the purpose of maintaining such school or schools, sites may be purchased and buildings constructed or premises rented in the same manner as provided for in the case of public schools in such districts; but no school shall be located at or near any penal institution. And it shall be the duty of the board of trustees to furnish such schools with such furniture, fixtures, industrial, and other apparatus, and provisions as may be necessary for the maintenance and operation thereof.

History. En. Sec. 1901, Ch. 76, L. 1913. See also history of Sec. 1157.

1159. Employment and regulation of teachers. The board of trustees may also employ a principal and other necessary officers, agents, and teachers, and shall prescribe the methods of discipline and the course of instruction; and shall exercise the same powers and perform the same duties as are prescribed by law for the management of other schools.

No religious instruction shall be given in said school, except as allowed by law to be given in public schools; but the board of trustees may make suitable regulation so that the inmates may receive religious training in accordance with the belief of the parents of such children, by arranging for attendance at public services elsewhere.

History: En. Sec. 1902, Ch. 76, L. 1913. See also history of Sec. 1157.

1160. Parents to provide clothing. It shall be the duty of the parent or guardian of any child committed to this school to provide suitable clothing upon his entry into such school, and from time to time thereafter as it may be needed, upon notice in writing from the principal or other proper officer of the school. In case any parent or guardian shall refuse or neglect to furnish such clothing, the same may be provided by the board of trustees, and such board may have an action against such parent or guardian of said child to recover cost of such clothing, with ten per cent. additional thereto.

History: En. Sec. 1903, Ch. 76, L. 1913. See also history of Sec. 1157.

1161. Rules and regulations of school. The board of trustees of such district shall have power to establish rules and regulations under which children committed to such industrial school may be allowed to return home upon parole, but to remain while upon parole in the legal custody and under control of the officers and agents of such school, and subject at any time to be taken back within the inclosure of such school by the principal or any authorized officer of said school except as hereinafter provided, and full power to enforce such rules and regulations to retake any such child so upon parole is hereby conferred upon said board of trustees. No child shall be released upon parole in less than four weeks from the time of his commitment, nor thereafter until the principal of such industrial school shall have become satisfied from the conduct of such child, that, if paroled, he will attend regularly the public or private school to which he may be sent by his parents or guardians, and shall so certify to the board of trustees.

History: En. Sec. 1904, Ch. 76, L. 1913. See also history of Sec. 1157.

1162. Paroled children. It shall be the duty of the principal or other person having charge of the school to which children so released on

parole may be sent, to report at least once each month to the principal of the industrial school, stating whether or not such child attends school regularly, and obeys the rules and regulations of said school; and if such child so released upon parole shall be regular in his attendance at school, and his conduct as a pupil shall be satisfactory for a period of one year from date on which he was released upon parole, he shall then be finally discharged from the industrial school, and shall not be recommitted thereto except as hereinbefore provided.

History: En. Sec. 1905, Ch. 76, L. 1913. See also history of Sec. 1157.

1163. Recommitment of paroled children. In case any child released from school upon parole, as hereinbefore provided, shall violate the conditions of his parole at any time within one year thereafter, he shall upon the order of the board of trustees, as hereinbefore provided, be taken back to such industrial school, and shall not be again released upon parole within the period of three months from the date of such re-entering; and if he shall violate the conditions of a second parole, he shall be recommitted to such industrial school, and shall not be released therefrom on parole until he shall have remained in such school at least one year.

History: En. Sec. 1906, Ch. 76, L. 1913. See also history of Sec. 1157.

1164. Incorrigibles. In any case where a child is incorrigible and his influence in such industrial school is detrimental to the interests of the other pupils, the board of trustees may authorize the principal or any other officer of the school to represent these facts to the district court by petition; and the court shall have power to commit said child to the state reform school.

History: En. Sec. 1907, Ch. 76, L. 1913. See also history of Sec. 1157.

1165. Industrial schools in small districts. The board of trustees in districts having a population less than twenty-five thousand may establish, maintain, and operate an industrial school for the purpose hereinbefore specified, and in case of the establishment of such school the board of trustees shall have like power in their respective districts as hereinbefore expressed; provided, that no board of trustees under this section shall put this law into effect until submitted to a vote at some general or special election.

History: En. Sec. 1908, Ch. 76, L. 1913. See also history of Sec. 1157.

1166. Receiving pupils from other districts. Boards of trustees in districts where there is established and in operation an industrial school, may, if the accommodation permits, receive pupils from other districts who have been committed thereto, upon the payment from the district in which the child resides of such rate of tuition as the board of trustees may fix.

History: En. Sec. 1909, Ch. 76, L. 1913. See also history of Sec. 1157.

1167. Penalties and fines for neglect of official duty. Any officer, principal, or other person mentioned in this chapter, neglecting to perform any duty imposed upon him by this chapter, shall be fined not less than twenty-five nor more than fifty dollars for each offense. Any officer or agent of any corporation violating any provisions of this chapter, and who participates or acquiesces in, or is cognizant of, such violation, shall

be fined not less than twenty-five dollars nor more than fifty dollars. Any person who violates any provisions of this chapter for which a penalty is not elsewhere in this chapter provided for shall be fined not more than fifty dollars. Mayors, justices of the peace, police judges, and district courts shall have jurisdiction to try the offenses described in this chapter. When complaint is made, information filed, or indictment found against any corporation for violating this chapter, summons shall be served, appearance made, or plea entered, as provided by the laws of Montana, except that in complaints before magistrates service shall be made by the constable. In all other cases process shall be served and proceedings had as in cases of misdemeanor. All fines collected under the provisions of this chapter shall be paid into the funds of the school district in which the offense was committed. Boards of trustees are authorized to employ legal counsel to prosecute any case arising under the provisions of the chapter, when they shall deem the same necessary, and the services of such counsel shall be paid from the general fund of the district.

History: En. Sec. 1910, Ch. 76, L. 1913. See also history of Sec. 1157.

1168. Penalties for repeated violation of the chapter. Every person who, after being once convicted for violating any of the provisions of this chapter, shall be convicted of again violating any of the provisions of this chapter, may, in addition to the punishment by way of a fine elsewhere provided for, be imprisoned not less than ten days nor more than thirty days. On complaint, before mayor, justice of the peace, or police judge, of a second violation of this chapter involving punishment by imprisonment, if a trial by jury be not waived, a jury shall be chosen and the case tried after the manner provided in the laws of Montana.

History: En. Sec. 1911, Ch. 76, L. 1913. See also history of Sec. 1157.

1169. Duty of trustees to provide sufficient accommodations. It is hereby made the duty of every board of trustees in this state to provide sufficient accommodations in the public schools for all children in their district compelled to attend the public schools under the provisions of this chapter. Authority to levy tax and raise the money necessary for such purpose is hereby given the proper officers charged with such duty under the law.

History: En. Sec. 1912, Ch. 76, L. 1913. See also history of Sec. 1157.

1170. Cost of prosecutions. No officer or person instituting proceedings under this chapter shall be required to advance money or give security for costs; and if a defendant is acquitted or discharged, or if convicted, and committed to jail in default of payment of fine and costs, the justice, mayor, police judge, or district court, before whom such case was brought, shall certify such costs to the county auditor, who shall examine, and if necessary correct the account, and issue his warrant to the county treasurer in favor of the respective persons to whom such costs are due for the amount due each.

History: En. Sec. 1913, Ch. 76, L. 1913. See also history of Sec. 1157.

CHAPTER 93.

JUVENILE DISORDERLY PERSONS—COMMITMENT TO INDUSTRIAL SCHOOL.

Section 1171. Juvenile Disorderly Persons.
1172. Commitment to Industrial School.

1171. Juvenile disorderly persons. Every child between the ages of eight and fourteen years, and every child between the ages of fourteen and sixteen years unable to read and write the English language, or not engaged in some regular employment and who is an habitual truant from school, or who absents itself habitually from school, or who, while in attendance at any public, private or parochial school, is incorrigible, vicious, or immoral in conduct, or who habitually wanders about the streets and public places during school hours, having no business or lawful occupation, shall be deemed a juvenile disorderly person and be subject to the provisions of this chapter.

History: En. Sec. 4, Ch. 45, L. 1903; re-en. Sec. 968, Rev. C. 1907; re-en. Sec. 1106, Ch. 76, L. 1913.

Validity of statute providing for juvenile courts, see notes in 7 Ann. Cas. 831, Ann. Cas. 1914A, 1227, Ann. Cas. 1915D, 701, 3 L. R. A. (N. S.) 564, 45 L. R. A. (N. S.) 908.

1172. Commitment to industrial school. If the parent, guardian, or other person in charge of any child, shall, upon the complaint under the last section for a failure to cause the child to attend a recognized school, prove inability to do so, when he or she shall be discharged and thereupon the truant officer shall make complaint that the child is a juvenile disorderly person within the meaning of the preceding section. If such complaint is made before any mayor, justice of the peace or police judge, it shall be certified by such magistrate to the district court in and for the county in which the child resides or to a judge of said district court. The district court or the judge thereof to whom the same is certified shall hear such complaint, and if it be determined that the child is a juvenile disorderly person within the meaning of the preceding section the said child shall be committed by the said court, or the judge thereof to whom the complaint was certified, to the industrial school hereinafter provided for, where he shall be subject to all rules and regulations of said industrial school; provided, further, that if for any cause the parent, guardian, or other person in charge of any juvenile disorderly person as defined in the preceding section shall fail to cause such juvenile disorderly person to attend school, the complaint against such juvenile disorderly person shall be made, heard, and determined in like manner as provided in case the parent proves inability to cause such juvenile disorderly person to attend school.

History: Ap. p. Sec. 6, Ch. 45, L. 1903; 972, Rev. C. 1907; amd. Sec. 1107, Ch. 76, amd. Sec. 1, Ch. 80, L. 1905; re-en. Sec. L. 1913.

CHAPTER 94.

SCHOOLHOUSE SITES AND CONSTRUCTION.

Section 1173. Selection.
1174. Architecture.
1175. Floor Space—Air—Light.
1176. Penalties.
1177. Suggestive Plans.
1178. Vestibules.
1179. Care of Schoolhouses.
1180. Water Supply and Toilet Accommodations.

1173. Selection. Whenever, in the judgment of the board of trustees of any school district of the third class, it is desirable to select, purchase,

exchange, or sell a schoolhouse site, or whenever petitioned so to do by one-third of the voters of such district, the district board shall without delay call a meeting at some convenient time and place fixed by the board to vote upon such question of selection, purchase, exchange, or sale of schoolhouse site. Such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers. Three notices giving the time, place, and purpose of such meeting shall be posted in three public places in the district by the clerk at least ten days prior to such meeting. If a majority of the electors of the district voting at such meeting or election shall be in favor of selecting, purchasing, exchanging, or selling the schoolhouse site, the board shall carry out the will of the voters thus expressed; provided, that all sites so chosen must be approved by the county superintendent of schools and the county health officer; and also provided that any sites so changed cannot again be changed within three years from the date of such action, except upon the advice of the county superintendent of schools and county health officer.

The school site shall be selected in a place that is convenient, accessible, suitable, and well drained; provided, that in districts of the first and second class, the site shall be not less than one-half of an average city block, and in districts of the third class shall contain not less than one acre. The state board of land commissioners shall have authority to sell to any school district at the appraised value, or to lease for any period of time less than ninety-nine years, at a rental of one dollar per year, any tract of state land not exceeding ten acres, to be used for schoolhouse site.

History: En. Sec. 1600, Ch. 76, L. 1913; amd. Sec. 1, Ch. 42, L. 1917; amd. Sec. 30, Ch. 196, L. 1919.

Statutory restrictions as to site of school buildings, see note in 43 L. R. A. (N. S.) 1024.

For matters relating to school property, see 24 R. C. L. 581.

1174. Architecture. No schoolhouse shall hereafter be erected, repaired, or enlarged in any school district of the state at an expense which shall exceed five hundred dollars, until the plans and specifications thereof shall have been submitted to the state board of health, and its approval indorsed thereon; provided, that districts of the second and third class shall also have the approval of the superintendent of public instruction. Such plans and specifications shall show in detail the ventilation, the heating, and lighting of such building.

History: En. Sec. 1601, Ch. 76, L. 1913.

1175. Floor space—Air—Light. The board of health shall not approve plans for the erection of any school building or addition thereto or remodeling thereof, unless the same shall provide (a) at least fifteen square feet of floor space and two hundred cubic feet of air space for each pupil to be accommodated in each study or recitation room therein; (b) at least thirty cubic feet of pure air per minute per pupil, shall be furnished by a satisfactory ventilating system, which should also provide means for exhausting the foul or vitiated air from the room.

The light shall come from the left or from the left and rear of each schoolroom, and the window space shall be not less than one-seventh of the floor space of each room.

History: En. Sec. 1602, Ch. 76, L. 1913.

1176. Penalties. The county treasurer shall not make any payments on any contract arising under the provisions of this chapter until the contractor furnishes a certified statement, signed by the state board of health, that the plans and specifications of the school building to be erected or remodeled have been fully approved by the state board of health.

History: En. Sec. 1603, Ch. 76, L. 1913.

1177. Suggestive plans. It shall be the duty of the state board of health to furnish to all districts of the third class suggestive plans for school buildings, to be erected in conformity with the above rules.

History. En. Sec. 1604, Ch. 76, L. 1913.

1178. Vestibules. No one and two-room schoolhouses shall be erected without a vestibule of reasonable size.

History: En. Sec. 1605, Ch. 76, L. 1913.

1179. Care of schoolhouses. It shall be the duty of boards of trustees in districts of the third class to require that the schoolroom or rooms shall be thoroughly scrubbed and cleaned, including the floors, interior woodwork and windows, at least once every three months.

History: En. Sec. 1606, Ch. 76, L, 1913

1180. Water supply and toilet accommodations. The board of trustees shall furnish such water supply and toilet accommodations as shall be approved by the state board of health.

History: En. Sec. 1607, Ch. 76, L. 1913.

CHAPTER 95.

SCHOOL LIBRARIES.

Section 1181. Library Fund.
1182. Districts of Third Class.
1183. Districts of the First and Second Classes.
1184. Location and Control of Libraries.
1185. Rules—Reports.
1186. Selection of Books.

1181. Library fund. A library fund is hereby created, and the board of school trustees must expend the library fund, together with such moneys as may be added thereto by donation, in the purchase of books for a school library, including books for supplementary work; provided, that in school districts in which a free public library is maintained such library fund may, in the discretion of the board of trustees, be used for the payment of the current expenses for maintenance of the schools; provided also that, with the approval of the county superintendent of schools, any surplus in the library fund, after furnishing all necessary reference works and library books, may be spent for other needed equipment.

History: Ap. p. Sec. 2000, Pol. C. 1895; amd. Sec. 1, Ch. 14, L. 1905; re-en. Sec. 1030, Rev. C. 1907; amd. Sec. 1200, Ch. 76, L. 1913; amd. Sec. 28, Ch. 196, L. 1919. Cal. Pol. C. Secs. 1712-1717.

1182. Districts of third class. In districts of the third class, the library fund shall consist of not less than five nor more than ten per cent. of the county school fund annually apportioned to the district; provided,

that if such ten per cent. exceed fifty dollars, fifty dollars only shall be apportioned to the district.

History: En. Sec. 1201, Ch. 76, L. 1913.

1183. Districts of the first and second classes. In districts of the first and second classes, the library fund shall consist of a sum not to exceed fifty dollars for every five hundred children or major fraction thereof, between the ages of six and twenty-one years, annually taken from the general school fund of the county apportioned to such district.

History: En. Sec. 1202, Ch. 76, L. 1913.

1184. Location and control of libraries. The library shall be under the control of the board of trustees, and must be kept, when practicable, in the schoolhouse, and shall be for the use of the pupils and all residents of the district.

History: En. Sec. 2003, Pol. C. 1895; re-en. Sec. 1033, Rev. C. 1907; amd. Sec. 1203, Ch. 76, L. 1913.

1185. Rules—Reports. The trustees shall be held accountable for the proper care and preservation of the library, and shall make all needful rules and regulations not provided for by the superintendent of public instruction, and not inconsistent therewith; and they shall report annually to the county superintendent all library statistics which may be required by the blanks furnished for the purpose by the superintendent of public instruction.

History: En. Sec. 2004, Pol. C. 1895; re-en. Sec. 1034, Rev. C. 1907; re-en. Sec. 1204, Ch. 76, L. 1913.

1186. Selection of books. All books shall be selected by the county superintendent and school trustees, acting together, from lists approved by the superintendent of public instruction. It shall be the duty of the county superintendent in his visits to inspect the library, and to make such suggestions regarding its use and care as he may deem advisable. It shall be the duty of the superintendent of public instruction to formulate rules and regulations for the school libraries, and furnish to the county superintendent, from time to time, such instruction and information as will make the use of the library most effective.

History: En. Sec. 2005, Pol. C. 1895; re-en. Sec. 1035, Rev. C. 1907; amd. Sec. 1205, Ch. 76, L. 1913.

CHAPTER 96.

TEXT-BOOKS.

Section 1187. Appointment of State Text-book Commission.
1188. Organization of Commission.
1189. Meetings of Commission.
1190. Contracts for Supplying Text-books.
1191. Selection of Text-books.
1192. Contracts and Agreements.
1193. Bond for Performance of Contracts.
1194. Forfeiture of Contract for Non-Performance.
1195. Price-list of Books to Be Printed and Distributed.
1196. Penalty for Using Other Than Selected Books.
1197. Annual Report as to the Use of Books.
1198. Free Text-books to Be Provided.
1199. Estimate of Money for Free Text-books.
1200. Compensation of Text-book Commissioners.

1187. Appointment of state text-book commission. The governor is hereby authorized to nominate and appoint a state text-book commission consisting of seven members, five of whom shall be persons actively engaged in public school work of the state or in state educational institutions at the time of their appointment. The terms of the members of said commission shall be for a period of five years each. If a vacancy occurs during the terms of any of the members of said commission by reason of death, resignation, or otherwise, the governor shall make appointment to fill such vacancy, and the person so appointed shall hold office until the expiration of the term for which the person he succeeds was appointed.

Historical Note: The first board of text-book commissioners was created by H. B. No. 1, L. 1897, p. 61 et seq. This act was repealed by Ch. 116, L. 1903. En. Sec. 1, Ch. 122, L. 1903; amd. Sec. 1, Ch. 132, L. 1907; Sec. 791, Rev. C. 1907; re-en. Sec. 1800, Ch. 76, L. 1913.

1188. Organization of commission. The commission at its meeting shall organize by taking the constitutional oath of office, which oath shall be filed in the office of the secretary of state; electing from among the members a president and secretary and formulating rules for its government. Five members shall constitute a quorum for the transaction of all business. All votes cast for or against the adoption of any text-books shall be recorded in the minutes of the commission, together with the names of those voting for or against such adoption; provided, that all meetings shall be opened to the public and that said commission must make a full report to the governor not later than the first Monday in November next preceding any regular or special meeting of the legislature.

History: En. Sec. 2, Ch. 122, L. 1903; amd. Sec. 2, Ch. 132, L. 1907; Sec. 792, Rev. C. 1907; re-en. Sec. 1801, Ch. 76, L. 1913.

1189. Meetings of commission. The state text-book commission shall meet in the state capital in the city of Helena, on the third Monday in January, 1917, and every second year thereafter, and the president of said commission shall call a meeting thereof on the first Monday of October, 1916, and every second year thereafter, for the purpose of considering in what subject, if any, as hereinafter provided, text-books shall be changed and expiring contracts extended; provided, that changes shall not be made in the text-books of more than three subjects at any meeting.

He must also, upon ten days' written notice to the members to be given by the secretary, call a meeting of the commission at any time to receive proposals and to enter into contracts with publishers for supplying text-books whenever contracts for certain books heretofore entered into become terminated by rescission, or otherwise cease to be in full force and effect, and to adopt additional supplementary books whenever it is deemed for the best interests of the schools of the state. Said text-book commission may adjourn from day to day until it shall have made adoptions as provided for in this chapter. The session of said commission shall not continue beyond six actual days, and nothing herein contained shall be so construed as to have any reference to the provisions of this act relating to school libraries.

Historical Note: The remaining sections of the law relating to the state text-book commission were enacted as Secs. 3 to 14 inclusive, Ch. 122, L. 1903; amended by Secs. 3 to 14 inclusive, Ch. 132, L. 1907, appearing as Secs. 793 to 804 inclusive,

Rev. C. 1907, the act is here given as it appears by amendment by Secs. 1802 to 1813 inclusive, Ch. 76, L. 1913. En. Sec. 1802, Ch. 76, L. 1913.

1190. Contracts for supplying text-books. Beginning with November 1, 1916, and every second year thereafter, the superintendent of public instruction shall, if any changes have been recommended, advertise for thirty days in two daily newspapers in this state, giving notice that the text-book commission will meet, as herein provided, and that it will receive sealed proposals up to twelve o'clock noon of said third Monday in January next following, for supplying the state of Montana with such basal and supplementary text-books as the commission has considered desirable to be changed, for use in all the public schools of said state for a period of six years from and after the first day of September, 1917; and all contracts under this act shall further provide that they may be extended after their expiration, at the option of the commission, and at not to exceed the schedule of prices agreed upon therein; and the contracts in existence at the time of the passage of this act may be extended after expiration for not to exceed four years, at the option of the commission, and not to exceed the schedule of prices agreed upon therein. The commission shall make contracts for text-books in the following branches, to-wit: Reading, spelling, writing, arithmetic, geography (elementary and advanced), language and grammar, physiology and hygiene, civil government (state and national), history of the United States (elementary and advanced), and elementary agriculture.

Said commission is hereby empowered to adopt such other text-books supplementary to the basal text-books above referred to as it may deem advisable. But no supplementary text-books shall be used in any of the schools in this state except in connection with and supplementary to the basal text-books adopted by the said state text-book commission as provided in this act. Said sealed proposals shall be addressed to the chairman of the state text-book commission, Helena, Montana, and shall be indorsed "Sealed proposals for supplying text-books for use in the state of Montana." Said proposals shall state the net wholesale prices at which the publishers whose books may be adopted by the text-book commission will agree to deliver the same in the city of Chicago, Illinois, f. o. b., to merchants in Montana or to school districts purchasing the same, or f. o. b. text-book depositories in Montana. They shall also state the introductory price without exchange, and the exchange price for new books adopted in exchange for the old books in the hands of the pupils, and for the new books in the hands of the districts or dealers, which may be displaced, grade for grade; provided, that when pupils own their own books they may exchange one of the lower grade for one of a higher; and shall further state the retail price at which they will keep all the text-books so adopted on sale uniformly in at least one place in each county throughout the state. Whenever any contract shall be terminated by rescission, or shall otherwise cease to be in force and effect, the text-book commission shall, within ten days after the termination of such contracts, advertise in the same manner and for the same length of time as elsewhere mentioned in this section for proposals to furnish text-books on the same subject as those embraced within such contract for the same

length of time, and bids shall be received in the same manner as hereinbefore provided. The publishers contracting and agreeing to supply text-books for use in the state of Montana, under the provisions of this act, shall cause to be prepared a special map and special supplement descriptive of Montana for the geography adopted by said commission. They shall also cause to be prepared a special supplement for Montana for the civil government adopted, which supplement shall contain not less than one hundred pages. They shall further agree to maintain the mechanical excellence of the books adopted by said commission fully equal to the samples submitted in binding, quality of paper, and other essential features.

History: En. Sec. 1803, Ch. 76, L. 1913; amd. Sec. 1, Ch. 94, L. 1917. See also history of Sec. 1189.

1191. Selection of text-books. It shall be the duty of said text-book commission to meet at the time and place mentioned in said notice and open sealed bids in the presence of a quorum of said commission, and in public to select and adopt such text-books, both basal and supplementary for use in all the public schools of this state. The text-book so selected and adopted by said text-book commission shall be certified to by the chairman and secretary, and said certificate, with a copy of all the books named therein, shall be placed on file in the office of the superintendent of public instruction. Such certificate must contain a complete list of all books adopted by said commission, giving the wholesale, retail, introductory, and exchange prices for which each kind and grade will be furnished, as provided in the preceding section, and the name of the publishers contracting to furnish the same. The said books named in said certificate shall for such period as is provided in the contract or extension thereof from and after the first day of September of the year in which they are adopted be used in all public schools of the state to the exclusion of all others; provided, that nothing in any part of this act shall be so construed as to prevent the purchase or use by any district of any reference books for use in any of the schools of the state.

History: En. Sec. 1804, Ch. 76, L. 1913. See also history of Sec. 1189.

Adoption of text-books for public schools, see note in 36 L. R. A. 277.

Who may complain of noncompliance with statute in adopting or changing text-books in schools, see note in 19 L. R. A. (N. S.) 1003.

1192. Contracts and agreements. The said text-book commission shall have power to make contracts and agreements for the use and supply of text-books in the name of the state as it shall deem necessary for the best interests of the public schools of the state, and shall require of all publishers contracting and agreeing to furnish books adopted by the said text-book commission, bonds equal in amount to one-half the value of the books to be furnished, conditioned that upon the failure on the part of such publishers to comply with the terms of such contracts, or any part thereof, in any county of the state, upon notice being given as provided for herein, said bonds may, by the governor of the state of Montana, be declared forfeited, and actions brought in the name of the state upon such bonds to recover the full amount named therein, which amount shall be deemed to be fixed and liquidated damages for the breach of such contracts; provided.

that the text-book commission may, at its discretion, reject any and all proposals if it be deemed by it to be to the interest of the state so to do, and it shall advertise for new proposals, stating the time when such new proposals will be received by it, not later, however, than thirty days from the rejection of the first proposals; provided, further, that the contract price of such books f. o. b. Chicago, Illinois, or text-book depositories in Montana, allowing difference for freight, shall not exceed the lowest wholesale price charged for the same books to any other state of the United States.

History: En. Sec. 1805, Ch. 76, L. 1913; amd. Sec. 2, Ch. 94, L. 1917. See also history of Sec. 1189.

1193. Bond for performance of contracts. The contract with the publishers shall take effect only when the publishers of the books adopted by the said text-book commission shall have filed with the secretary of state their bond, with at least two sufficient sureties, to be approved by the governor, in such sum as shall be determined by said text-book commission conditioned that they shall comply with the terms of their proposal to the state and such conditions as may be agreed upon between said text-book commission and the publishers contracting with the state.

History: En. Sec. 1806, Ch. 76, L. 1913. See also history of Sec. 1189.

1194. Forfeiture of contract for non-performance. In case the publishers of the books adopted by the said text-book commission shall not on or before the fifteenth day of February of the year in which the text-books are to be adopted, have filed with the secretary of state their bond as hereinbefore provided, on or before the fifteenth day of February of said year, or in case they shall not, on or before the fifteenth day of June of said year, have performed all the obligations of their contracts with respect to the exchange and introduction of books and the preparation and supply of the special maps, and the special descriptive matter for the geography so adopted, or the special supplement for the civil government, or in case they shall at any time thereafter violate or fail to perform any of the conditions specified in their bond, as hereinbefore provided, and shall fail within reasonable time after due notice has been given by the governor to make good their guarantee in any respect in which they may have failed, then this adoption shall become null and void. The said text-books adopted by the said text-book commission under this act, and upon compliance of the publishers with the conditions aforesaid, shall continue in use for the period of not less than five years from the first day of September of the year above mentioned, to the exclusion of all others except as herein otherwise provided.

History: En. Sec. 1807, Ch. 76, L. 1913. See also history of Sec. 1189.

1195. Price list of books to be printed and distributed. Whenever the publishers of the books adopted under the provisions of this bill shall have filed their bonds as hereinbefore provided, it shall be the duty of the state superintendent of public instruction to cause all prices of the text-books, as guaranteed by the publishers, to be properly printed and distributed through the county superintendents to the trustees of all school districts in the state, who shall cause the same to be kept constantly posted in a conspicuous place

in each schoolroom in their districts, and it shall be the duty of the several county superintendents to keep themselves informed as to whether such prices are actually maintained by the said publishers, and at once notify the superintendent of public instruction of the violation of the contracts entered into by virtue of the authority contained in this act, which may come to their knowledge, and it shall be the duty of the superintendent of public instruction to promptly communicate such information to the governor.

History: En. Sec. 1808, Ch. 76, L. 1913. See also history of Sec. 1189.

1196. Penalty for using other than selected books. Any school officer, teacher, or trustee, who shall use or provide for the use in the public schools of the state, text-books other than those adopted by the said text-book commission, except as herein otherwise provided, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

History: En. Sec. 1809, Ch. 76, L. 1913. See also history of Sec. 1189.

1197. Annual report as to the use of books. All county superintendents and all school officers are charged with the execution of this law, and the county school superintendent shall require the trustees of the several school districts or the clerks thereof to report annually whether or not the authorized text-books are used in their schools.

History: En. Sec. 1810, Ch. 76, L. 1913. See also history of Sec. 1189.

1198. Free text-books to be provided. In all school districts of the state, and in all high schools, free text-books shall be furnished for the use of the pupils thereof, and it shall be the duty of all school boards and school trustees to purchase the text-books required for the use of the pupils in attendance thereon, at the expense of said districts, and said books shall be loaned to said pupils free of charge, subject to such rules and regulations as such trustees shall prescribe, provided, that said free text-books shall be sold at cost for the use of any pupils whose parents or guardians may request same.

History: En. Sec. 1811, Ch. 76, L. 1913; amd. Sec. 1, Ch. 12, L. 1917. See also history of Sec. 1189.

Power of school authorities to purchase text-books, see note in 45 L. R. A. (N. S.) 972.

1199. Estimate of money for free text-books. For the purpose of raising money to pay for free text-books, it shall be the duty of the trustees of each school district, on or before the first day of July of each year, to certify to the county commissioners of the county wherein said school district is located, an estimate of the amount of money required to provide said free text-books for the ensuing school year; thereupon, in case the money received from the general fund of the district be insufficient for said purpose, said board of county commissioners shall levy a special tax upon the taxable property of said district for the purpose of providing said

free text-books; said tax shall be collected in the same manner and at the same time as other taxes are collected.

History: En. Sec. 1812, Ch. 76, L. 1913; amd. Sec. 1, Ch. 65, L. 1921. See also history of Sec. 1189.

1200. Compensation of text-book commissioners. The members of said text-book commission provided for by this act shall receive the sum of six dollars per diem for each day necessarily engaged in transacting business and while in session, and actual traveling expenses; and there is hereby appropriated the sum of one thousand dollars per year, or so much thereof as may be necessary to carry out the provisions of this act; provided, that said commission shall not be in session more than ten days in any one year.

History: En. Sec. 1813, Ch. 76, L. 1913. See also history of section 1189.

CHAPTER 97.

FINANCE.

Section 1201. Permanent School Fund.
1202. Common School Levy.
1203. Special School Tax.
1204. Apportionment.
1205. Purposes for Which Money May Be Used.
1206. Transfer of Road Funds.
1207. Proceeds of Town Lots.
1208. Building and Furnishing Fund.
1209. Warrants.
1210. Transfer of Funds—Election.
1211. Distribution of Oil Royalties From United States.
1212. County Superintendent to File Statement.
1213. Duties of County Treasurer.
1214. Same—Report.
1215. County Assessor to Report Assessed Valuation School Districts.
1216. Duty of Clerk of District Court.
1217. Duty of Justice of the Peace.
1218. Penalty.

1201. Permanent school fund. The principal of the state school fund shall remain irreducible and permanent. That said fund shall be derived from the following sources, to-wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the union as approved by section 15 of the enabling act; the principal of all funds arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools, and such other funds as may be provided by the legislative enactment.

History: Ap. p. Sec. 1940, Pol. C. 1895; amd. Sec. 11, p. 133, L. 1897; re-en. Sec. 993, Rev. C. 1907; re-en. Sec. 2000, Ch. 76, L. 1913.

Note.—The first act establishing a common school system and providing for school funds was chapter 1, pages 433-443, Bannack Stat. By chapter 13, page 17,

2nd Session 1866, this act was annulled; the latter legislation being set aside by act of congress of March 2, 1867.

For a discussion of school taxation and management of school funds, see 24 R. C. L. 587 et seq.

1202. Common school levy. In addition to the provisions for the support of common schools hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax of six mills on the dollar of the assessed value of all taxable property, real and personal, within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected. For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines or violations of law, unless otherwise specified by law. Such money shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxing each county and dividing in the same manner.

History: Ap. p. Sec. 44, p. 630, Cod. Stat. 1871; re-en. Sec. 43, p. 132, L. 1874; re-en. Sec. 1130, 5th Div. Rev. Stat. 1879; re-en. Sec. 1902, 5th Div. Comp. Stat. 1887; amd. Sec. 1940, Pol. C. 1895; amd. Sec. 1940a, p. 134, L. 1897; amd. Sec. 1, p. 12, L. 1901; amd. Sec. 1, Ch. 51, L. 1907; re-en. Sec. 994, Rev. C. 1907; amd. Sec. 2001, Ch. 76, L. 1913; amd. Sec. 31, Ch. 196, L. 1919.

Cited or applied as section 1940a, Laws of 1897, before amendment, in State ex rel. Knight v. Cave, 20 Mont. 468, 472, 52 Pac. 200.

Power of legislature to delegate taxing power to school district, see note in 8 Ann. Cas. 535.

School tax as affected by extension of boundaries of district, see note in Ann. Cas. 1915B, 1152.

1203. Special school tax. On or before the second Monday in July the board of trustees of each school district shall certify to the county commissioners the amount of money needed by the district, over and above the amount apportioned to it by the county superintendent under the provisions of section 1204 of this code to maintain the schools of said district, to furnish additional school facilities therefor, and to furnish such appliances and apparatus as may be needed, and, in districts of the first and second class, to maintain a school term of at least nine months in each year; in case the board of trustees of any school district shall fail to make such specifications to the board of county commissioners at the time herein specified, the county superintendent shall ascertain the amount of money needed by the district for the purposes specified in this section, and advise the county commissioners, on or before the time designated by law for the levy of tax, of the amount required by such school district; and the board of county commissioners shall thereupon levy a special tax for such purposes, not exceeding ten mills per dollar on the taxable property of the district, such tax to be levied at the same time and in the same manner that other taxes are levied, and the amount of such special tax shall be levied upon each taxpayer of such district, and shall be collected in the same manner as other county and state taxes, and shall be placed in a separate column of the tax-book, which shall be headed, "Special School Tax."

There shall also be a column in said tax-book, which shall be designated the number of the school district in which the property is listed. This tax,

when collected, shall be placed to the credit of the proper district, and shall be subject to the order of the district board.

History: En. Sec. 2, p. 13, L. 1901; amd. Sec. 2, Ch. 51, L. 1907; Sec. 995, Rev. C. 1907; amd. Sec. 2002, Ch. 76, L. 1913; amd. Sec. 32, Ch. 196, L. 1919.

Moneys raised by taxes levied for furnishing "additional school facilities" may be used to pay the salary of teachers. State ex rel. Knight v. Cave, 20 Mont. 468, 475, 52 Pac. 200.

1204. Apportionment. All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school census children between six and twenty-one years of age as shown by the returns of the district clerk for the preceding school census, provided that Indian children whose parents are citizens of the United States or have taken land under the allotment and severalty act of congress or are specified in any act of congress as being entitled to attend common schools either by declaration in such act of congress or as a condition precedent under congressional or federal land allotment or lieu land selection, shall be entitled to attend public schools or to be enumerated as school children, and apportionment shall be made accordingly.

History: Ap. p. Sec. 49, p. 632, Cod. Stat. 1871; re-en. Sec. 48, p. 136, L. 1874; amd. Sec. 1, p. 62, L. 1879; re-en. Sec. 1135, 5th Div. Rev. Stat. 1879; re-en. Sec. 1907, 5th Div. Comp. Stat. 1887; amd. Sec. 1942, Pol. C. 1895; re-en. Sec. 996, Rev. C. 1907; re-en. Sec. 2003, Ch. 76, L. 1913; amd. Sec. 1, Ch. 253, L. 1921. Cal. Pol. C. Sec. 1858.

Cited or applied as section 1942, Political Code, in State ex rel. Knight v. Cave, 20 Mont. 468, 473, 52 Pac. 200.

1205. Purposes for which money may be used. County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this act, and for no other purpose, except that in any district any surplus in the general school fund to the credit of said district, after providing for the expenses of not less than nine months' school, on a vote of the qualified electors of said district may be used for the purpose of retiring bonds and improving buildings and grounds, or erecting school buildings, a teacherage, or barn. If any school money shall be paid by authority of the board of trustees for any purpose not authorized by this chapter, the trustees consenting to such payment shall be liable to the district for the repayment of such sum, and a suit to recover the same may be brought by the county attorney, or if he shall refuse to bring the same, a suit may be brought by any taxpaying elector in the district.

History: Ap. p. Sec. 50, p. 633, Cod. Stat. 1871; re-en. Sec. 49, p. 136, L. 1874; re-en. Sec. 1136, 5th Div. Rev. Stat. 1879; re-en. Sec. 1908, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 56, L. 1893; amd. Sec. 1943, Pol. C. 1895; re-en. Sec. 997, Rev. C. 1907; amd. Sec. 2004, Ch. 76, L. 1913; amd. Sec. 33, Ch. 196, L. 1919.

The improvements contemplated by this section must be of such a character as to materially and permanently enhance the value of the property, and therefore the trustees cannot authorize the payment of an assessment for sprinkling streets. City of Butte v. School District, 29 Mont. 336, 340, 74 Pac. 869.

Power of legislature with respect to expenditure of school funds, see note in Ann. Cas. 1917C, 917.

1206. Transfer of road funds. It shall be the duty of the county treasurer in each county in this state, upon an order of the board of county commissioners, to transfer any and all sums of money raised by county road tax and apportioned to certain road districts, that shall have remained one

year to the credit of any road district unused or unapportioned, to the credit of the particular school district or districts whose boundaries are coterminous, or nearly so, with those of the road district to whose credit said moneys were originally apportioned. A certificate by the road supervisor that such moneys are not needed for immediate use in building or repairing roads in his district, accompanied by the petition of ten residents of such district that such transfer be made, shall be made sufficient warrant for the county treasurer to make such transfer when approved by the board of county commissioners, and the official maps of the several road and school districts of the county shall determine the districts to which the transfers are to be made. Moneys so received to the credit of any particular school district may be applied by the trustees thereof to the payment of any outstanding district indebtedness, or, like other funds, to the ordinary expenses of the district.

History: En. Sec. 1941-1942 and 1943, 5th Div. Comp. Stat. 1887; re-en. Sec. 1944, Pol. C. 1895; re-en. Sec. 998, Rev. C. 1907; re-en. Sec. 2005, Ch. 76, L. 1913.

1207. Proceeds of town lots. All moneys arising from the sale of town lots under and by virtue of the several acts of the legislative assembly of the state of Montana relating to townsites, that are now or that hereafter may come into the hands of any clerk of the district court, or the corporate authorities of any city or town of the state, shall be paid into the county treasury of the county for the use and benefit of the common schools of the school district in which such city or town is situated, to be used as provided for in this chapter.

History: En. Sec. 1944, 5th Div. Comp. Stat. 1887; re-en. Sec. 1945, Pol. C. 1895; re-en. Sec. 999, Rev. C. 1907; re-en. Sec. 2006, Ch. 76, L. 1913.

1208. Building and furnishing fund. The county treasurers of the several counties of this state shall transfer all moneys so paid into said treasury as provided for in the preceding section or that may now be in such treasury, derived from said source, to the school fund of the school district in which said town is situated, which shall be paid out on the order of the school trustees of such district as provided for in section 1209 of this code; and which said moneys shall be by said treasurer set apart as a special fund for the purpose of building and furnishing schoolhouses, and shall be used for such purpose alone, unless otherwise ordered, as provided for in this chapter.

History: En. Sec. 1945, 5th Div. Comp. Stat. 1887; re-en. Sec. 1946, Pol. C. 1895; re-en. Sec. 1000, Rev. C. 1907; amd. Sec. 2007, Ch. 76, L. 1913.

1209. Warrants. The school trustees of any school district are hereby authorized to draw warrants on said fund named in the two preceding sections, for the purpose of building and furnishing a schoolhouse in such place, in the town or city from the sale of lots out of which such fund arose, as they may designate, which said warrants or orders shall specify the fund on which the same are drawn, and for what purpose drawn.

History: En. Sec. 1946, 5th Div. Comp. Stat. 1887; re-en. Sec. 1947; Pol. C. 1895; re-en. Sec. 1001, Rev. C. 1907; re-en. Sec. 2008, Ch. 76, L. 1913.

Running of statute of limitations against warrants of municipal or quasi-municipal corporations, see note in 2 Ann. Cas. 394.

Necessary parties in action to determine validity of county or municipal warrants, see note in 5 Ann. Cas. 853.

1210. Transfer of funds—Election. Said fund may be used for general school purposes, if a majority of the qualified electors of such district shall so elect, upon such question being duly submitted to them at any regular or special election therefor.

History: Ap. p. Sec. 1947, 5th Div. Comp. Stat. 1887; re-en. Sec. 1948, Pol. C. 1895; re-en. Sec. 1002, Rev. C. 1907; amd. Sec. 2009, Ch. 76, L. 1913.

1211. Distribution of oil royalties from United States. All sums of money derived from any and all bonuses, royalties, and rentals paid into the treasury of the United States on account of any permits or leases granted by the government of the United States as provided by the act of congress of February 25, 1920, and paid by the secretary of the treasury of the United States to the state of Montana shall be disposed of and distributed as follows, to-wit: One-half shall be deposited by the state treasurer to the several counties of the state in proportion to the total number of teaching positions in which teachers were employed for a period of at least six months during the preceding calendar year in each county in all of the public schools of the county, as shown by the statements and certificates of the county superintendent of schools of the several counties filed with the state treasurer, and said state treasurer must, at the time of making such appointments, notify the county superintendent of schools of each county of the amount of such fund which has been apportioned and distributed to his respective county. Within ten days after receiving such notice each county superintendent of schools must apportion such amount in the following manner, to-wit: Sixty percentum thereof shall be apportioned to each school district, district high school and county high school in proportion to the total number of teaching positions in which teachers were employed for a period of not less than six months during the last calendar year, for which the statement and certificate was last made and filed with the state treasurer by such county superintendent, in each such school district, district high school and county high school; thirty-five percentum thereof shall be apportioned to each school district, district high school and county high school in proportion to the aggregate number of days attendance of all pupils who attended for a period of not less than six weeks during the aforesaid calendar year in each and every school district, district high school and county high school; and five percentum thereof to be apportioned to each district high school and county high school in proportion to the aggregate number of years of accredited high school work of each district high school and county high school during the last preceding calendar year aforesaid, in each such district high school and county high school. Immediately after making such apportionment the county superintendent of schools must file with the county treasurer a statement and certificate showing the total amount apportioned to each school district, district high school and county high school, and the county treasurer must, immediately after receiving such statement and certificate deposit to the credit of each district school, district high school and county high school fund the amount to which each is entitled as shown by such statement and certificate, and the remaining one-half shall be deposited to the credit of the state highway fund of the state.

History: En. Sec. 1, Ch. 12, Ex. L. 1921.

1212. County superintendent to file statement. The county superintendent of schools of each county in the state must, between the 15th day of April and the 1st day of May in each year, make and file with the state treasurer a statement and certificate showing the total number of teaching positions in which teachers were employed for a period of at least six months during the calendar year ending December 31st immediately preceding, in all of the public schools in such county, including kindergarten, primary, grade, district high and county high schools; provided, however, that if during such calendar year, or thereafter and before the making of such statement and certificate, any portion of a county has been detached from such county and attached to another county, or has been detached from such county and included in a new county, the number of such teaching positions within that portion of such county so detached shall not be included in the statement and certificate of the county superintendent of schools of such county, but the same shall be included in the statement and certificate of the county superintendent of schools of the county to which the portion of such county has been attached, or in the statement and certificate of the county superintendent of schools of the new county.

History: En. Sec. 2, Ch. 12, Ex. L. 1921.

1213. Duties of county treasurer. It shall be the duty of the county treasurer of each county:

1. To receive and hold all school moneys as special deposit, and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent.

2. To render quarterly, beginning September first, each board of trustees, through its chairman, an itemized statement of warrants paid and moneys received for the district for the preceding quarter.

3. To notify the county superintendent of public schools of the amount of county school fund in the county treasury subject to apportionment whenever required, and to inform said county superintendent of the amount of school moneys belonging to any other fund subject to apportionment.

4. To pay all warrants drawn on county or district school moneys in accordance with the provisions of this chapter, whenever such warrants are countersigned by the district clerk and also countersigned by the county superintendent, as provided in section 1019 of this code.

History: Ap. p. Sec. 1880, Pol. C. 1895; re-en. Sec. 941, Rev. C. 1907; amd. Sec. 2010, Ch. 76, L. 1913.

1214. Same—Report. To make annually, on or before the tenth day of August in each year, a financial report of the last school year and fiscal year ending June thirtieth, to the county superintendent of schools, in such form as may be prescribed by him.

History: En. Sec. 2010, Ch. 76, L. 1913; amd. Sec. 6, Ch. 81, L. 1917.

1215. County assessor to report assessed valuation school districts. It shall be the duty of the county assessor in each county in the state to make a report to the county superintendent of schools within his county on or before the first day of July of each year giving the assessed valuation of the several school districts of the county for that year.

History: En. Sec. 2011, Ch. 76, L. 1913; amd. Sec. 1, Ch. 46, L. 1921.

1216. Duty of clerk of district court. It shall be the duty of the clerk of the district court, at the close of every term thereof, to report to the county superintendent of the county in which said term shall have been held, whether or not any fines, and if any, what ones, were imposed by said court during the said term.

History: En. Sec. 1903, 5th Div. Comp. Stat. 1887; re-en. Sec. 1891, Pol. C. 1895; re-en. Sec. 943, Rev. C. 1907; re-en. Sec. 2012, Ch. 76, L. 1913.

1217. Duty of justice of the peace. It shall be the duty of each justice of the peace of each county to report to the county superintendent, during the month of September in each year, whether or not they have imposed and collected any fines during the preceding year, and if any, what ones, with the date at which the same were paid to the county treasurer.

History: En. Sec. 1903, 5th Div. Comp. Stat. 1887; re-en. Sec. 1892, Pol. C. 1895; re-en. Sec. 944, Rev. C. 1907; re-en. Sec. 2013, Ch. 76, L. 1913.

1218. Penalty. All officers mentioned in the four preceding sections, who shall fail or neglect to perform any of the duties required by this chapter, shall be deemed guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction thereof, shall be fined in any sum not less than twenty dollars and not more than one hundred dollars for each neglect; and such fine shall be paid into the county treasury for the benefit of the public schools in said county.

History: En. Sec. 1903, 5th Div. Comp. Stat. 1887; re-en. Sec. 1893, Pol. C. 1895; re-en. Sec. 945, Rev. C. 1907; re-en. Sec. 2014, Ch. 76, L. 1913.

CHAPTER 98.

EXTRA TAXATION FOR SCHOOL PURPOSES.

Section 1219. District School Taxes in Excess of Ten Mills—Election.
1220. Notice of Election.
1221. Purpose of Levy to Be Submitted—Use of Funds.
1222. Form and Marking of Ballot—Conduct of Election.
1223. Challenging Voters—Oath of Elector—False Swearing.

1219. District school taxes in excess of ten mills—Election. Whenever the board of trustees of any school district shall deem it necessary to raise money by taxation in excess of the ten-mill levy now allowed by law for the purpose of maintaining the schools of said district, or building, altering, repairing, or enlarging any schoolhouse or houses of said district, for furnishing additional school facilities for said district, for building and equipping heating or other plants for said district, or for any other purpose necessary for the proper operation and maintenance of the schools in said district, it shall submit the question of such additional levy to the legal voters of said district, who are tax-paying freeholders therein, either at the regular annual election held in said district, or at a special election called for that purpose by the board of trustees of said district.

History: En. Sec. 1, Ch. 93, L. 1917.

1220. Notice of election. Where the question of making such additional levy is so submitted, notice thereof shall be given by posting the same at each schoolhouse in said district, at least ten days before such election, or by publication thereof for a like period before such election

in each newspaper published in said district, or by both such notice and publication.

History: En. Sec. 2, Ch. 93, L. 1917.

1221. Purpose of levy to be submitted—Use of funds. The submission of said question shall expressly provide for what purpose such additional levy is to be made, and if authorized, the money raised by such additional levy shall be used for that specified purpose only; provided, that if any balance remain on hand after the purpose for which said levy was made has been accomplished, such balance may, by vote of the trustees of the said district, be transferred to any other fund of said district.

History: En. Sec. 3, Ch. 93, L. 1917.

1222. Form and marking of ballot—Conduct of election. The ballot furnished electors at such election shall have printed thereon the following:

"Shall the board of trustees of this district be authorized to make a levy of (here insert the number) mills taxes in addition to the regular ten-mill levy authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made)?"

	For additional levy.
	Against additional levy.

The voters shall mark the ballot in the same manner as other ballots are marked under the election laws of this state. The election shall be held and the votes canvassed and returned as in other school elections. If the majority voting on the question are in favor of such additional levy, the board of trustees of said school district shall so certify to the board of county commissioners of the county in which said school district is situated, and said additional levy shall be made in the same manner that the levy for special taxes in said district is made.

History: En. Sec. 4, Ch. 93, L. 1917.

1223. Challenging voters—Oath of elector—False swearing. Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation, in substance as follows: "You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years of age; that you have resided in this state one year, and in this school district thirty days next preceding this election; that you are a tax-paying freeholder on the last assessment-roll for this school district; and that you have not voted this day. So help you God." Said oath shall be reduced to writing and signed by the person challenged and sworn to before one of the judges of election. Said oath or affirmation shall be returned with the ballots cast at such election. If the voter takes such oath or affirmation his vote must be received; otherwise, it shall be rejected. Any person who shall swear falsely before any such judge of election shall be guilty of perjury, and shall be punished accordingly.

History: En. Sec. 5, Ch. 93, L. 1917.

CHAPTER 99.

BONDS.

Section 1224. Issuance of Bonds—Submission of Question to Electors—Limit.
1225. Manner of Holding Election—Ballots—Form of Bonds.
1226. Notice of Sale of Bonds.
1227. School District Liable on Bonds.
1228. Tax—Sinking Fund.
1229. Same—Redemption of Bonds.
1230. Redemption—Notice to Bondholder.
1231. Duty of County Treasurer.
1232. Printing of Bonds.
1233. Penalty.
1234. General Laws Applicable.
1235. Refunding Bonds.
1236. Disposal of Proceeds of Bonds.
1237. District Responsible on Bonds.
1238. Must Levy Tax for Interest, etc.
1239. Redemption of Bonds.
1240. Payment of Interest.
1241. Presentation of Bonds.
1242. Felony—Penalty.
1243. Repayment of Loans.
1244. Trustees May Fund Floating Indebtedness.
1245. Issuance of Warrants in Excess of Funds or Levy.
1246. Funding Bonds, When Issued.
1247. Resolution to Be Entered.
1248. Contents of Resolution—Form of Bonds—Registry.
1249. Tax Levy.
1250. Advertisement and Sale of Bonds—Exchange.
1251. Emergency Clause.
1252. Signers Required on Petition for Bond Elections.
1253. Qualifications of Voters.
1254. Repealing Clause.

1224. Issuance of bonds—Submission of question to electors—Limit. 1. The board of school trustees of any school district within this state is hereby vested with the power and authority to issue and negotiate, on the credit of the school district, coupon bonds for any one or more of the following purposes: (a) For the purpose of building, altering, enlarging, repairing, or acquiring by purchase one or more schoolhouses in said district; (b) for the purpose of furnishing and equipping one or more schoolhouses in said district; (c) for the purpose of purchasing land for a schoolhouse site; and (d) for the purpose of constructing or acquiring by purchase a teacherage in said district, and purchasing land necessary for the same.

2. The board of school trustees of any school district within this state shall, whenever a majority of the school trustees so decide, or when petitioned so to do by thirty per centum of the qualified electors of said district, submit to the electors of the district the question whether the board shall be authorized to issue coupon bonds to a certain amount, not to exceed three per cent. of the taxable property in said district, bearing a certain rate of interest not exceeding six per cent. per annum, payable semiannually and payable at a certain time, and redeemable at a certain time, for any one or more of the purposes specified in paragraph one of this section. Upon the passing of a resolution by the board of trustees, submitting to the electors of the district the question of the issuance of bonds, the clerk of such school district shall, not less than fifteen days before the date specified for such election, post notices in three public

places in said district, and in incorporated cities and towns at least one notice in each ward, which notices must specify the time and place of election, the hours during which the polls will be opened, and the amount, the maximum rate of interest, time payable, time redeemable, and purpose of the proposed bond issue. Such notice of election shall be substantially in the following form:

Notice of Special Bond Election.

Notice is hereby given by the undersigned clerk of school district No. .... of ..... county, state of Montana, that under and pursuant to a certain resolution, duly adopted at a meeting of the trustees of said school district, held on the .... day of ....., A. D. 19..., an election of the qualified electors of school district No. ... of ..... county, state of Montana, will be held at ..... on the ..... day of ....., A. D. 19..., for the purpose of voting upon the question of whether the board of trustees shall be authorized to issue coupon bonds to the amount of ..... dollars ($.....), bearing interest at a rate not exceeding ..... per cent. per annum, payable semi-annually, said bonds to be payable in ..... years, and redeemable in ..... years, for the purpose of .....

.....

The polls will be open from ..... o'clock ... m. until ..... o'clock ... m.

Dated and posted this ..... day of ....., A. D. 19....

.....

Clerk of said school district No. .....

3. Should the trustees of any school district in which bonds have heretofore been issued to any amount desire to submit to the electors of the district the question as to whether additional bonds shall be issued, they may do so, but no such bonds shall be issued unless a majority of all votes cast at any such election shall be cast in favor of such issue of additional bonds; and in no case shall the whole issue of bonds exceed the amount of three per cent. of the taxable property within said school district.

History: Ap. p. Sec. 1, p. 64, L. 1883; re-en. Sec. 1950, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 209, L. 1889; amd. Sec. 1, p. 55, L. 1893; amd. Sec. 1960, Pol. C. 1895; re-en. Sec. 1003, Rev. C. 1907; amd. Sec. 2015, Ch. 76, L. 1913; amd. Sec. 34, Ch. 196, L. 1919.

Notice of election, failing to disclose rate of interest of proposed bonds, time when payable, and time when redeemable, held insufficient under similar statute. State v. School District No. 1, 15 Mont. 133, 136, 38 Pac. 462.

Right of taxpayer, in absence of statute, to enjoin issuance or payment of school bonds, see note in 36 L. R. A. (N. S.) 7.

1225. Manner of holding elections—Ballots—Form of bonds. 1. Such election shall be held in the manner prescribed for the election of school trustees.

2. The ballots shall be substantially in the following manner: "Shall coupon bonds be issued and sold to the amount of ..... dollars ($.....), bearing not to exceed ..... per cent. interest, payable in ..... years and redeemable in ..... years, for the purpose of (briefly state purpose or purposes of such bond issue)."

☐	BONDS—Yes.
☐	BONDS—No.

The elector shall prepare his ballot by putting an "X" before "Bonds—Yes" in the vacant square provided therefor if he wishes to vote for the bonds, or before "Bonds—No" in the vacant square provided therefor if he wishes to vote against the bonds.

The foregoing sentence containing instructions for the marking of the ballot shall also be printed, typewritten, or written upon the ballot at the top thereof.

3. Resolution for issuance of bonds.

If a majority of votes cast at such election are in favor of the issuance of such bonds, the board of school trustees shall, within sixty days from the date of such election, pass a resolution providing for the issuance of such bonds and prescribing the form thereof. Such bonds shall bear the signature of the chairman of the board of trustees, and shall be signed by the clerk of such school district, and the coupons attached to the bonds shall be signed by the said chairman and clerk, provided, a facsimile of the signatures of the chairman and clerk may be affixed to the coupons only when so recited in the bonds, and the corporate seal of the school district shall be attached to each of the bonds. Each bond so issued shall be registered by the county treasurer in a book provided for that purpose, which shall show the number and amount of each bond, its date, date payable, date redeemable, and the person to whom the same is issued or sold; and the said bonds shall be sold by the trustees as hereinafter provided.

History: Ap. p. Sec. 1962, Pol. C. 1895; amd. Sec. 2, p. 125, L. 1901; re-en. Sec. 1005, Rev. C. 1907; amd. Sec. 2016, Ch. 76, L. 1913; amd. Sec. 35, Ch. 196, L. 1919.

Cited or applied as section 1962, Political Code, before amendment, in Hauswirth v. Mueller, 25 Mont. 156, 159, 64 Pac. 324.

1226. Notice of sale of bonds. The school trustees shall give notice of the sale of such bonds by advertisement in some newspaper published in this state, at least once a week for four consecutive weeks, the date of the first publication to be not less than thirty days prior to the date of sale; such advertisement must state the date, hour, and the place where such sale will take place, and also the amount of such bond issue and the denomination of the bonds; rate of interest which they shall bear, time payable, time redeemable, and the purpose of the proposed bond issue. Such bonds shall not be sold for less than their par value, and the said trustees are authorized to reject any bids, and to sell such bonds at private sale if they deem it for the best interest of the district. The board of trustees shall forthwith, upon the sale of such bonds, properly execute and issue the same and deposit them with the county treasurer, who shall register the same and deliver them to the purchaser upon receipt of the purchase price therefor; provided, however, that in case such bonds shall be purchased by the state board of land commissioners, the county treasurer shall forward the same to the state treasurer, who

shall cause a warrant in payment for such bonds to be forwarded to the county treasurer. All moneys arising from the sale of said bonds shall by the county treasurer be credited to said district, and the same shall be immediately available for the purpose of such bond issue.

History: Ap. p. Sec. 3, p. 65, L. 1883; re-en. Sec. 1952, 5th Div. Comp. Stat. 1887; amd. Sec. 1963, Pol. C. 1895; re-en. Sec. 1006, Rev. C. 1907; amd. Sec. 2017, Ch. 76, L. 1913; amd. Sec. 36, Ch. 196, L. 1919.

1227. School district liable on bonds. The faith of each school district is solemnly pledged for the payment of the interest and the redemption of the principal of the bonds which shall be issued under the provisions of this chapter. And for the purpose of enforcing the provisions of this chapter each school district shall be a body corporate, which may sue and be sued by or in the name of the board of school trustees of such district.

History: En. Sec. 4, p. 65, L. 1883; re-en. Sec. 1953, 5th Div. Comp. Stat. 1887; re-en. Sec. 1964, Pol. C. 1895; re-en. Sec. 1007, Rev. C. 1907; re-en. Sec. 2018, Ch. 76, L. 1913.

1228. Tax—Sinking fund. The school trustees of each district having an outstanding bonded indebtedness shall, on or before the first Monday in July of each year, ascertain and certify to the board of county commissioners (and in the event that such school district is a joint school district, the board of trustees shall certify to the board of county commissioners of each county in which any portion of such joint district is located) the amount necessary to pay the annual interest upon such outstanding bonds, and a sinking fund to redeem the bonds at their maturity. Any board of trustees failing to comply with the provisions of this section shall be subject to immediate removal by the county superintendent. In the event that the board of trustees in said district shall fail to comply with the provisions of this section, the county superintendent shall advise the county commissioners, on or before the first Monday in August, of the amount of money necessary to be raised for the above-mentioned purpose. The county commissioners shall thereupon compute and levy the necessary tax, and said tax shall become a lien upon all the property in said school district, and shall be collected in the same manner as other taxes for school purposes.

History: Ap. p. Sec. 5, p. 65, L. 1883; re-en. Sec. 1954, 5th Div. Comp. Stat. 1887; re-en. Sec. 1965, Pol. C. 1895; re-en. Sec. 1008, Rev. C. 1907; re-en. Sec. 2019; Ch. 76, L. 1913; amd. Sec. 37, Ch. 196, L. 1919.

1229. Same—Redemption of bonds. The county commissioners, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year and such portion of the principal as is to become due during such years, and in any event must be high enough to raise annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon, and during the balance of the term, high enough to pay such annual interest, and to pay annually a portion of the principal of said bonds, equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds have to run; and all moneys so levied, when collected, must be paid into the county treasury to the credit

of such district, kept in a separate fund, and be used for the payment of principal and interest on said bonds, and for no other purpose; provided, that the board may, with the surplus of such sinking fund, when the same shall be one thousand dollars or more, purchase any of the outstanding bonds issued by the board. Such purchase shall be made at the lowest price such bonds can be purchased at, but at no more than par value of such bonds; and whenever there shall be such a surplus of sinking fund, amounting to the sum of one thousand dollars, the board shall purchase therewith like bonds, on the same terms and conditions as hereinbefore specified.

If for any reason such bonds cannot be purchased as hereinbefore specified, such sinking fund shall be invested by the treasurer under the direction of the board of trustees, at such times as the board shall direct, in interest-bearing bonds of the United States or of the state of Montana, which shall be purchased at the lowest market price. Interest accruing upon such bonds shall be invested in the same manner and for the same purpose as a sinking fund. Such bonds shall be held by the treasurer until the principal of any bonds issued by the board of trustees shall become due, and shall be sold at the highest market price, and the proceeds applied to the payment of bonds; provided, further, that if at any time the board shall deem it best, it shall be lawful to sell such bonds for the purpose of purchasing the bonds issued by such board; but all such sales shall be at the highest market price, and the bonds of the board purchased with the proceeds of such sale shall be purchased at the lowest price they can be obtained for, and not above the par value of such bonds; provided, further, that the bonds first maturing shall be purchased, if they can be purchased, on terms as favorable to the board as others offered for sale to the said board. All bonds of the said board purchased under the authority hereby given, or paid by the board, shall be forthwith canceled as provided in the next succeeding section.

History: Ap. p. Sec. 1966, Pol. C. 1895; re-en. Sec. 1009, Rev. C. 1907; amd. Sec. 2020, Ch. 76, L. 1913.

1230. Redemption—Notice to bondholder. When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall give notice to each bondholder, if known to him, and shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof, and preference shall be given to the oldest issue; and if, at the expiration of the said thirty days, the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased, and redeem by writing across the face of such bond or bonds, in red ink, the word "Redeemed," and the date of such redemption; provided, that whenever, in the judgment of the board of school trustees and prior to the redemption of said bonds, said board shall deem it advisable and for the best interest of the school district to invest said sinking fund or any part thereof, the board may, by an order entered upon their minutes, direct and require the county treasurer to invest said sinking

fund, or any part thereof, in state or county bonds or warrants until such redeemable period.

History: Ap. p. Sec. 6, p. 65, L. 1883; 1010, Rev. C. 1907; re-en. Sec. 2021, Ch. 76, re-en. Sec. 1955, 5th Div. Comp. Stat. 1887; L. 1913. amd. Sec. 1967, Pol. C. 1895; re-en. Sec.

1231. Duty of county treasurer. The county treasurer shall pay out of any moneys belonging to the school district the interest upon any bonds issued under this chapter by such district, when the same shall become due, upon the presentation at his office of the proper coupon, which shall show the amount due and the number of the bond to which it belonged; and all coupons so paid shall be reported to the school trustees at their first meeting thereafter. But the board of trustees of any school district issuing bonds may, by resolution, direct that said bonds and the interest thereon shall be payable in any city in the United States, and then such bonds and coupons shall be made payable at such bank in said city as shall be designated by the county treasurer at the time of issue; and all bonds and coupons so paid must be returned to the county treasurer and by him canceled and exhibited to the county commissioners at their first meeting thereafter.

History: Ap. p. Sec. 7, p. 66, L. 1883; 1011, Rev. C. 1907; amd. Sec. 2022, Ch. 76, re-en. Sec. 1956, 5th Div. Comp. Stat. 1887; L. 1913. re-en. Sec. 1968, Pol. C. 1895; re-en. Sec.

1232. Printing of bonds. The school trustees of any district shall cause to be printed or lithographed, at the lowest rates, suitable bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said school district.

History: En. Sec. 8, p. 66, L. 1883; 1012, Rev. C. 1907; re-en. Sec. 2023, Ch. 76, re-en. Sec. 1957, 5th Div. Comp. Stat. 1887; L. 1913. re-en. Sec. 1969, Pol. C. 1895; re-en. Sec.

1233. Penalty. If any of the school trustees of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for by this chapter, they shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years.

History: En. Sec. 9, p. 66, L. 1883; 1013, Rev. C. 1907; re-en. Sec. 2024, Ch. 76, re-en. Sec. 1958, 5th Div. Comp. Stat. 1887; L. 1913. re-en. Sec. 1970, Pol. C. 1895; re-en. Sec.

1234. General laws applicable. All of the powers conferred and duties enjoined upon school trustees and county commissioners by sections 1228 to 1232, inclusive, of this code for raising money to pay the interest and to create a sinking fund for the redemption and payment of bonds issued by school districts under the provisions of existing laws, are hereby conferred and enjoined upon school trustees and county commissioners respectively with respect to all bonds issued under the provisions of this chapter.

History: En. Sec. 5, p. 5, L. 1901; re-en. Sec. 1018, Rev. C. 1907; amd. Sec. 2029, Ch. 76, L. 1913.

1235. Refunding bonds. The school trustees of any school district of the state of Montana shall have, and are hereby given in addition to the power already conferred on them, authority to issue, on the credit of their respective districts, coupon bonds (and sell or dispose of the same), for the purpose of providing the necessary funds to pay maturing, redeemable, or optional bonds, under the following conditions, to-wit:

1. When there is not sufficient money to the credit of the school district applicable to pay any of said bonds.

2. When, in the judgment of the school trustees, to levy and collect a special tax for the purpose of paying any of said bonds would be a hardship and a burden to the school district.

3. All bonds issued under the provisions of this section of this act shall bear upon their face the words "Refunding School bonds," and shall also recite in the body of the bond that "this bond is issued for the purpose of providing funds to pay maturing and outstanding bonds."

4. Said bonds shall bear interest at a rate not to exceed six per cent. per annum (and interest may be payable semi-annually), and payable and redeemable within a period not exceeding twenty years from the date of issue; provided, said bonds shall not exceed in amount the face value of the bond (and any accrued interest thereon), which they are issued to replace.

5. The trustees shall fix the denominations, terms, rate, and form of said bonds, not inconsistent with the requirements hereinbefore set forth; and may issue, dispose of, or sell such bonds at any time deemed necessary and expedient to enhance, preserve, and maintain the credit of their respective districts.

6. Said bonds, when offered for sale, shall be advertised for sale in not less than one newspaper of general circulation, published in the state of Montana, for a period of not less than four weeks preceding the date fixed for sale of said bonds; said advertisement shall briefly describe the bonds, stating the time when, and the place where said sale shall take place; provided, that said bonds shall not be sold at less than their par value, and the trustees are authorized to reject any bids made and sell said bonds at private sale, or exchange the same for outstanding bonds, if they deem it for the best interests of the districts so to do, and it shall not be necessary to hold any election or submit the matter of the issuance of the bonds authorized by this section of this chapter to the electors of the school district.

7. Said bonds and coupons (attached) shall be signed by the chairman of the board of trustees and the school clerk of the district; provided, a lithographed or engraved facsimile of the signatures of the chairman and clerk may be affixed to the coupons, only when so recited in the bonds, and the corporate seal of the school district shall be affixed to each bond.

8. Each bond so issued shall be registered by the county treasurer of the county wherein such school district is located, in a book provided for the purpose, which shall show the date, number, term, and amount of each bond, and the person or persons to whom the bonds are issued and sold.

Historical Note: The first refunding bond act was Secs. 1810 to 1818 inclusive of the Pol. C. 1895; appearing as Secs. 890 to 898 inclusive, Rev. C. 1907. Section 1810 was amended by Sec. 1, p. 124, L. 1901. The act is here given as it appears

after amendment by Ch. 76, L. 1913. En. Sec. 2030, Ch. 76, L. 1913.

Refunding bonds as indebtedness within meaning of debt limit provisions, see notes in 37 L. R. A. (N. S.) 1099; L. R. A. 1917E, 541.

1236. Disposal of proceeds of bonds. All moneys arising from the sale of said bonds shall be paid forthwith into the treasury of the county in which said school district is located, and shall be immediately available to apply for the purpose authorized, and no other purpose.

History: En. Sec. 2031, Ch. 76, L. 1913.

1237. District responsible on bonds. The faith of each school district is solemnly pledged for the payment of the interest and redemption of the principal of the bonds which shall be issued under this chapter. And for the purpose of enforcing the provisions of this chapter, each school district shall be a body corporate, which may sue and be sued by or in the name of the board of school trustees.

History: En. Sec. 2032, Ch. 76, L. 1913.

1238. Must levy tax for interest, etc. The school trustees of each district shall ascertain the amount and levy annually a tax necessary to pay the interest, when it becomes due, and provide a sinking fund to redeem the bonds at their maturity; and said tax shall become a lien upon the property in said school district, and be collected in the same manner as other taxes for school purposes.

History: En. Sec. 2033, Ch. 76, L. 1913.

1239. Redemption of bonds. When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the number thereof, and the bonds bearing the lowest number shall be redeemed first in their order; and provided, that such redemption shall be made at some regular interest period as set forth in the bond; and if, at the expiration of the said thirty days, the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bond or bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased and redeemed, by writing or stamping across the face of such bond or bonds, in ink, the words "Redeemed and canceled," and the date of such redemption. And the bonds paid shall be exhibited to the board of county commissioners at their first meeting thereafter.

History: En. Sec. 2034, Ch. 76, L. 1913.

1240. Payment of interest. The county treasurer shall pay out of any moneys belonging to the school district the interest upon any bonds issued by authority of this chapter, by such district, when the same shall become due, upon the presentation at his office of the proper coupon, which shall show the amount due and the number of the bond to which it belongs; and all coupons so paid shall be canceled and exhibited to the board of county commissioners at their first meeting thereafter.

History: En. Sec. 2035, Ch. 76, L. 1913.

1241. Presentation of bonds. The school trustees of any school district shall cause to be printed or lithographed, at the lowest rate, suitable

bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said school district.

History: En. Sec. 2036, Ch. 76, L. 1913.

1242. Felony—Penalty. If any of the school trustees of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for in this chapter, they shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years.

History: En. Sec. 2037, Ch. 76, L. 1913.

1243. Repayment of loans. Whenever heretofore money has been loaned or advanced to the board of school trustees of any district for the erection of a schoolhouse or schoolhouses therein, by any person or corporation, in reliance upon the proceeds of the sales of bonds for the repayment of the same, the issuance of which bonds has been voted for by a majority of the electors of such district, voting at an election held for the purpose of authorizing the issuance of the same for the erection of a schoolhouse or schoolhouses, which said money has been used by such board of school trustees in the erection of a schoolhouse or schoolhouses in such district, but which bonds, when issued, have been adjudged and held to be void or invalid by the supreme court of the state, the money so loaned or advanced may be repaid, together with the interest thereon covering the period for which interest has not been paid, at the rate specified in said bonds so held to be void; said payment to be made by the board of school trustees to the person or corporation who or which had loaned or advanced the same, from the proceeds of the sale of any bonds thereafter issued for the purpose of building one or more schoolhouses in said district, or for any other school purpose.

History: En. Sec. 2038, Ch. 76, L. 1913. This section is constitutional. State v. Dickerman, 16 Mont. 278, 292, 40 Pac. 698.

1244. Trustees may fund floating indebtedness. The board of school trustees of any school district or county high school in the state of Montana shall have, and are hereby given, in addition to the powers already conferred upon them, authority, whenever at any time such district shall have a floating indebtedness incurred, on or before July 1, 1921, for teachers' salaries, school supplies and equipment, new buildings heretofore completed, necessary repairs to school buildings and heating plants therein, or other necessary expenses incurred in the maintenance of schools in such district, to fund such indebtedness and to issue negotiable coupon bonds therefor and to pledge the credit and resources of the district represented by warrants heretofore issued whether in excess of funds on hand and anticipated revenues or otherwise for the payment of the principal and interest of such bonds.

History: En. Sec. 1, Ch. 97, L. 1921.

1245. Issuance of warrants in excess of funds or levy. In addition to the powers conferred by the preceding section, and in anticipation of the subsequent issuance of the funding bonds authorized by this act, but subject to the constitutional limitations as to the total indebtedness of school dis-

tricts or county high schools, all boards of school trustees are hereby given authority to issue warrants in excess of the available funds of the school district or county high school and in excess of the amount levied by said school district or county high school for the current school year. Said warrants shall be issued only in payment of the current expenses of said school for the completion of the school year of 1920-1921, and not for the purpose of increasing salaries, purchasing new equipment or increasing school facilities in any manner whatsoever. The warrants so issued may likewise be funded in accordance with the terms of this act.

History: En. Sec. 2, Ch. 97, L. 1921.

1246. Funding bonds, when issued. The funding bonds authorized by this act shall be issued under the following conditions, to-wit:

1. When there is not sufficient money to the credit of said school district or county high school applicable to the payment of any such outstanding indebtedness; and,

2. When, in the judgment of the board of school trustees, to levy and collect a tax for the purpose of paying such indebtedness would be a hardship and burden to said school district or county high school;

Provided it shall not be necessary to submit the question of the issuance of such bonds to fund such indebtedness to the vote of the electors of such district, or county high school.

History: En. Sec. 3, Ch. 97, L. 1921.

1247. Resolution to be entered. The board of school trustees shall, by resolution, declare that the existing indebtedness shall be funded by the issuance of bonds, which said resolution shall describe the amount and kinds of indebtedness which is to be funded and declare and certify as to the validity of such indebtedness, which resolution and certificate shall be conclusive against the district as to the validity of the indebtedness so funded in favor of innocent holders of said bonds.

History: En. Sec. 4, Ch. 97, L. 1921.

1248. Contents of resolution—Form of bonds—Registry. The board of school trustees shall, by resolution, fix the rate of interest which said bonds shall bear, not exceeding six per centum per annum, payable semi-annually; the time of payment not exceeding twenty years after date; if redeemable before maturity, the date thereof; and shall prescribe the denomination and form thereof; such bonds shall bear the signature of the chairman of the board of trustees and shall be signed by the clerk of said district; and the coupons attached to the bonds shall be signed by the said chairman and clerk, provided a facsimile of the signatures of the chairman and clerk may be affixed to the coupon, only when so recited in the bonds, and the corporate seal of the school district, or county high school, shall be affixed to each of the bonds. Upon execution, the bonds shall be deposited with the county treasurer, who shall register the same in a book provided for that purpose, which shall show the number and amount of each bond, its date, the date payable and redeemable, and the person to whom the same is issued, and the county treasurer shall deliver the same to the person, or persons, to whom sold, upon their making payment for the same, or, if so directed by the board of trustees, to such person, or persons, as shall surrender an amount of warrants, which, with accrued

interest, shall equal the par value of such bonds, and said warrants so received by the treasurer shall be duly canceled.

History: En. Sec. 5, Ch. 97, L. 1921.

1249. Tax levy. The board of school trustees shall provide for a tax levy to pay the principal and interest of said bonds as they mature, in accordance with the provisions of section 1228 of this code.

History: En. Sec. 6, Ch. 97, L. 1921.

1250. Advertisement and sale of bonds—Exchange. When the board issues any bonds authorized by this chapter it is its duty to sell the same and they shall give notice by advertisement in some newspaper published in this state at least once a week for four consecutive weeks, the date of the first publication to be not less than thirty days prior to date of sale, such advertisement must state the date, hour and place where such sale will take place and shall describe the bonds to be sold, giving the amount, denomination, rate of interest, time payable, time redeemable and purpose of the proposed bond issue. The trustees are authorized to reject any and all bids and sell such bonds at private sale if they deem it for the best interests of the district, the proceeds from the sale of such bonds to be used wholly for the purpose of taking up and retiring the outstanding indebtedness of the district as described in the resolution provided by section 1247 of this code; provided, however, that the board may, if in its opinion it would be to the best interests of the district so to do, effect an exchange of such school district, or county high school, bonds to take up such legal outstanding indebtedness by issuing the same to any person or persons holding the school district, or county high school, warrants or just claims against the school district, or county high school, as set forth in the resolution as provided in section 1247 of this code, the exchange to be made dollar for dollar.

History: En. Sec. 7, Ch. 97, L. 1921.

1251. Emergency clause. There being no adequate provision by law for the funding of indebtedness of school districts, or county high schools, and there being a large number of districts which will be unable to continue their school operations unless their present indebtedness be funded into bonds, and this act being deemed of immediate importance, and an emergency existing in the meaning of the constitution, therefore, this act shall take effect and be in force from and after its passage and approval.

History: En. Sec. 9, Ch. 97, L. 1921.

1252. Signers required on petition for bond elections. No election for the issuance of bonds of any school district, or of any town, or city, or county shall be called except upon presentation of a petition therefor to the board of school trustees, or to the town or city council, or to the board of county commissioners, as the case may be, signed by at least twenty per cent. of the qualified registered electors who are taxpayers upon property within said school district, town, city or county, and whose names appear on the assessment-roll for the year next preceding such election, praying for the calling of said election; provided that the board of county commissioners, board of school trustees, town or city council, as the case may be, shall determine as to the sufficiency of such petition, and the findings of such governing body shall be conclusive against the

municipality in favor of any innocent holder of the bonds issued under and by virtue of authority conferred by election provided by this act.

History: En. Sec. 1, Ch. 104, L. 1921.

1253. Qualification of voters. In all elections hereafter held for the issuance of bonds of any school district, town or city, only qualified registered electors who are taxpayers upon property therein, and whose names appear on the assessment-roll for the year next preceding such election, shall be entitled to vote thereat.

History: En. Sec. 2, Ch. 104, L. 1921; amd. Sec. 1, Ch. 17, Ex. L. 1921.

Note.—The title to the latter act, as well as the amending clause thereof, mentions chapter 103, Laws of 1921, but the title itself recites the title of chapter 104, Laws of 1921.

1254. Repealing clause. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, this act shall not apply to any issuance of bonds which have been authorized prior to such time as this act shall take effect and be in full force.

History: En. Sec. 3, Ch. 104, L. 1921.

CHAPTER 100.

MANUAL AND INDUSTRIAL TRAINING.

Section 1255. Establishment of Manual and Industrial Training.
1256. Designation of Districts and Character of Instruction.
1257. Courses.
1258. Qualification of Teachers.
1259. Special Courses in Districts With Population of Over Ten Thousand.
1260. Support from General School Fund—Buildings and Equipment.
1261. Penalty for Schools Not Complying With This Act.

1255. Establishment of manual and industrial training. Elementary manual and industrial training which shall include industrial art may form a part of the required course of study in all grades of the public schools of the state of Montana. The superintendent of public instruction shall formulate a course of study, or he may approve courses of study formulated by local school officials, which meet the requirements of this section. The clerk of each school district, in his annual report to the county superintendent, shall state whether the above provisions have been complied with within the schools of his district.

History: En. Sec. 1, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913.

1256. Designation of districts and character of instruction. All school districts having a population of more than five thousand shall, and districts of less population may, maintain at least one manual training school suitably equipped and designated to furnish manual and industrial instruction to pupils who are above the fifth grade. Said schools shall furnish instruction in elementary wood, metal, and textile work; in mechanical and industrial drawing; and in communities where applicable, in agriculture, mineralogy, and technical mining; and for girls above the first grade, instruction in household management, decoration, and economics, and in needlework. They shall also include instruction in industrial history and geography, and in the industrial materials, processes, and products, with special reference to the industrial pursuits of the communities in which they are situated.

History: En. Sec. 1, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913.

1257. Courses. The courses to be presented in these schools shall provide:

1. A general culture, intelligence, and skill for those pupils whose school attendance will end with the elementary or secondary grades; and

A progressive development designed to prepare directly for efficient work in the related technical and scientific courses of the higher institutions of learning.

The courses shall be modified to meet, in the largest measure, the needs of each class of pupils.

Nothing in this section shall be understood as forbidding any school from using other materials than those herein specified, nor as preventing a different assignment of work by grades; provided, that all courses shall have the approval of the state board of education.

History: En. Secs. 1 and 2, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913.

1258. Qualification of teachers. Teachers of such schools shall have had special preparation for such instruction and shall be holders of special manual training teachers' certificates, which the superintendent of public instruction is hereby empowered to grant, when satisfied that the applicant has received a sufficient general education and the professional and technical preparation necessary for such manual and industrial training.

History: En. Sec. 2, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913.

1259. Special courses in districts with population of over ten thousand. In all school districts having a population of over ten thousand, there shall be, and in school districts of less population there may be, maintained schools of special courses in connection with manual training, or city or county high schools, designed to furnish a direct vocational training, including training in agricultural pursuits and mining for which there shall be a local demand. Classes shall be formed when not less than twenty applicants desire instruction in any vocation. Pupils who have reached the age of twelve years, and who have completed not less than the general school work assigned to the first five grades, may be admitted to these courses upon such terms as the board of trustees of the district may prescribe; pupils above the age of fourteen, together with adults, may be admitted to evening classes providing similar instruction, upon such terms of admittance as the trustees may prescribe; provided, that there shall in no case be any charge for tuition. Teachers of such classes shall be holders of special certificates issued by the superintendent of public instruction, specifying the subject or subjects which the holder is entitled to teach. Applicants for such certificates must present satisfactory evidence not only of general educational qualifications, but of special training and practical experience in the vocations which they are to teach.

History: En. Sec. 3, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913.

1260. Support from general school fund—Buildings and equipment. The trustees of any district are hereby empowered to use moneys from the general school fund of the district for the maintenance of manual and industrial schools and courses the same as for other school purposes; provided, that the state treasurer shall pay annually from any funds in his possession not otherwise appropriated ten dollars to each district for each person attending such manual and industrial courses for a period of six months or more yearly; provided, further, that the state treasury shall likewise

pay annually to any county high school which maintains a manual training department, from any funds in the state treasury, not otherwise appropriated, the sum of ten dollars for each child or student attending the manual training department in such county high school for a period of six months or longer yearly. Buildings and furnishing and equipment for manual and industrial training shall be provided in the same manner as now prescribed for the erection and furnishing of buildings for other school purposes.

History: En. Sec. 4, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913.

1261. Penalty for schools not complying with this act. To secure an efficient administration of this act, the state board of education shall determine whether such manual and industrial schools and courses meet the provisions of this law. Such schools as do not meet the provisions of this act shall not be entitled to state aid until all defects are remedied.

History: En. Sec. 5, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913.

CHAPTER 101.

COUNTY HIGH SCHOOLS—SUPERINTENDENT OF CITY AND COUNTY HIGH SCHOOLS.

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1262. Any county may establish high school. Any county in the state may establish a high school on the conditions and in the manner hereinafter prescribed, for the purpose of affording better educational facilities for the pupils more advanced than those attending the elementary schools.

Historical Note: The first county free high school act was substitute for H. B. No. 69, pp. 59 to 64, L. 1899. This was superseded by Ch. 29, L. 1907, appearing as Secs. 918 to 938, inclusive, Rev. C. 1907. The act is here given as it appears after amendment by Ch. 76, L. 1913, and acts amendatory thereof as noted after the several sections.

This and following sections, being a local option law, of uniform operation, the taking effect of which in any particular county is made dependent upon a favorable vote of the electors of such county, is not an unwarranted delegation of legislative power to such electors. Evers v. Hudson, 36 Mont. 135, 148, 92 Pac. 462.

A tax levy for the purpose of erecting a county high school building which would raise in excess of the constitutional limit of $10,000 is void unless the approval of the electors for such expenditure is first secured, and by merely voting for the establishment of such school, the electors do not impliedly authorize the expenditure of more than that amount. Panchot v. Leet, 50 Mont. 314, 316 et seq., 146 Pac. 927.

1263. Petition for establishment and location. Whenever one hundred freeholders in any county shall petition the board of county commissioners, requesting that a high school be established in their county, the county clerk shall give twenty days' notice, by publication in the official paper of the county, that such petition has been filed, and that any village, town, or city may become a candidate for the location of said high school upon petition of not less than fifty freeholders of said village, town, or city, requesting that said place be named as the candidate for the location of said high school. All nominations of places for the location of said school shall be filed with the board of county commissioners within thirty days from the date of the first publication of said notice. Any number of places may be candidates for the location of said school, but no freeholder shall append his name to more than one petition. If such petition is filed at any time when the board of county commissioners is not in session, the county clerk shall notify the commissioners thereof, and a special meeting shall be held to call the necessary election herein provided for.

History: En. Sec. 2101, Ch. 76, L. 1913. Seee also history of Sec. 1262.

1264. Election—Voting. At the expiration of thirty days from the date of the first publication of said notice, the county commissioners shall call an election and appoint precinct judges and clerks. Said election shall be conducted in accordance with the general election laws of the state. The county clerk shall give twenty days' notice of such election by publication in the official paper of the county that the question of establishing a high school in said county, and the location thereof, will be submitted to the qualified electors of said county at a designated time. The notice shall distinctly specify the places which are candidates in the forthcoming election. The qualified electors shall vote by ballot, for or against the establishment of a county high school, and on separate ballots, with the names of the place or places that are candidates for the location of said school written or printed thereon, vote for not more than one of the places named upon said ballot as a candidate for the location of said school. The ballots shall be substantially in the following form:

Ballot No. 1. For a County High School. Against a County High School.

Ballot No. 2. Helena. Marysville.

An elector desiring to vote for the establishment of a high school, shall do so by placing an "X" before the clause, "For a County High School," which shall be a vote in favor of establishing a county high school. An elector desiring to vote against the establishment of a high school, shall do so by placing an "X" before the clause, "Against a County High School." An elector desiring to vote for the location of a county high school at a certain place shall do so by placing an "X" before the name of the place desired for the location of such school.

History: En. Sec. 2102, Ch. 76, L. 1913. See also history of Sec. 1262.

The notice of election does not take the place of the election proclamation required by the general election laws, and an election held without such proclamation being issued is void. Evers v. Hudson, 36 Mont. 135, 153, 92 Pac. 462.

Where the defendant county treasurer, in an action to enjoin the collection of a tax imposed for the purpose of establishing a county free high school, interposed a demurrer, and thus admitted an allegation in the complaint that because of the failure of the board of county commissioners to proclaim the holding of a special election provided for in the act, and of the clerk to give proper notice, a large number of qualified electors were prevented from voting, the voters had not been given that opportunity to freely and fairly give expression to their wishes, as contemplated by the election laws, and therefore the election was void, and the tax, levied in pursuance thereof, void. Evers v. Hudson, 36 Mont. 135, 156, 92 Pac. 462.

1265. Canvass of returns. After the election, the ballots on said question shall be canvassed in the manner provided for general county elections, and, if the vote in favor of establishing a county high school shall be a majority of all votes cast upon said proposition, the board of county commissioners shall proceed to canvass the vote for the different candidates for the location of said school, and the village, town, or city having the largest number of votes for the location of said school, provided said number of votes be a majority of all votes cast in favor of the measure, shall be declared to be the place for the location thereof. If the results in favor of establishing such high school, and any candidate for its location has a majority, the board of county commissioners, by an order duly entered on their minutes, shall so declare this fact, and the board shall immediately thereafter appoint six persons, residents and taxpayers of the county, not less than three nor more than four of whom shall be residents of the village, town, or city where the school is located, who shall, with the county superintendent of schools, constitute a board of trustees for said school.

In case of a tie vote between two or more of the candidates having the highest number of votes for the location of said school, the county commissioners shall immediately call another election in the manner provided by law for general county elections, at which the only question to

be submitted shall be the location of said school, and only the names of those candidates so tied shall appear upon the ballot.

History: En. Sec. 2103, Ch. 76, L. 1913. See also history of Sec. 1262.

1266. Board of trustees—Composition and terms. The board of trustees shall consist of seven members, of which the county superintendent shall be a member, and the remaining six members shall be appointed by the county commissioners. The term of office of trustees, other than the county superintendent, except of those especially hereinafter provided for, shall be three years and until their successors are appointed and qualified.

History: En. Sec. 2104, Ch. 76, L. 1913. See also history of Sec. 1262. Cited in Hamilton v. Board of County Commrs., 54 Mont. 301, 308, 169 Pac. 729.

1267. Appointment. The county commissioners shall appoint at their regular meeting in March, 1921, two trustees for a term ending January 1, 1924, and at their regular meeting in December, 1921, shall appoint two trustees for a three-year term beginning January 1, 1922, who shall take the place of the two trustees appointed at the regular meeting in March, 1919, and at their regular meeting in December, 1922, shall appoint two trustees for a three-year term beginning January 1, 1923, who shall take the place of the two trustees appointed at the regular meeting in March, 1920, and annually thereafter at their regular meeting in December, they shall appoint two trustees for a three-year term, their term to begin on the 1st day of January after such appointment.

Of the trustees appointed not more than two shall be residents outside of the school district in which the high school is located, and the two trustees resident outside of the school district in which the high school is located, must be appointed in different years.

History: En. Sec. 2104, Ch. 76, L. 1913; amd. Sec. 1, Ch. 17, L. 1919; amd. Sec. 1, Ch. 190, L. 1921. See also history of Sec. 1262.

1268. Vacancies. Whenever any vacancy occurs in said board of trustees, from any cause, the secretary of the board shall immediately certify such vacancy to the board of county commissioners.

History: En. Sec. 2104, Ch. 76, L. 1913. See also history of Sec. 1262.

1269. Meeting quorum — contracts. The county high school board shall hold four regular meetings each year, on the third Saturday of April, July, October and January, and such special meetings not to exceed two in any one month, as they may deem necessary. The provisions of the general school law as to notice, time and place of meetings shall govern all county high school boards.

A majority of said board shall constitute a quorum for the transaction of business, except it shall be necessary for a majority of the whole board to enter into any contract, on behalf of the board.

History: En. Sec. 2104, Ch. 76, L. 1913; amd. Sec. 1, Ch. 106, L. 1921. See also history of Sec. 1262.

1270. Officers. At their regular April meeting in each year, the trustees shall choose from their number a president, vice-president, and secretary, who shall hold office for one year, or until their successors have been appointed and qualified, and said trustees shall have authority to make all necessary rules for their government, not inconsistent with the

law. The county treasurer of the county shall be the treasurer of the board and the custodian of all funds available for school purposes.

History: En. Sec. 2104, Ch. 76, L. 1913. See also history of Sec. 1262.

1271. Powers and duties. The board of trustees shall have power and it shall be their duty:

1. To keep a record of all the official acts done by said board, and to keep a full record of all warrants issued against moneys belonging to said county high school. Payments of money can only be made upon warrants drawn against said funds belonging to said high school, and each warrant so drawn must specify upon its face the purpose for which it is drawn.

2. To proceed, as soon as practicable after their appointment and qualification, to select at the place designated as the location for the county high school, the best site that can be obtained, and the title thereto, upon securing said site by purchase or otherwise, shall vest in the county; the trustees shall then proceed to make purchase of material and to let such contracts for necessary school buildings as they may deem proper. They shall not, however, make any purchase or enter into any contract, whereby obligations are assumed in excess of the amount of funds on hand, or available through the levy of taxes for the current year, or the issuance of bonds.

3. To lease, at their discretion, suitable buildings for the use of the high school while the new buildings are in process of erection, or to contract with the trustees of the local school district, or any other parties, for the use of suitable buildings for high school purposes for such time as may be deemed best for the interests of the county.

4. To employ, for a period not to exceed three years, some suitable person to take charge of said school, who shall possess such qualifications as are now required to be possessed by a city superintendent of schools; except that said principal shall not be required to possess more than three years of experience in teaching; to furnish such assistant teachers as they may deem necessary, and to designate the salaries which shall be paid to said principal and assistant teachers; provided, that such teachers shall be required to have the qualifications required of a teacher to hold a position in a district high school, and also to hold a valid Montana certificate.

5. To adopt, on the recommendation of the principal, such courses of study as will properly fit the student attending said high school for admission to the collegiate class of any of the state educational institutions, and such course of study shall contain the work now provided for accredited high schools by the state board of education.

6. To admit pupils without tuition under such rules and regulations as they may deem proper in regard to age and grade of attainments essential to entitle pupils to admission to such school; provided, that no person shall be admitted to such high school who shall not have satisfactorily completed the work of the elementary grades. All eligible pupils in the county are entitled to attend the county high school, and it shall be the duty of the board to provide accommodations for such pupils.

7. To admit pupils from other counties, when there is room, upon the payment of such tuition as the board of trustees may prescribe; but at no

time shall such pupils continue in such school to the exclusion of pupils residing in the county in which such school is located.

History: En. Sec. 2104, Ch. 76, L. 1913. See also history of Sec. 1262.

1272. Compensation of trustees. The trustees who do not reside at the place where said high school is established are entitled to mileage in attending the meetings of the board. The trustees of said high school shall serve without compensation, but shall pay their secretary such reasonable compensation as may be determined; and the board shall make such reports, from time to time, as the county superintendent of schools or the state superintendent of public instruction may require.

History: En. Sec. 2105, Ch. 76, L. 1913; amd. Sec. 38, Ch. 196, L. 1919. See also history of Sec. 1262.

1273. Principal may make rules. The principal of any such high school, with the approval of the board of trustees, shall make such rules and regulations as he may deem proper in regard to the studies, conduct, and government of the pupils under his charge; and if any such pupils will not conform to nor obey the rules of the school, they may be suspended by the principal or expelled therefrom by the board of trustees.

History: En. Sec. 2106, Ch. 76, L. 1913. See also history of Sec. 1262.

1274. Diploma to admit to state collegiate institutions. Upon the presentation of a certificate of graduation from any such county high school, within eighteen months from the date of the same, to any state institution of learning, the person presenting the same may be admitted without further examination to said institution of learning.

History: En. Sec. 2107, Ch. 76, L. 1913. See also history of Sec. 1262.

1275. Tax levy. At the regular April meeting, or at some succeeding meeting called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for payment of contingent expenses, and they shall present to the board of county commissioners a certified estimate of the rate of tax required to raise the amount desired for such purposes, and the board of county commissioners must levy such tax as other county taxes are levied. But in no case shall the tax for such purpose exceed in one year the amount of five mills on the dollar on the taxable property of the county.

History: En. Sec. 2108, Ch. 76, L. 1913; amd. Sec. 1, Ch. 115, L. 1915. See also history of Sec. 1262.

The board of trustees of a free county high school, required by law to certify to the board of county commissioners an estimate of the tax rate necessary to raise the funds for the establishment thereof, is not by such requirement made a part of the taxing power. Morse v. Jacky, 34 Mont. 165, 168, 85 Pac. 882.

The board of high school trustees is authorized to estimate the amount of funds needed for building purposes and the rate of tax required to raise such amount, after certification of which to the county commissioners, a levy must be made by them. Panchot v. Leet, 50 Mont. 314, 317, 146 Pac. 927.

1276. Submission to electors of question of bond issue. The secretary of the board of county high school trustees, whenever a majority of the board shall so decide, and upon the presentation of a petition in the manner provided by law, shall certify to the board of county commissioners that they have decided to submit to the taxpayers of the county the question

whether the county bonds shall be issued for the purpose of the erection or purchase of a building or buildings for high school purposes and the equipment thereof, or for the erection and equipment of a dormitory or dormitories, or gymnasium, and for a suitable site or sites therefor, and shall include in such certificates the amount of such bonds, which amount shall not exceed the sum of four hundred thousand dollars, in any one county of the first class, and three hundred thousand dollars, in any one county of the second or third class, and in all other counties shall not exceed the sum of two hundred thousand dollars, in any one county. Such bonds may run for a term of twenty years or less, but no longer; provided, that any such issue of bonds shall not increase the indebtedness of any county beyond the maximum limit fixed by the state constitution.

It shall also be lawful for a majority of the board of school trustees of any county high school, through its secretary as aforesaid, after the presentation of a petition in the manner provided by law, to certify to the board of county commissioners for submission to the electors of the county, the question as to whether or not county bonds shall be issued for the purposes above specified, the proceeds thereof to be divided between the county high school and the several four-year accredited district high schools of the county in the manner designated by said board. In all such cases the question submitted to the electors shall definitely state the amount of said bond issue which is to be expended for or upon the county high school, and the amount thereof which is to be divided among the several four-year accredited district high schools of the county, which allotment shall be pro-rated so that each of the four-year accredited district high schools shall receive that percentage of the total bond issue which the assessed valuation of the property in the four-year accredited high school district bears to the assessed valuation of the entire county.

That as soon as practicable after receiving such certificate, the board of county commissioners shall fix the term for which said bonds are to run, and the rate of interest they shall bear; and shall proceed to submit the question of issuing such bonds to the qualified electors of the county in the manner provided by law for the issuance of other county bonds. If such bonds are issued, the board of county commissioners, at the time of making the levy of taxes for county purposes each year, shall levy a tax for that year upon the taxable property in the county for the interest and redemption of said bonds, and such taxes must not be less than sufficient to pay the interest on said bonds for that year, and such proportion of the principal as is to become due during the year, and in any event must be high enough to raise annually, for the first half of the term, a sufficient sum to pay the interest thereon, and during the remainder of the term, high enough to pay said annual interest and to pay annually a portion of the principal of said bonds equal to the quotient produced by taking the whole amount of said bonds outstanding, and dividing it by the number of years said bonds have yet to run; and all moneys so levied, when collected, must be paid into the county treasury to the credit of the county high school and kept in a separate fund, and used for the payment of the principal and interest on said bonds, and for no other purpose; provided, however, that the accumulated money may be invested as is provided for the investment of money collected for the payment of

school district bonds. Said tax shall be levied and collected as other county taxes.

In any county wherein there are now maintained one or more district high schools, in which a county high school has been created, or may hereafter be created, the trustees of any such school district may, by resolution duly passed at a regular or special meeting of such board of trustees discontinue such district high school to take effect upon the establishment of the county high school; and in case such county high school is located, as provided in this chapter, within any school district maintaining a district high school, it shall be the duty of the board of trustees of such school district to discontinue the district high school.

History: En. Sec. 1, Ch. 71, L. 1911; amd. Sec. 2109, Ch. 76, L. 1913; amd. Sec. 1, Ch. 167, L. 1917; amd. Sec. 1, Ch. 158, L. 1919; amd. Sec. 1, Ch. 132, L. 1921. See also history of Sec. 1262.

A levy for the purpose of erecting a county high school building which would raise in excess of $40,000 was void where the approval of the expenditure by the electors had not first been secured, as required by the provision of section 5, article XIII, constitution of Montana, that no county indebtedness or liability for any single purpose in excess of $10,000 shall be incurred without the approval of a majority of the electors voting at the election called for that purpose. Panchot v. Leet, 50 Mont. 314, 146 Pac. 927.

Cited or applied in Hamilton v. Board of County Commrs., 54 Mont. 301, 169 Pac. 729.

1277. Repealing clause. Nothing in this act shall be construed to amend or repeal any of the provisions of an act entitled: "An act requiring a petition of 20 per cent. of the qualified electors who are taxpayers to authorize the voting upon the issuance of any school, town, city or county bonds, and providing who are entitled to vote thereon," enacted by the 17th legislative assembly of Montana (Sec. 1253 of this code), and that all other acts and parts of acts in conflict herewith are hereby repealed.

History: En. Sec. 2, Ch. 132, L. 1921.

1278. Payment of bonds. Said bonds shall be paid, principal and interest, in the manner provided for the payment of other county bonds.

History: En. Sec. 2110, Ch. 76, L. 1913. See also history of Sec. 1262.

Cited or applied in Hamilton v. Board of County Commrs., 54 Mont. 301, 306, 169 Pac. 729.

1279. Assessment for maintenance. In case bonds are issued, the trustees, in making estimates for the maintenance of the high school, shall not include estimates for building or other purposes for which the said bonds are issued.

History: En. Sec. 2111, Ch. 76, L. 1913. See also history of Sec. 1262.

1280. School districts maintaining high school classes to share in high school moneys. In any county where a county high school has been established, any school district which maintains high school classes duly accredited by the state superintendent of public instruction shall be entitled on such accrediting to share in all county high school moneys levied and collected for maintenance, and the money derived from such levy shall be apportioned by the county superintendent of schools to the several accredited high schools in the county according to the average daily atendance in accredited high

school classes for the school year next preceding, as determined by the said county superintendent.

History: En. Sec. 2112, Ch. 76, L. 1913; amd. Sec. 1, Ch. 119, L. 1915. See also history of Sec. 1262.

Cited or applied as section 2112, Political Code, in Hamilton v. Board of County Commrs., 54 Mont. 301, 308, 169 Pac. 729.

1281. Special tax for maintenance of high school classes in counties not having high schools. In any county not maintaining a county high school but in which one or more districts maintain high school classes duly accredited for one, two, three, or four years of high school work by the state board of education, a special tax, not exceeding three mills on each dollar of taxable property in the county, shall be made for the benefit of such schools. When such levy is to be made, the chairman of the board of trustees in each school district in which an accredited high school has been maintained during the preceding school year shall, on or before the first day of August in each year, recommend and advise the board of county commissioners as to the amount of money required, and the board of county commissioners shall thereupon fix such a levy, not exceeding three mills, as will raise sufficient money to meet the expenses of such accredited high school for maintenance during the ensuing school year, and the money derived from such levy shall be apportioned by the county superintendent of schools to the several districts in which such accredited high schools are maintained as follows: Two-thirds of the total amount in proportion to the number of teachers employed and necessary for the effective instruction of pupils in accredited high school work, and one-third of the total amount in proportion to the total number of days' attendance of pupils in accredited high school work for the school year next preceding, as determined by the said county superintendent provided that the number of teachers allotted to any school for the purpose of such apportionment shall be determined in accordance with a uniform method to be announced by the state board of education.

History: En. Sec. 1, Ch. 105, L. 1917; amd. Sec. 1, Ch. 137, L. 1919. See also history of Sec. 1262.

1282. What pupils entitled to attend. Attendance at any high school to whose support such money is apportioned in accordance with the provisions of this act, shall be free to all eligible pupils residing within the district in the county in which such accredited high school is situated.

History: En. Sec. 1, Ch. 119, L. 1915. See also history of Sec. 1262.

1283. Prior acts validated. All acts and things of any kind whatever done by any board of county free high school trustees, or by any board of county commissioners of this state, prior to the passage of this act, under the provisions of the act of March 3, 1899, for the establishment of county free high schools, or under the act of March 14, 1901, or the act of March 5, 1899, shall be and are hereby ratified and declared to be valid and of full force and effect.

History: En. Sec. 2113, Ch. 76, L. 1913. See also history of Sec. 1262.

1284. Same. All acts heretofore done by any board of county commissioners in this state in connection with the submission to the electors of their county of the question of establishing and locating a county free high school, and upon which acts such question was in fact submitted to the electors of such county, and a majority of all votes cast at such election was in favor of the establishment and location of such high school, and so found

and declared by the board of county commissioners, shall be and are hereby ratified and declared to be valid and of full force and effect.

History: En. Sec. 2114, Ch. 76, L. 1913. See also history of Sec. 1262.

1285. Bonds legalized. All bonds issued or authorized to be issued, at any time prior to the passage of this act, by the board of trustees of any county free high school in this state, where the question of the issuance of the same was first submitted by said trustees to the electors of the county and a majority of all votes cast at such election were in favor of said bond issue, and so found and declared by said board of trustees, are hereby ratified and declared to be valid and legal obligations and of full force and effect.

History: En. Sec. 2115, Ch. 76, L. 1913. See also history of Sec. 1262.

1286. Funding bonds for floating school indebtedness. The board of county commissioners of any county in the state of Montana shall have, and are hereby given in addition to the powers already conferred upon them, authority, whenever at any time such county high school shall have a floating indebtedness incurred on or before July 1, 1921, for teachers' salaries, school supplies, equipment, new buildings heretofore completed, necessary repairs to school buildings, heating plants therein or other necessary expenses incurred in the maintenance of such county high school, represented by warrants heretofore issued, whether in excess of funds on hand and anticipated revenues or otherwise, to fund such indebtedness and to issue negotiable coupon bonds therefor and to pledge the credit and resources of the county for the payment of the principal and interest of such bonds.

History: En. Sec. 1, Ch. 189, L. 1921.

1287. Issuance of warrants in excess of levy — When authorized. In addition to the powers conferred by the preceding section and in anticipation of the subsequent issuance of the funding bonds authorized by this act, but subject to the constitutional limitations as to the total indebtedness of counties, all boards of trustees of county high schools are hereby given authority to issue warrants in excess of the available funds of the county high school, and in excess of the amount levied by the county high school board of trustees for the current school year. Such warrants shall be issued only in payment of the current expenses of the county high school for the completion of the school year of 1920-1921, and not for the purpose of increasing salaries, purchasing new equipment or increasing school facilities in any manner whatsoever. The warrants so issued may likewise be funded in accordance with the terms of this act.

History: En. Sec. 2, Ch. 189, L. 1921.

1288. Funding bonds, when issued. Funding bonds authorized by this act shall be issued under the following conditions, to-wit:

1. When there is not sufficient money to the credit of such county high school applicable to the payment of any such outstanding indebtedness; and,

2. When, in the judgment of the board of school trustees, to levy and collect a tax for the purpose of paying such indebtedness would be a hardship and burden to such county.

Provided, it shall not be necessary to submit the question of the issuance of such bonds to fund such indebtedness to the vote of the electors of the county.

History: En. Sec. 3, Ch. 189, L. 1921.

1289. Resolution for funding bonds. The board of county commissioners shall by resolution declare that the existing indebtedness shall be funded by the issuance of the bonds, which said resolution shall describe the amount and kinds of indebtedness which are to be funded, and declare and certify as to the validity of such indebtedness, which resolution and certification shall be conclusive against the district as to the validity of the indebtedness so funded in payment of innocent holders of such bonds.

History: En. Sec. 4, Ch. 189, L. 1921.

1290. Bonds—Interest—Terms—Execution and registry. The board of county commissioners shall by resolution fix the rate of interest which said bonds shall bear, not exceeding six per cent. per annum payable semi-annually, the time of payment not exceeding twenty years after date; if redeemable before maturity, the date thereof; and shall prescribe the denomination and form thereof. Such bonds shall bear the signature of the chairman of the board of county commissioners and shall be signed by the clerk of the board of county commissioners; and the coupons attached to the bonds shall be signed by the said chairman and clerk; provided, a fascimile of the signature of the chairman and clerk may be affixed to the coupon, only when so recited in the bonds, and the corporate seal of the county shall be affixed to each of the bonds. Upon execution, the bonds shall be deposited with the county treasurer, who shall register the same in a book provided for that purpose, which shall show the number and amount of each bond, its date or date payable and redeemable and the person to whom the same is issued, and the county treasurer shall deliver the same to the person or persons, to whom sold, upon their making payment for the same, or if so directed by the board of county commissioners, to such person or persons as shall surrender an amount of warrants which, with the accrued interest, shall equal the par value of said bonds, and said warrants so received by the treasurer shall be duly canceled.

History: En. Sec. 5, Ch. 189, L. 1921.

1291. Tax levy for payment of bonds. The board of county commissioners shall provide for a tax levy to pay the principal and interest of such bonds as they mature.

History: En. Sec. 6, Ch. 189, L. 1921.

1292. Notice of sale of bonds. When the board of county commissioners issues any bonds authorized by this act, it is its duty to sell the same, and they shall give notice by advertisement in some newspaper published in this state at least once a week for four consecutive weeks, the date of the first publication to be not less than thirty days prior to the date of selling. Such advertisement must state the date, hour and place where such sale will take place and shall describe the bonds to be sold, giving the amount, denominations, rate of interest, time payable, time redeemable and purpose of the proposed bond issue. The board of county commissioners is authorized to reject any and all bids, and sell such bonds at private sale, if they deem it for the best interest of the county, the proceeds from the sale of such bonds to be used solely for the purpose of taking up and retiring the outstanding indebtedness of the county high school as described in the resolution provided by section 1289 of this code; provided, however, that the board may, if in its opinion it would

be to the best interests of the county to do so, effect an exchange of such county bonds to take up such legal outstanding indebtedness by issuing the same to any person or persons holding the county high school warrants, or just claims against the county high school as set forth in the resolution provided in section 1289 of this code, exchange to be made dollar for dollar.

History: En. Sec. 7, Ch. 189, L. 1921.

1293. Emergency clause. There being no adequate provision by law for the funding of indebtedness by county high schools, and there being several county high schools which will be unable to continue their school operations unless their present indebtedness be funded into bonds, and this act being deemed of immediate importance and an emergency existing in the meaning of the constitution, therefore this act shall take effect and be in force from and after its passage and approval.

History: En. Sec. 9, Ch. 189, L. 1921.

1294. Superintendent of city and county high schools—Appointment. Whenever, after the passage and approval of this act, the total number of school children enrolled in any county high school and in the city schools located in the same city or town with said county high school shall be fewer than nine hundred, the board of trustees of the school district in which such city schools are located, and the board of trustees of such county high school (said boards being hereinafter designated as "the joint boards"), shall jointly appoint a person to be known as the superintendent of city and high schools, who shall supervise the operation of both the high school and city schools in such district.

History: En. Sec. 1, Ch. 105, L. 1921.

1295. Qualifications and compensation. In the cases mentioned in the preceding section no superintendent of city schools and no principal of the county high school shall be appointed, but the duties of both said officers shall be performed by a superintendent of city and high schools. Said superintendent shall possess the qualifications required by law for principals of county high schools and shall be employed by the said joint boards hereinbefore mentioned for not to exceed three years, and shall receive a compensation fixed by such joint boards.

History: En. Sec. 2, Ch. 105, L. 1921.

1296. Existing contracts exempted. Nothing herein contained shall affect any existing contracts for the employment of high school principals or city superintendents, but wherever in the cases mentioned in section 1294 of this code, the contract of either a high school principal or a city superintendent shall expire, no new contract shall be entered into with either of such officers, or with any other person, except for such period of time as may be necessary to continue the services of one such officer until the expiration of the term of office of the other.

History: En. Sec. 3, Ch. 105, L. 1921.

1297. Employment of joint teachers. On and after July 1, 1921, the joint boards of trustees shall, in all the cases mentioned in section 1294 of this code, employ one or more persons as may be necessary to teach jointly in both schools any of the several special subjects offered therein,

such as home economics, manual training, agriculture, music, art, penmanship or other special subjects.

History: En. Sec. 4, Ch. 105, L. 1921.

1298. Salaries, how paid. The salary of the superintendent of city and high schools, and the salaries of the teachers employed to teach jointly in both schools shall be borne by the county high school and the school district in which is located such city schools; the salaries of the superintendent of city and high schools shall be apportioned between the two school systems in proportion to the number of teachers employed in each school system for the proper administration thereof; the salaries of all teachers employed to teach jointly in both schools shall be apportioned between the two school systems in accordance with the number of classroom hours of work expended by said teachers in each school system.

History: En. Sec. 5, Ch. 105, L. 1921.

1299. Controversies, how decided. Whenever any controversy shall arise between the two school systems mentioned in this act concerning any division of expense between said schools, the facts pertaining to the controversy shall be certified for final determination to the superintendent of public instruction by a representative of each school board.

History: En. Sec. 6, Ch. 105, L. 1921.

1300. Voting powers of joint boards. For purposes of voting for the employment of a superintendent of city and high schools, or for the employment of teachers, or for the purpose of determining any administrative policy relating to both schools, the joint boards shall be entitled to the same number of votes. The county high school board shall select, as its representatives for purposes of voting, the same number of its members as the membership of the board of the school district in which the city school is located; provided, however, that the county superintendent of schools shall not be one of those so selected, and further provided, that said county superintendent of schools shall be permitted to vote only in case of a tie vote continuing after at least three ballots.

History: En. Sec. 7, Ch. 105, L. 1921.

1301. General school laws applicable. In all other matters not herein specifically enumerated, the joint boards shall be guided by the laws of the state of Montana, relating to public and high schools.

History: En. Sec. 8, Ch. 105, L. 1921.

CHAPTER 102.

HIGH SCHOOL NORMAL TRAINING COURSES.

Section 1302. High Schools May Establish Normal Training Courses.
1303. State Superintendent to Prescribe Course—Branches to Be Taught.
1304. Approval of Instructors by State Superintendent—Special Training Required.
1305. Normal Training Library.
1306. Rules and Regulations—County Superintendent to Visit and Report Upon Classes.
1307. Junior College Courses; Requirements.
1308. Tuition Free, When.
1309. Use of Common School Funds Must Be Authorized by Electors.
1310. Teachers' Second-Grade Certificates May Be Issued to Graduates.
1310a. Appropriation for High School Normal Training Courses.
1310b. Conditions Governing Apportionment.
1310c. Payment to County Treasurers—Conditions.

1302. High schools may establish normal training courses. Any accredited high school in the state, approved as hereinafter provided, may establish normal training courses for rural school teachers, or junior college courses, or both.

History: En. Sec. 1, Ch. 114, L. 1917. General power of state to establish schools as including normal school, see note in Ann. Cas. 1912D, 1365.

1303. State superintendent to prescribe course—Branches to be taught. The state superintendent of public instruction shall outline the work to be followed in such normal training courses, which shall include, during the eleventh and twelfth grades, not less than nine weeks of review in each of the common branches, including reading, arithmetic, grammar, and geography, and not less than one-half year of general agriculture, one year of domestic science for girls, and one year of manual training for boys, and not less than one-half year in pedagogy and practice teaching.

History: En. Sec. 2, Ch. 114, L. 1917.

1304. Approval of instructors by state superintendent—Special training required. All instructors employed in normal training work shall be approved by the state superintendent of public instruction, and such instructors in domestic science, agriculture, and manual training shall have had special training in such work.

History: En. Sec. 3, Ch. 114, L. 1917.

1305. Normal training library. A normal training library of not less than fifty books, approved by the state superintendent of public instruction shall be maintained by each high school for the use of normal classes.

History: En. Sec. 4, Ch. 114, L. 1917.

1306. Rules and regulations—County superintendent to visit and report upon classes. The state superintendent of public instruction shall prescribe all necessary rules and regulations for such normal training work, and the county superintendent of schools shall visit such classes and shall report to the state superintendent upon blanks furnished by the department, and in reporting upon such classes, only those students shall be counted as normal training students who have completed the tenth grade in high school.

History: En. Sec. 5, Ch. 114, L. 1917.

1307. Junior college courses; requirements. The junior college courses established in any high school shall conform to such requirements and regulations as may be prescribed by the chancellor of the university of Montana.

History: En. Sec. 6, Ch. 114, L. 1917.

1308. Tuition free, when. In any county where such junior college courses or normal training courses shall be maintained in any high school, all students belonging in the county shall have the right to attend any such high school free of cost to such student.

History: En. Sec. 7, Ch. 114, L. 1917.

1309. Use of common school funds must be authorized by electors. None of the common school funds shall be used in any county to carry out the purpose of this act, without first submitting such proposed expenditure to a vote of the qualified electors affected thereby.

History: En. Sec. 9, Ch. 114, L. 1917.

Use of common school funds for normal school or teachers' training school, see note in 20 L. R. A. (N. S.) 1033.

1310. Teachers' second-grade certificates may be issued to graduates. The state superintendent of public instruction may authorize the issuance of teachers' second-grade certificates, good for a period not exceeding two years, to pupils graduating from normal training course in high schools.

History: En. Sec. 4, Ch. 176, L. 1917.

1310a. Appropriation for high school normal training courses. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of twelve thousand dollars, for the year ending March 1, 1918, and there is hereby appropriated the sum of sixteen thousand dollars, for the year ending March 1, 1919, the same to be paid by the state treasurer, under the direction of the state superintendent of public instruction to accredited high schools for establishing normal training courses in such high schools. Such payments to be made to only one high school in each county, the same to be designated by the state superintendent of public instruction. In designating such school, the state superintendent shall select the high school having the largest enrollment and best equipment in the county.

History: En. Sec. 1, Ch. 176, L. 1917.

1310b. Conditions governing apportionment. When any accredited high school in the state, with the approval of the state superintendent of public instruction and the chancellor, shall have established normal training courses in such high school, and such course or courses shall have been maintained for a period of six months or more, the state superintendent of public instruction is authorized to apportion to such high school, out of the funds appropriated in this act, one-half of the amount paid in salaries by such high school for such normal training courses, provided, however, that allowance shall only be made for the time actually devoted to instruction in such courses by the teachers engaged therein, and that after the first half year, no allowance shall be made to any high school for salary paid to any instructor, unless one-half or more of the time of such instructor shall have been spent in normal training work, as shown by previous reports made to the state superintendent of public instruction by the county superintendent of schools.

History: En. Sec. 2, Ch. 176, L. 1917.

1310c. Payment to county treasurers—Conditions. The state treasurer shall pay to the several county treasurers for the credit of the respective high schools, the sums apportioned to such high schools under this act, provided, however, that no payments shall be made under this act to any high school which does not comply with the provisions of senate bill No. 189 of the acts of the fifteenth legislative assembly (1302-1309), relating to normal training courses in high schools.

History: En. Sec. 3, Ch. 176, L. 1917.

CHAPTER 103.

VOCATIONAL EDUCATION.

Section 1311. Acceptance of Act of Congress for Promotion of Vocational Education.
1312. Co-operation of State and Local Boards of Education in Vocational Training.
1313. Rules and Regulations to Be Adopted by State Board of Education.
1314. Duties of Superintendent of Public Instruction.
1315. Advisory Committee—Composition and Qualifications of Members—Meetings—Powers and Duties—Expenses.
1316. Apportionment of Funds for Vocational Education.
1317. State Treasurer as "Custodian for Vocational Education."

1311. Acceptance of act of congress for promotion of vocational education. The state of Montana hereby reaffirms the acceptance and assents to the terms and provisions of the act of congress entitled: "An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditures," as enacted into law by the legislative assembly of Montana in chapter 102, session laws of 1917.

History: En. Sec. 1, Ch. 192, L. 1919.

1312. Co-operation of state and local boards of education in vocational training. The state board of education shall have authority to co-operate with school district and county school boards in the establishment and maintenance in the public elementary schools and public high schools of the state, courses for vocational training in agriculture, trades and industries, and home economics.

History: En. Sec. 2, Ch. 192, L. 1919.

1313. Rules and regulations to be adopted by state board of education. The state board of education shall have authority to adopt rules and regulations governing such vocational courses, including the right to fix the qualifications of instructors and the courses of study to be followed in such schools. Such rules and regulations and all courses of study shall conform to any requirements of the federal board of vocational education.

History: En. Sec. 3, Ch. 192, L. 1919.

1314. Duties of superintendent of public instruction. The superintendent of public instruction shall serve as executive officer of the state board of education in the administration of said federal act and this act for the state of Montana, shall designate, by and with the advice and consent of the state board of education, such assistants as may be necessary to carry out properly the provisions of this act, shall carry into effect such rules and regulations as the state board of education may adopt concerning the promotion of vocational education, and shall prepare such reports concerning the conditions of vocational education in the state as the state board of education may require. The superintendent of public instruction shall keep all records of the state board of education which pertain to vocational education in his office in the capitol of the state.

History: En. Sec. 4, Ch. 192, L. 1919.

1315. Advisory committee—Composition and qualifications of members—Meetings—Powers and duties—Expenses. The state board of education shall annually appoint an advisory committee consisting of five citizens. One of the members of this committee shall be a representative of the manufacturing and commercial interests, one a representative of the agricultural interests, one a representative of skilled labor, one a representative of home-making interests, and the state superintendent of public instruction or a person designated by him. This advisory committee shall meet not less than three times a year upon the call of the state superintendent of public instruction. The advisory committee shall have power to call to the attention of the state board of education such matters concerning vocational education as in its judgment should receive consideration by the state board of education; it shall also present to the state board of education its recommendations concerning the plan proposed for adoption by the state board of education for the co-operation of the state of Montana with the federal government for the promotion of vocational education and its recommendations concerning any proposed changes in legislation affecting vocational education in the state of Montana; and its recommendations concerning any proposed publications or principles and policies by the state board of education in so far as they concern vocational education. The members of this advisory committee shall be entitled to actual expenses in attending such meetings; such expenses to be paid from the funds appropriated to carry out the provisions of this act.

History: En. Sec. 5, Ch. 192, L. 1919.

1316. Apportionment of funds for vocational education. The state board of education shall apportion the money appropriated under this act, and any money received for vocational education from the federal government, under the act of 1917, to the public elementary and public high schools of the state in which have been established and maintained courses for vocational training as provided in section 1312 of this code; provided, however, that no apportionment shall be made to any school unless the work of such school and the instructors employed therein shall have been approved by the state board of education. Money received from the federal government for the training of teachers, supervisors, and directors of vocational subjects, together with an amount not less than five thousand dollars for the year ending February 29, 1920, and an amount not less than five thousand dollars for the year ending February 28, 1921, of the money appropriated by this act, shall be apportioned by the state board of education to the several institutions in which the training of vocational teachers is carried on under the direction of the state board of education.

History: En. Sec. 6, Ch. 192, L. 1919.

1317. State treasurer as "Custodian for Vocational Education." The state treasurer is hereby designated as the "Custodian for Vocational Education," and under the direction of the state board of education he shall disburse all money appropriated under this act, and all moneys received by the state of Montana for vocational education from the federal government.

History: En. Sec. 7, Ch. 192, L. 1919.

CHAPTER 104.

AMERICANIZATION SCHOOLS.

Section 1318. Americanization Schools, Establishment of.
1319. Course of Study, Approval of.
1320. Mode of Creation.
1321. Expense of Maintenance.
1322. Powers of Board of Trustees.

1318. Americanization schools, establishment of. The board of trustees of the several school districts in the state of Montana are hereby vested with power and authority to establish and maintain Americanization schools for all mentally normal persons over the age of sixteen years, in which schools there shall be taught the following subjects: Reading and writing the English language, American history and principles of citizenship, and any other school subjects which the school trustees deem necessary for the Americanization of the students enrolled.

History: En. Sec. 1, Ch. 38, L. 1919.

1319. Course of study, approval of. In districts of the first and second class having a superintendent of schools of the district, the course of study shall be approved by such superintendent of schools. In all other districts, the course of study shall be approved by the county superintendent and the superintendent of public instruction.

History: En. Sec. 2, Ch. 38, L. 1919.

1320. Mode of creation. The board of trustees of any two or more school districts may combine in establishing and maintaining such Amerization school, and the expenses thereof shall be borne by such school districts in proportion to the number of students enrolled from each district.

History: En. Sec. 3, Ch. 38, L. 1919.

1321. Expense of maintenance. The expenses of such Americanization schools shall be paid out of the funds provided for by section 1203 of this code.

History: En. Sec. 4, Ch. 38, L. 1919.

1322. Powers of board of trustees. The board of trustees of any school district is hereby authorized to perform any and all acts which may be necessary for the purpose of carrying this act into effect, and for the further purpose of obtaining the benefits of any appropriation which may be made by the federal government for similar purposes.

History: En. Sec. 5, Ch. 38, L. 1919.

CHAPTER 105.

DEFINITIONS AND GENERAL PROVISIONS.

Section 1323. Gender.
1324. Fines and Penalties.
1325. Printing and Binding.
1326. School Officers Not to Act as Agents.
1327. Oath of Office.
1328. Duty of County Attorney.
1329. Penalties.

1323. Gender. Whenever the word "he" or "his" occurs in this title, referring either to the members of the board of trustees, county sup-

erintendent, teachers, school officers, or children, it shall be understood to mean also "she" or "her."

History: En. Sec. 2200, Ch. 76, L. 1913.

Note.—The word "title" is retained in sections 1323 to 1329 as referring to the entire body of law originally enacted as chapter 76, Laws of 1913.

1324. Fines and penalties. All fines and penalties not otherwise provided for in this title, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

History: En. Sec. 2201, Ch. 76, L. 1913. See note to Sec. 1323.

1325. Printing and binding. All printing and binding required under this title shall be executed in the form and manner, and at a price not exceeding other county printing, and shall be paid in like manner out of the general school fund.

History: En. Sec. 2202, Ch. 76, L. 1913. See note to Sec. 1323.

1326. School officers not to act as agents. Neither the superintendent of public instruction nor any person in his office, nor any county superintendent, nor school district officer, nor any officer or teacher connected with any public school, shall act as agent or solicitor for the sale of any school-books, maps, charts, school library books, school furniture, or apparatus, or furnish any assistance to, or receive any reward therefor, from any author, publisher, bookseller, or dealer, doing the same. Every person violating this section shall be deemed guilty of a misdemeanor, and be liable to a fine of not less than fifty nor more than two hundred dollars for each offense, and shall be liable to removal from office therefor.

History: En. Sec. 2025, Pol. C. 1895; re-en. Sec. 1041, Rev. C. 1907; re-en. Sec. 2203, Ch. 76, L. 1913.

1327. Oath of office. Any person elected or appointed to any office mentioned in this title shall, before entering upon the discharge of the duties thereof, take the oath of office. In case such officer has a written appointment or commission, his oath shall be indorsed thereon; otherwise it may be taken orally; in either case it may be sworn to before any officer authorized to administer all oaths relative to school business appertaining to their respective offices, without charge or fee.

History: En. Sec. 2026, Pol. C. 1895; re-en. Sec. 1042, Rev. C. 1907; re-en. Sec. 2205, Ch. 76, L. 1913, See note to Sec. 1323.

1328. Duty of county attorney. The county attorney shall be the legal adviser of the county superintendent and all school trustees, and shall prosecute and defend all suits to which a district may be a party.

History: En. Sec. 2027, Pol. C. 1895; re-en. Sec. 1043, Rev. C. 1907; re-en. Sec. 2206, Ch. 76, L. 1913.

1329. Penalties. Any person who shall violate any provisions of this title shall be deemed guilty of a misdemeanor (when not otherwise provided in this title), and upon a conviction thereof shall be fined in a sum not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than five days nor more than thirty days, or by both such fine and imprisonment.

History: En. Sec. 2028, Pol. C. 1895; re-en. Sec. 1044, Rev. C. 1907; re-en. Sec. 2207, Ch. 76, L. 1913. See note to Sec. 1323.

MILITIA. CHAPTERS 106 TO 109.

Chapter 106. The Militia—Its Composition, Enrollment, Officers, and General Regulation.
107. Military Courts.
108. Articles Governing the Organized Militia.
109. General Provisions and Emergency Clause.

CHAPTER 106.

THE MILITIA—ITS COMPOSITION, ENROLLMENT OFFICERS AND GENERAL REGULATION.

Section 1330. Military Code of State.
1331. Composition of the Militia.
1332. Governor as Commander-in-Chief.
1333. Composition of Organized Militia.
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1343. Penalties for Dereliction or False Certificate.
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1360. Promotion While in the Service of the United States.
1361. Officer May Waive Right to Promotion.
1362. Officer to Take Oath.
1363. Oath, Form of.
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1365. Seniority of Officers.
1366. Retirement of Officers.
1367. Reserves.
1368. Period of Enlistment.
1369. Discharge of Enlisted Men.
1370. Uniform Allowance of Officers.
1371. Property to Remain Public Property.
1372. Uniforms, etc., Exempt.
1373. Claims Against National Guard Appropriation.
1374. Buying and Receiving State Property Prohibited.
1375. Pay of Officers and Enlisted Men.
1376. Pensions.
1377. Camp Duty.
1378. Exemption From Arrest.
1379. Interference With Employment.
1380. Allowance for Incidental Expenses.
1381. Transportation and Subsistence.
1382. Authority of Commanding Officer.
1383. Warning for Duty.

1330. Military code of state. This act, together with subsequent acts amendatory thereof, and all future acts relating to the militia and national guard of Montana, shall be known as the Military Code of the state of Montana.

Note.—The first militia law of the state was enacted March 10, 1885, Laws of 1885, pp. 95 to 100, appearing as sections 1451 to 1471, Fifth Division Compiled Statutes, 1887. This act was superseded by the National Guard Act of March 12, 1889 (pp. 189 to 205, Laws of 1889.) The latter act was superseded as a new military law enacted in 1895 and appearing as sections 2050 to 2245, Political Code 1895. This act was superseded by senate bill No. 13, pp. 149 to 162, Laws of 1897, which act appeared as sections 1045 to 1110, Revised Codes 1907. These sections were repealed by chapter 145, Laws of 1911, which law re-enacted a complete military code. The act of 1911 was referred to the people by referendum of November, 1912, and rejected by them, thus restoring sections 1045 to 1110, Revised Codes 1907, to effect. The law is here given as it appears by the enactment of chapter 191, Laws of 1919.

History: En. Sec. 1, Ch. 191, L. 1919. Cal. Pol. C. Secs. 1895-2112.

For a discussion of the civil liability of military officers for the destruction of private property, see Herlihy v. Donohue, 52 Mont. 601, 161 Pac. 164, Ann. Cas. 1917C, 29 L. R. A. 1917B, 702.

Cited or applied in In re McDonald; In re Gillis, 49 Mont. 454, 43 Pac. 947, Ann. Cas. 1916A, 1166, L. R. A. 1915B, 988.

1331. Composition of the militia. The militia of the state of Montana shall consist of all able-bodied male citizens of the United States, and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, residing within this state, who shall be more than eighteen years of age, and except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into two classes, the national guard of Montana and the unorganized militia.

History: En. Sec. 2, Ch. 191, L. 1919.

1332. Governor as commander-in-chief. The militia of the state not in the service of the United States shall be governed and its affairs administered pursuant to law by the governor, as commander-in-chief, through the adjutant-general's department, which shall consist of the adjutant-general as its executive head, and such other officers and such enlisted men and civilian employees as the governor shall from time to time prescribe.

History: En. Sec. 3, Ch. 191, L. 1919.

1333. Composition of organized militia. The organized militia of Montana shall consist of the commissioned officers, enlisted men, organizations, staffs, corps, and departments of the regularly commissioned and enlisted militia of the state, organized and maintained pursuant to law. Its numerical strength, composition, distribution, organization, arms, uniforms, equipment, training, and discipline shall be prescribed by the governor, in conformity with the laws and regulations of the United States and the laws of this state. In the absence of any federal law or regulation to the contrary, its minimum enlisted strength shall be twelve hundred, and it shall include at all times the adjutant-general's department and at least one regiment of infantry. The governor may authorize and cause to be organized from time to time, within the organized militia of Montana, such additional staffs, corps, departments, branches, arms, and organizations as he shall deem necessary, and he shall have power at will to alter, divide, consolidate, disband, muster out, or reorganize any staff, corps, department, branch, arm, or tactical or administrative subdivision,

either now existing or hereafter created within the organized militia of Montana, subject to the limitations imposed by the laws and regulations of the United States and the laws of this state.

History: En. Sec. 4, Ch. 191, L. 1919.

1334. Declaration of policy. The duty of maintaining and governing the organized militia not in the service of the United States rests upon the states respectively, subject to the constitutional authority of congress, but the prime object of the force is the national defense. Its efficiency as an agent for national defense necessarily depends upon systematic uniformity in the organization, composition, arms, equipment, training, and discipline of its component parts. Its attainment of such uniformity and efficiency requires on the part of each state a rigid adherence to federal laws and regulations relating to militia. Therefore, the governor shall cause the organized militia of this state always to conform to all such federal laws and regulations as are now or may hereafter, from time to time, become operative and applicable, nothwithstanding anything in the laws of this state to the contrary. The organized militia of Montana, or any part thereof, shall be subject to call for United States service at such times, in such manner, and such numbers as may from time to time be prescribed by the United States.

History: En. Sec. 5, Ch. 191, L. 1919.

1335. Composition of national guard. The national guard of Montana shall consist of the commissioned officers, enlisted men, staffs, corps, departments, and organizations of the organized militia of Montana regularly organized and maintained pursuant to law for land service.

History: En. Sec. 7, Ch. 191, L. 1919.

1336. Governor may order out organized militia. In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or in event of public disaster, the governor shall have power to order the organized militia of Montana, or any part thereof, into the active service of the state, and to cause them to perform such duty as he shall deem proper. The governor shall also have power to order out the organized militia, or any part thereof, to preserve order and keep the people within bounds at any large public assemblage; provided, that such action shall be taken only upon written request of the mayor of the city or the sheriff of the county, or a district judge in the judicial district within which said assemblage is to occur.

History: En. Sec. 8, Ch. 191, L. 1919. Calling out militia for service, see note in 15 L. R. A. 116.

1337. Governor may order out unorganized militia. In event of or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace, if the governor shall have ordered into active service all the available forces of the organized militia of Montana and shall consider them insufficient in numbers to properly accomplish the purpose, he may then, in addition, order out the unorgan-

ized militia, or such portion thereof as he may deem necessary, and cause them to perform such military duty as the circumstances may require.

History: En. Sec. 9, Ch. 191, L. 1919.

1338. Penalty for failure to obey call. Every member of the militia who shall have been ordered out for either state or federal service under the provisions of the two preceding sections, and who shall refuse or wilfully or negligently fail to report at the time and place and to the officer designated in the order, or to the representative or successor of such officer, shall be deemed guilty of desertion, and shall suffer such penalty as a general court-martial may direct, unless he shall produce a sworn certificate from a licensed physician of good standing that he is physically unable to appear at the time and place designated; provided, that any person chargeable with desertion under this section may be taken by force and compelled to serve.

History: En. Sec. 10, Ch. 191, L. 1919.

1339. Penalty for physician making false certificate. Whenever any physician shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service, such physician shall thereby forfeit forever his license and right to practice in this state, and shall be deemed guilty of perjury.

History: En. Sec. 11, Ch. 191, L. 1919.

1340. Commander-in-chief may order enrollment. Whenever the commander-in-chief shall deem it necessary, in event of or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process, or breach of the peace, he may order an enrollment by counties of all persons subject to military duty, designating the county assessor or some other person for each county to act as county enrolling officer. Each county enrolling officer may appoint such assistant or assistants as may be authorized by the commander-in-chief. In each county the enrollment shall include every sane, able-bodied male inhabitant not under sentence for an infamous crime, who is more than eighteen and less than forty-five years of age. The enrollment shall be made in triplicate, and shall state the name, residence, age, occupation, and previous or existing military or naval service of each person enrolled. When complete, the rolls shall be verified under oath by the enrolling officer, who shall immediately thereupon file one copy with the adjutant-general of the state and another with the county clerk, retaining the third copy for himself.

History: En. Sec. 12, Ch. 191, L. 1919.

1341. Notice of enrollment. Persons making an enrollment under this act shall, at the time of making same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him personally, or by leaving it with some person of suitable age and discretion at his place of business or residence, or by mailing such notice to him at his last known place of residence, and shall make a return under oath of such service to accompany the copy of the enrollment filed with the adjutant-general. Such return shall be prima facie evidence of the facts therein shown.

History: En. Sec. 13, Ch. 191, L. 1919.

1342. Exemptions. Whenever an enrollment shall have been ordered under this act, the commanding officer of existing organizations of militia, and the chiefs of all police and fire departments, shall make and deliver to the enrolling officer of the county in which such organization and departments are stationed, verified lists in triplicate of the members of their respective commands and departments, and the enrolling officer shall mark "Exempt" opposite the names of all persons so listed, attaching one copy of each such list to each copy of the enrollment. The enrolling officers shall also mark "Exempt" opposite the names of all federal, state, and county officers. All other persons claiming exemption must, within fifteen days after service upon them of the notice of enrollment, make a written verified claim in duplicate of such exemption, and file the same in the office of the county clerk, who shall within five days thereafter forward one copy thereof with remarks and recommendations to the adjutant-general. Upon the expiration of the time within which any claim of exemption may be filed and received by the adjutant-general, the latter shall notify the county clerk of his decision in each case where exemption has been claimed, and the county clerk shall write upon the roll opposite the name of each person whose claim of exemption has been allowed by the adjutant-general the word "Exempt." All those on the roll not marked "Exempt" shall be subject to military duty.

History: En. Sec. 14, Ch. 191, L. 1919.

Right conferred by statute exemption of firemen from militia duty, see note in 8 L. R. A. (N. S.) 498.

1343. Penalties for dereliction or false certificate. If any officer or person, who becomes charged under this act with any duty relating to an enrollment of persons subject to military duty, refuses or neglects to perform the same within the time and substantially in the manner required by law, or if he shall knowingly make any false certificate, or if, when acting as county or assistant enrolling officer, he shall knowingly or wilfully omit from the roll any person required by this act to be enrolled, he shall thereby forfeit not less than one hundred nor more than five hundred dollars, to be sued for in the name of the state of Montana by the prosecuting attorney of the county in which such offense shall occur, the amount of the penalty to be determined by the court, and when recovered to be paid into the military fund of the state.

History: En. Sec. 15, Ch. 191, L. 1919.

1344. Compensation of enrolling officer. Each county enrolling officer shall be allowed the sum of five cents per name enrolled and served with notice of enrollment by him or his assistants, to be audited and paid as other military bills out of any moneys in the military fund not otherwise appropriated, and from such allowance he must pay his assistant or assistants.

History: En. Sec. 16, Ch. 191, L. 1919.

1345. Examination of assessment-rolls and poll-lists. All civil officers in each county, city, and town shall allow persons authorized under this act to make enrollments, at all proper times to examine their records and take copies thereof or information therefrom. It shall be the duty of every person, under the penalties provided in section 1343 of this code, upon application of any person legally authorized to make an enrollment,

truthfully to state all of the facts within his knowledge concerning any individual of whom the enroller shall make inquiry. In event of a violation of this section, the enroller shall report the facts to the prosecuting attorney, who shall at once proceed to enforce the penalty.

History: En. Sec. 17, Ch. 191, L. 1919.

1346. The adjutant-general of the state. There shall be an adjutant-general of the state, who shall be appointed by the governor, and shall have the rank of brigadier-general. He shall hold office at the pleasure of the governor, and his commission shall expire with the term for which the governor appointing him shall have been elected. He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments.

History: En. Sec. 23, Ch. 191, L. 1919.

1347. Suits against officers, or enlisted men. When any suit or proceeding shall be commenced in any court by any person against any military officer of the state for any act done by such officer in his official capacity in the discharge of any duty under this act, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting such suit or proceeding to file a cost bond running to the state of Montana of not less than two hundred dollars, or such greater sum as may be fixed by the court on application therefor, for the payment of costs that may be incurred by the defendant therein, and in case the plaintiff shall be nonsuited, or have the verdict or judgment rendered against him, the defendant shall recover costs. The defendant in such action shall be defended by the attorney-general at the expense of the state, but private counsel may be employed by the defendant. No action shall lie against any officer or enlisted man for any acts done by him by virtue of any order which may hereafter be held invalid by any civil court.

History: En. Sec. 18, Ch. 191, L. 1919.

1348. Personal staff for governor. Whenever the governor shall desire the attendance of a personal staff upon any ceremonial occasion, he shall detail therefor such officers as he may choose from the active list of the organized militia of Montana, resident in or nearest to the place where such ceremonies are to be held, and the officers detailed shall attend in uniform at the time and place designated, and shall constitute the personal staff of the governor for that occasion, reverting upon completion of such duty to their regular assignments.

History: En. Sec. 19, Ch. 191, L. 1919.

1349. Duties of adjutant-general. The adjutant-general shall be ex-officio chief of staff. He shall hold office until his successor is appointed and qualified. He shall appoint the civilian employees of his department, and may remove any of them in his discretion.

The expenses of the adjutant-general's department, necessary to the military service, shall be audited, allowed, and paid as other military

expenditures are audited, allowed, and paid. Before entering upon his official duties, the adjutant-general must execute an official bond running to the state of Montana in the penal sum of one thousand dollars, conditioned upon the faithful performance of his duties, said bond to be submitted to the attorney-general for approval, and when approved to be filed in the office of the secretary of state, the cost of said bond to be paid from the military fund of the state. The adjutant-general shall obtain and pay for, from the military fund, a surety company bond or bonds running to the state of Montana, covering all of the officers of the organized militia of Montana responsible to the state for money or military property, such bond or bonds to be approved and filed in the same manner as the adjutant-general's bond.

1. The adjutant-general shall keep a roster of all active, reserve, and retired officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and shall submit to the governor, during December of each even numbered year, a printed biennial report of the operations and conditions of the organized militia of Montana.

2. He shall cause the military law, the regulations of the organized militia of Montana, and such other military publications as may be necessary for the military service, to be printed, indexed, and bound at the expense of the state, and distributed to the commissioned officers of the organized militia of Montana.

3. He shall keep and preserve the books, arms, accoutrements, ammunition, and other military property belonging to the state, not properly issued.

4. He shall keep just and true accounts of all moneys received and disbursed by him.

5. He shall attest all commissions issued to military officers of this state.

6. He shall make out and transmit all militia reports, returns, and communications prescribed by acts of congress or by direction of the secretary of war.

7. He shall have a seal, and all copies, orders, records, and papers in his office, duly certified and authenticated under said seal, shall be evidence in all cases in like manner as if the originals were produced. The seal now used in the office of the adjutant-general shall be the seal of his office, and shall be delivered by him to his successor. All orders issued from his office shall be authenticated with said seal.

8. He shall make such regulations pertaining to the preparation of reports and returns, and to the care and preservation of property in possession of the state for military purposes, whether belonging to the state or to the United States, as in his opinion the conditions demand.

9. He shall attend to the care, preservation, safe-keeping, and the repairing of the arms, ordnance, accoutrements, equipment, and all other military property belonging to the state, or issued to the state by the government of the United States for military purposes, and keep accurate accounts thereof. All military property of the state, which after proper inspection shall be found unsuitable for use of the state, shall be disposed

of in such manner as the governor shall direct, and the proceeds thereof paid into the military fund of the state.

10. He shall issue such military property as the necessity of the service requires, and make purchases for that purpose. No military property shall be issued or loaned except upon an emergency to persons or organizations other than those belonging to the organized militia of Montana, except to such portions of the unorganized militia as may be called out by the governor.

11. He shall keep on file in his office the reports and returns of troops and heads of military departments, and all other writings and papers required to be transmitted to and preserved at the general headquarters of the state militia.

History: **En. Sec. 20, Ch. 191, L. 1919.** Note.—Bond is given as fixed by section 464, this code.

1350. Officers to be commissioned by the governor. All commissioned officers of the organized militia of Montana shall be appointed and commissioned by the governor. No person shall be so appointed and commissioned unless he shall be a citizen of the United States and of this state, and more than twenty-one years of age. Every commissioned officer shall hold office under his commission until he shall have been regularly appointed and commissioned to another grade or office, or until he shall have been regularly retired, discharged, dismissed, or placed in the reserve.

History: **En. Sec. 21, Ch. 191, L. 1919.**

1351. Commissioned officers. No person shall be appointed and commissioned to any office in the organized militia of Montana unless he shall have been examined and adjudged qualified therefor by an examining board whose report shall have been approved by the authority appointing the board. The composition, appointment, and procedure of examining boards, and the nature and scope of examinations, shall be prescribed by the laws or regulations of the United States or those of this state. Whenever a commissioned officer shall have been examined for promotion, pursuant to this section, and shall have been adjudged not qualified therefor, upon approval by the authority appointing the board of its report to that effect such officer shall be honorably discharged, retired, or placed in the reserve, as the governor shall direct, or returned to his former rank and grade if otherwise by this record qualified therefor in the opinion of the governor.

History: **En. Sec. 22, Ch. 191, L. 1919.**

1352. Staff officers, how chosen. Vacancies in commissioned grades in administrative staff, corps, and departments shall be filled by detail or by appointment and commission, as the governor shall have prescribed in regulations conforming as nearly as practicable with federal laws and regulations governing the filling of similar vacancies in the federal service; provided, that no officer shall be detailed or appointed and commissioned to any such staff, corps, or department without his written consent. The detail of an officer to a staff, corps, or department shall not affect his grade, relative seniority, or right of promotion in the branch or arm of the service from which he shall have been so detailed, and whenever, during the continuance of such detail, a vacancy shall occur in the branch

or arm of the service from which such officer shall have been detailed, for which vacancy he would have been eligible in the absence of such detail, he shall, upon the termination of such detail and passing the required examination, be appointed and commissioned in the grade of such vacancy with rank from the date of occurrence thereof. When an officer shall be relieved from detail with any staff, corps, or department, he shall be returned to the branch or arm of the service from which he was detailed, and shall be assigned to fill the next vacancy therein of his rank and grade, and if there be no vacancy immediately available he shall be carried in the meantime upon the active list as "unassigned."

History: En. Sec. 24, Ch. 191, L. 1919.

1353. Eligibility for staff assignment. Staff officers of the national guard of Montana, including officers of the pay, inspection, subsistence, and medical departments, hereafter appointed, shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the militia of this state. This section shall cease to be effective whenever its provisions shall not be required by federal law as a condition to participation by the state in federal appropriations.

History: En. Sec. 25, Ch. 191, L. 1919.

1354. Commissioned officers—Selection. Whenever a vacancy shall have occurred in the junior commissioned office of any company or similar unit of the national guard of Montana, the person to be appointed and commissioned to fill such vacancy shall be selected by competitive examination in which all enlisted men of the branch or arm of the service wherein such vacancy shall have occurred, on duty at the station where it shall have occurred, shall be eligible to participate.

History: En. Sec. 26, Ch. 191, L. 1919.

1355. Commissioned officers—Promotion. Whenever a vacancy shall have occurred in any commissioned office of a company or similar unit of the organized militia of Montana other than the junior commissioned office thereof, the same shall be filled by the assignment thereto of an officer of the same grade and branch or arm of the service resident of the station of said company or similar unit, or by the promotion of the senior officer of the next lower grade of the same branch or arm of the service resident at that station.

History: En. Sec. 27, Ch. 191, L. 1919.

1356. Commissioned officers—Detail to staff. Whenever a vacancy shall have occurred in the commissioned staff of any regiment, battalion, squadron, or similar unit of the organized militia of Montana, the same shall be filled by the assignment thereto of an officer of the same grade and branch or arm of the service, or by the promotion of the senior officer of the next lower grade of the same unit.

History: En. Sec. 28, Ch. 191, L. 1919.

1357. Promotion to grade of major. Whenever a vacancy shall have occurred in the grade of major in the line of the national guard of Montana, the same shall be filled as follows:

1. In any battalion, squadron, or similar unit whose elements are all at one station, by the assignment of the senior major of the line of the same branch or arm of the service resident at that station, who shall have no command wholly located within said station, or, if there be no such major, by the promotion of the senior captain in the same branch or arm of the service resident at said station.

2. In any battalion, squadron, or similar unit whose elements are not all at one station, by the promotion of the senior among the captains of the same branch or arm of the service resident at the various stations of such command.

History: En. Sec. 29, Ch. 191, L. 1919.

1358. Promotion to grade of lieutenant-colonel and colonel. Whenever a vacancy shall have occurred in the grade of colonel or lieutenant-colonel in any regiment or similar unit of the national guard of Montana, it shall be filled by promotion of the next senior officer of such command, except in those cases where the law provides for the assignment thereto of officers relieved from detail with staff corps and departments.

History: En. Sec. 30, Ch. 191, L. 1919.

1359. Promotion to grade of brigadier-general of the line. Whenever a vacancy shall have occurred in the grade of brigadier-general of the line of the national guard of Montana, it shall be filled by the promotion of an officer of the line of the national guard of Montana of the next lower grade of the same branch or arm of the service.

History: En. Sec. 31, Ch. 191, L. 1919.

1360. Promotion while in the service of the United States. Whenever a vacancy shall have occurred in any commissioned grade, other than the lowest commissioned grade, of any regiment, separate battalion, or squadron, separate company, or similar separate unit of the national guard of Montana while in the service of the United States, such vacancy shall be filled by the promotion of the senior officer of the next lower grade on duty with such command who shall not in writing have waived such promotion. Every vacancy in the lowest commissioned grade in any such command while in such service shall be filled by the promotion of an enlisted man of such command upon the written recommendation of its commanding officer; provided, that any vacancy in any such command while in such service in any commissioned grade below that of major, may be filled upon the written recommendation of the commanding officer of such command, by the transfer, assignment, or appointment of any officer of the national guard or national guard reserve of this state.

History: En. Sec. 32, Ch. 191, L. 1919.

1361. Officer may waive right to promotion. Any officer of the organized militia of Montana may, in writing, waive his right to any promomotion to which his seniority shall entitle him, in which event the next senior officer who shall not in writing have waived such promotion shall be entitled thereto.

History: En. Sec. 33, Ch. 191, L. 1919.

1362. Officer to take oath. Every officer, duly commissioned or warranted, shall, within such time as may be provided by law or by regulations, take the oath of office prescribed by law, and give bond, if required. In case of neglect or refusal so to do, he shall be considered to have resigned such office, and a new appointment may be made as provided by law.

History: En. Sec. 34, Ch. 191, L. 1919.

1363. Oath, form of. The oath of office for commissioned officers in the organized militia of Montana shall be substantially as follows: "I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the president of the United States and of the governor of the state of Montana: that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of ..... in the national guard of the United States and of the state of Montana upon which I am about to enter, so help me God."

History: En. Sec. 35, Ch. 191, L. 1919.

1364. Dismissal of officers. The governor may dismiss any commissioned officer of the organized militia of Montana for any of the following reasons:

1. Conviction of an infamous crime.
2. Absence from his command for more than thirty days without proper leave.
3. Sentence of dismissal by court-martial, duly approved.

And the governor may discharge any commissioned officer of the organized militia of Montana for any of the following reasons:

1. Upon muster out of the organization to which such officer is then assigned.
2. Acceptance of resignation of such officer; provided, that no officer shall be discharged or his resignation accepted while under arrest or against whom military charges have been preferred, or until he shall have turned over to his successor or satisfactorily accounted for all state and federal moneys and military property for which he shall have been accountable or responsible.
3. Removal of his actual residence to such distance from the station of his command as to render it impracticable for him to perform the duties of his office.
4. Incompetence or unfitness for military service as determined by the duly approved findings of an efficiency board appointed for that purpose.

History: En. Sec. 36, Ch. 191, L. 1919.

1365. Seniority of officers. Upon the date this act becomes effective, or as soon thereafter as practicable, it shall be the duty of the commander-in-chief to assign to each commissioned officer of the active list of the national guard of Montana a number, assigning to the senior officer of each grade number one and continuing lineally thereafter in such grade

in order of seniority as of the date of commission in the grade held by each officer on the day this act becomes effective. Thereafter seniority in any given grade shall be determined by the greatest length of continuous service as an officer of the national guard of Montana, said service to be calculated from the day this act becomes effective. If two or more officers of the same grade have equal length of continuous service as commissioned officers of the national guard of Montana, calculated from the date this act becomes effective, seniority between them shall be determined in the grade held by them by service as officers of the active list performed subsequent to the date this act becomes effective. The rank of any officer who shall receive his first commission in the national guard of Montana after this act becomes effective, shall be determined in the grade to which appointed by length of service as an officer of the active list, performed subsequent to the date this act becomes effective.

History: En. Sec. 37, Ch. 191, L. 1919.

1366. Retirement of officers. Commissioned officers of the national guard of Montana shall be retired by order of the commander-in-chief with the grade and rank respectively held by them at the time of such retirement for the following reasons:

1. Upon reaching the age of sixty-four years.
2. Unfitness for military service by reason of physical disability.
3. Upon request, after at least five years' continuous service as officers in the national guard of Montana.

Retired officers shall draw no pay or allowance except when on duty. They shall be subject only to temporary detail by the commander-in-chief, and while on duty shall receive the same pay and allowances as officers of the same rank on the active list. On all occasions of duty or ceremony, retired officers shall take rank next below officers of the same grade on the active list.

History: En. Sec. 38, Ch. 191, L. 1919.

1367. Reserves. The national guard reserve of this state shall respectively be organized by the governor in regulations conforming with the laws, rules, and regulations of the United States. It shall consist of such organization, officers, and enlisted men as the governor shall prescribe. No commissioned officer shall be transferred or furloughed to the national guard reserve without his written consent, except as otherwise expressly provided by law. Officers of the retired list of the organized militia of Montana may be transferred to the national guard reserve, under such regulations as the governor may prescribe. Any officer of the national guard reserve may be restored to the active list by order of the governor, subject to the same examination as in the case of an original appointment to his grade, and in such event his service in reserve shall not be counted in computing total length of service for relative seniority.

History: En. Sec. 39, Ch. 191, L. 1919.

1368. Period of enlistment. Hereafter the period of enlistment in the national guard of Montana shall be for six years, the first three years of which shall be in an active organization and the remaining three years in the national guard reserve. Qualifications for enlistment or re-enlistment, and the forms of oaths and contracts of enlistment or re-enlistment, shall be

as prescribed by the governor in accordance with federal laws and regulations. In the national guard, the privilege of continuing in active service during the whole of an enlistment period, and of re-enlisting in said service, shall not be denied by reason of anything contained in this act; provided, when a man re-enlists in the organized militia of Montana within thirty days from the date of the expiration of his prior enlistment, or within thirty days from the date of his discharge, his term of service shall be considered as continuous, and shall be so dated; provided, that in time of peace, a man who enlists in the Montana national guard shall have been a resident of the state of Montana for the period of one year prior to his enlistment, unless he holds an honorable discharge from some branch of the military or naval service of the United States, or from the United States marine corps.

History: En. Sec. 40, Ch. 191, L. 1919.

1369. Discharge of enlisted men. An enlisted man discharged from service in the organized militia of Montana shall receive a discharge in writing in such form and of such classification as is or shall be prescribed by law or regulations, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by competent authority.

History: En. Sec. 41, Ch. 191, L. 1919.

1370. Uniform allowance of officers. Every commissioned officer of the organized militia of Montana shall, within sixty days from the date of the order whereby he shall have been appointed, provide himself, at his own expense, with the arms, uniforms, and equipments prescribed by the governor for his rank and assignment.

There shall be audited and paid annually on the first day of April in each year, to each properly armed, uniformed, and equipped officer of the active service of the organized militia of Montana, a uniform allowance of thirty-five dollars for dismounted officers and fifty dollars for mounted officers.

History: En. Sec. 42, Ch. 191, L. 1919.

1371. Property to remain public property. All property issued to organizations and members of the organized militia of Montana shall be and remain public property.

History: En. Sec. 43, Ch. 191, L. 1919.

1372. Uniforms, etc., exempt. The military uniforms, arms, equipment, and mounts of members of the organized militia of Montana shall be exempt from execution and taxation.

History: En. Sec. 44, Ch. 191, L. 1919.

1373. Claims against national guard appropriation. All bills, claims, and demands against the national guard appropriation shall be certified or verified in the manner prescribed by regulations promulgated by the governor, and shall be audited and approved by the adjutant-general and, if allowed, by the state board of examiners, shall be paid by the state treasurer upon the warrant of the state auditor from the national guard appropriation; provided, however, that in all cases where the organized militia or any part thereof is called into the service of the state in case

of war, riot, insurrection, invasion, breach of the peace, or in aid of the civil authorities, warrants for allowed pay and expenses for such service shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund, on the order of the governor.

History: En. Sec. 45, Ch. 191, L. 1919.

1374. Buying and receiving state property prohibited. If any person shall purchase or receive in pawn or pledge any military property of the state of Montana or of the United States, he shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to imprisonment not exceeding one year, or fined not exceeding three hundred dollars, or by both such fine and imprisonment.

History: En. Sec. 46, Ch. 191, L. 1919.

Liability of civilian for public property purchased or received in pledge from soldier or sailor, see notes in Ann. Cas. 1918B, 523, Ann. Cas. 1918D, 1203.

1375. Pay of officers and enlisted men. Commissioned officers while on duty pursuant to the orders of the governor (other than at assemblages for drill or instruction, or on examining boards at or in the vicinity of their home stations, or when called or ordered out by the president of the United States), and while on duty in aid of the civil authorities pursuant to the lawful orders of the governor, shall receive the same pay and allowances as officers of the United States of the same grade; provided, that for travel only actual necessary expenses shall be allowed.

While on duty pursuant to the orders of the governor (other than at assemblages for drill or instruction at or in the vicinity of their home stations, or when called or ordered out by the president of the United States), and while on duty in aid of the civil authorities pursuant to the lawful orders of the governor, enlisted men of the national guard of Montana shall receive pay at rates equivalent to twice those allowed for corresponding grades in the United States army.

This schedule of pay shall apply only to the first thirty days of any tour of duty, and after the thirtieth day of any such tour, officers and men shall receive the pay and allowances of officers and men in the regular service of the United States of corresponding organizations and grades.

In addition to the pay herein provided the governor, or such other official as may be designated by federal authority, is authorized to receive and disburse, in accordance with federal laws and regulations, any moneys which may be appropriated by the congress of the United States and allotted to the state of Montana for the payment of officers and enlisted men of the organized militia, as reimbursement for expenses incurred in and compensation for the time devoted to military training during times of peace.

History: En. Sec. 47, Ch. 191, L. 1919.

1376. Pensions. Every member of the organized militia of Montana, who shall be wounded or disabled while on duty in the service of the state, shall be taken care of and provided for at the expense of the state, and if permanently disabled, shall receive the like pensions or rewards that persons under similar circumstances in the military service of the United States receive from the United States; provided, that no pension shall be

granted for any disability received while in the service of the United States, or while proceeding to or returning from such service. Before the name of any person is placed upon the pension roll under this section proof shall be made, under such regulations as the governor shall from time to time prescribe, that the applicant is entitled to such pension.

History: En. Sec. 48, Ch. 191, L. 1919.

Validity of statute authorizing state to grant pensions to war veterans, see notes in Ann. Cas. 1913B, 951, Ann. Cas. 1915C, 282.

1377. Camp duty. The governor shall cause the organized militia of Montana to perform for at least five consecutive days in each year camp duty, field maneuvers, or such other duty as in his judgment will best promote the discipline and efficiency of the force.

History: En. Sec. 49, Ch. 191, L. 1919.

1378. Exemption from arrest. No person belonging to the military forces of this state shall be arrested under any civil process while going to, remaining at, or returning from any place at which he may be required to attend military duty. Any members of the organized militia parading, or performing any duty according to the law, shall have the right of way in any street or highway through which they may pass, and while on field duty shall have the right to enter upon, cross, or occupy any uninclosed lands, or any inclosed lands where no damage will be caused thereby; provided, that the carriage of the United States mail and the legitimate functions of the police and the progress and operations of fire departments shall not be interfered with thereby.

History: En. Sec. 50, Ch. 191, L. 1919.

1379. Interference with employment. A person who, either by himself or with another, wilfully deprives a member of the organized militia of Montana of his employment, or prevents, by himself or another, such member being employed, or obstructs or annoys said member or his employer in his trade, business, or employment because he is such member, or dissuades any person from enlisting in said organized militia by threat or injury to him in his employment, trade, or business in case he shall so enlist shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding one hundred dollars, or imprisonment in the county jail not more than thirty days, or shall suffer both such fine and imprisonment.

History: En. Sec. 51, Ch. 191, L. 1919.

1380. Allowances for incidental expenses. Each commanding officer shall be entitled to receive an allowance for the incidental expenses of his command, payable quarterly in advance according to the following schedule: Companies, troops, batteries, and like units, not to exceed fifty dollars per month; bands, not to exceed ten dollars per month; regiments and like units, not to exceed twenty-five dollars per month.

For the first quarter of each biennial period, each officer entitled to a quarterly allowance under this section shall be entitled to receive in advance the maximum allowance in full, but with his claim therefor he shall make remittance of the balance, if any, remaining unexpended from the last previous quarter, such remittance to be transmitted by the adju-

tant-general to the state treasurer, and for each succeeding quarter of each biennial period each such officer shall be entitled to receive such sum, not more than the maximum allowance above prescribed, as he shall have expended for authorized expenses of his command during the next preceding quarter. Each claim for quarterly allowance shall include an account current showing the items of expenditure, and shall be accompanied by subvouchers for all items, each voucher stating definitely the nature and amount of the expenditure evidenced thereby.

History: En. Sec. 52, Ch. 191, L. 1919.

1381. Transportation and subsistence. There shall be provided by the state transportation for all officers, and transportation and subsistence for all enlisted men who shall be ordered out for encampment, field duty, or stated parades, or assembled for duty in case of riot, tumult, breach of the peace, war, insurrection, invasion, or imminent danger thereof. Necessary transportation, quartermasters' stores, and subsistence for troops when ordered on duty shall be contracted for by the proper officers and paid for as other military bills. There shall be allowed from the military fund for each day's service the sum of two dollars per man for each horse for every mounted officer and mounted orderly, and all members of such other organizations of the national guard of Montana as are required to be mounted. Horses not furnished by officers or men shall be rented by the state at a cost not exceeding two dollars per day for each horse.

History: En. Sec. 53, Ch. 191, L. 1919.

1382. Authority of commanding officer. The commanding officer at any drill, parade, encampment, or other duty may cause those under his command to perform any military duty he shall require, and may place in arrest for the time of such drill, parade, encampment, or other duty, any officer or enlisted man who shall disobey the orders of his superior officer, or in any way interrupt the exercises, and any other person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those on duty, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and he shall prohibit and prevent the sale or use of all spirituous liquors, wines, ale, or beer, or holding of huckster or auction sales, and all gambling, and remove disorderly persons beyond the limits of such parade or encampment, or beyond a distance of two miles therefrom, and he shall abate as common nuisances all disorderly places, and all such sales within such limits. Any person violating any of the provisions of this section, or any order issued in pursuance thereof, shall be guilty of a misdemeanor, and may be delivered at or before the termination of such duty to any peace officer, and shall be brought before the nearest court of competent jurisdiction for trial, and upon conviction thereof shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or shall suffer both such fine and imprisonment.

History: En. Sec. 54, Ch. 191, L. 1919.

1383. Warning for duty. Orders for duty may be oral or written. Officers and enlisted men may be warned for duty as follows: Either by stating the substance of the order, or by reading the order to the person

warned, or by delivering a copy of such order to such person, or by leaving a copy of such order at his last known place of abode or business with some person of suitable age and discretion, or by sending a copy of such order or notice containing the substance thereof to such man by mail, directed to him at his last known place of abode or business. Orders may be transmitted by telegraph or telephone. Such warning may be given by any officer or enlisted man. The officer or enlisted man giving such warning shall, when required, make a return thereof, containing the names of persons warned and the time, place, and manner of warning. Such returns shall be verified on oath and shall be prima facie evidence, on the trial of any person returned as a delinquent, of the facts therein stated.

History: En. Sec. 55, Ch. 191, L. 1919.

CHAPTER 107.

MILITARY COURTS.

Section 1384. Military Tribunals—Kinds.
1385. Military Courts of the Organized Militia.
1386. General Courts-Martial.
1387. Special Courts-Martial.
1388. Summary Court Officer.
1389. Sentence to Confinement.
1390. Sentence, When to Be Approved by Governor.
1391. Jurisdiction of Military Courts.
1392. Evidence in Military Courts.
1393. Witnesses.
1394. Process.
1395. Contempt of Court.
1396. Fees and Mileage.
1397. "Officer" and "Enlisted Man" Defined.

1384. Military tribunals—Kinds. The military tribunals of the state of Montana shall be of two kinds, viz.:

1. Courts-martial for the trial of offenders against the military law; and

2. Courts of inquiry for examining transactions of, or accusations or imputations against, officers or enlisted men of the organized militia of Montana.

All such courts shall be composed of commissioned officers only. All commissioned officers of the organized militia of Montana shall be eligible for detail to such courts, but no officer will be detailed for the trial of an officer superior to himself in rank when it can be avoided.

History: En. Sec. 56, Ch. 191, L. 1919.

For a general discussion of matters relating to military courts, see 18 R. C. L. 1061.

1385. Military courts of the organized militia. The military courts of the organized militia of the state of Montana shall be of the following classes:

1. General courts-martial.
2. Special courts-martial.
3. Summary courts-martial.

They shall be respectively constituted like and have cognizance of the same subjects and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations of the United States, and

the proceedings of such courts shall follow the forms and modes of procedure prescribed for similar courts by the law and regulations of the United States. They may be convened by order specifying that they shall sit either for the trial of specified offenses or offenders, or for the trial of all offenses or offenders that may be lawfully brought before them, either during a specified period of time or until further order of the convening or superior authority.

History: En. Sec. 57, Ch. 191, L. 1919.

1386. General courts-martial. General courts-martial may be convened by order of the governor and may consist of any number of officers from five to thirteen, inclusive. The decision of the appointing authority as to the number of officers to compose such court shall be conclusive. When from any cause a general court-martial is reduced below the minimum of five officers, the remaining number will direct the judge-advocate to report the fact to the convening authority and await further orders. Such courts shall have the power and jurisdiction to impose fines not exceeding two hundred dollars; to sentence to forfeiture of pay and allowances; to reprimand; to dismissal or dishonorable discharge from the service; to reduction of non-commissioned officers to the ranks; to reduction in rank or rating; or any two or more of such punishments may be combined in the sentence imposed by such courts.

History: En. Sec. 58, Ch. 191, L. 1919.

Martial law as distinguished from military law, see note in Ann. Cas. 1914C, 23.

Courts-martial proceedings as subject to review by civil courts, see note in 17 Ann. Cas. 445, 20 L. R. A. (N. S.) 413.

Power of courts-martial to punish for contempt, see note in 8 A. L. R. 1547.

1387. Special courts-martial. In the national guard of Montana the commanding officer of each garrison, post, camp, or other place, brigade, regiment, detachment, battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by a superior authority when by the latter deemed desirable. Special courts-martial shall have the power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States or of the state of Montana, and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such special courts-martial shall not exceed one hundred dollars. Such special courts-martial shall consist of any number of commissioned officers, from three to five, inclusive.

History: En. Sec. 59, Ch. 191, L. 1919.

1388. Summary court officer. The commanding officer of each garrison, fort, post, or other place, regiment, or corps, detached battalion, company, or other detachment of the national guard of Montana, may appoint for such place of command a summary court to consist of one officer, who shall have power to administer oaths and try enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and said court, when satisfied of the guilt of such soldier, may impose fines not exceeding twenty-five dollars for any single offense, may sentence non-commissioned officers to reduction to the ranks, and may sentence to forfeiture of pay and allowances. The

proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for similar courts of the regular army of the United States.

History: En. Sec. 60, Ch. 191, L. 1919.

1389. Sentence to confinement. All military courts of the organized militia of Montana shall have power to sentence to confinement in lieu of fines authorized to be imposed; provided, that such sentence of confinement shall not exceed one day for each dollar of fine authorized.

History: En. Sec. 61, Ch. 191, L. 1919.

1390. Sentence, when to be approved by governor. No sentence of dismissal or dishonorable discharge from the service of the organized militia of Montana not in the service of the United States, imposed by any military court, shall be executed until approved by the governor.

History: En. Sec. 62, Ch. 191, L. 1919.

1391. Jurisdiction of military courts. Military courts shall have jurisdiction, subject to the limitations imposed by law, at all times and in all places, over officers and enlisted men of the organized militia of Montana, and over members of the unorganized militia of Montana who shall be under orders for military duty, for all military offenses.

History: En. Sec. 63, Ch. 191, L. 1919.

1392. Evidence in military courts. Every military court shall have the same power to compel by subpoena, by subpoena duces tecum, and by attachment, the attendance of witnesses, both civilian and military, and the production of books, papers, and documents, and to punish for contempt a witness duly subpoenaed for non-attendance or refusal to be sworn or testify, or to produce books, papers, and documents, as is possessed by the superior courts of the state. Military courts shall also have power to take or cause to be taken the depositions of witnesses who cannot reasonably be produced at the trial, to the same extent as the superior courts aforesaid.

History: En. Sec. 64, Ch. 191, L. 1919.

1393. Witnesses. Every person not belonging to the organized militia of Montana who, having been duly subpoenaed to appear as a witness before a military court, shall have wilfully neglected or refused to appear, or refused to qualify as a witness or to testify or produce documentary evidence which such person shall have been legally subpoenaed to produce, and every sheriff, constable, or jailor who shall have received a lawful writ, mandate, subpoena, or other process of any military court, and who shall have refused or wilfully or negligently failed to execute or serve the same, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the state of Montana; and it shall be the duty of the prosecuting attorney of any county, on the certification of the facts to him by the president or senior member of the court, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars, or imprisonment not to exceed six months, or both, at the discretion of the court; provided,

that no witness shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him.

History: En. Sec. 65, Ch. 191, L. 1919.

1394. Process. Military courts are empowered to issue all processes and mandates, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such writs and mandates may be directed to the sheriff of any county, or the constables of marshals of any precinct, city, or town, and shall be in such form as may from time to time be prescribed in regulations. It shall be the duty of all such officers to whom any such process or mandate may be so directed to forthwith execute the same, and make return of their acts thereunder, according to the requirements of such process or mandate. The keepers and wardens of all county and city jails shall receive the bodies of persons committed by the process or mandate of any military court, and shall confine them in the manner prescribed thereby and according to law. Any person may be committed to any county or city jail for failure to pay any fine under this act, and when so committed shall be credited upon each fine and assessed with the sum of one dollar for each day so confined.

History: En. Sec. 66, Ch. 191, L. 1919.

1395. Contempt of court. Any person who shall be guilty of disorderly, contemptuous, or insolent behavior in, or who shall use any insulting, or contemptuous, or indecorous language or expression to or before any military court, or any member of such court in open court, tending to interrupt its proceedings, or to impair the respect due to its authority, or who shall commit any breach of the peace, or make any noise or other disturbances directly tending to interrupt its proceedings, may be committed by warrant, under the hand of the president of the court, to the jail of the city or county in which said court shall sit, there to remain without bail in close confinement for a definite period not exceeding three days.

History: En. Sec. 67, Ch. 191, L. 1919.

1396. Fees and mileage. Fees and mileage allowed for the service of process and for civilian witnesses shall be the same as in civil actions. All expenditures necessary to carry the provisions of this act into effect are hereby authorized to be incurred and paid out of the appropriations for the maintenance of the organized militia of Montana.

History: En. Sec. 68, Ch. 191, L. 1919.

1397. "Officer" and "enlisted man" defined. Whenever used in the military code of the state of Montana and throughout this act, the word "officer" shall be understood to designate commissioned officers, and the words "enlisted men" shall be understood to designate members of the organized militia of Montana other than commissioned officers. The convictions and punishments mentioned in the military code of the state of Montana and in this act, unless otherwise specifically designated, shall be understood to be respectively convictions and punishments by military courts.

History: En. Sec. 69, Ch. 191, L. 1919.

CHAPTER 108.

ARTICLES GOVERNING THE ORGANIZED MILITIA.

1398. The organized militia of Montana shall be governed by the following articles:

Article 1. Any officer who knowingly musters as an enlisted man a person who is not an enlisted man, shall be deemed guilty of knowingly making a false muster and punished accordingly.

Article 2. Every officer who knowingly makes a false return to any of his superior officers authorized to call for such returns, of the state of the organization under his command, or of the arms, ammunition, clothing, or other stores for which he shall be responsible or accountable, shall, on conviction thereof before a court-martial, be dismissed.

Article 3. Every officer shall be charged with the arms, accoutrements, ammunition, clothing, and other military stores for which he shall have given his receipt in writing, and shall be responsible in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

Article 4. Every officer who signs a false certificate relating to the absence or pay of an officer or enlisted man shall be dismissed from the service.

Article 5. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster-roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the military service of the state of Montana.

Article 6. Any officer, who wilfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States or the state of Montana, shall make good the loss or damage, and shall suffer such punishment as a court-martial may direct.

Article 7. Any enlisted man who sells, or wilfully, or through neglect wastes the ammunition delivered to him, shall be punished as a court-martial may direct.

Article 8. Any enlisted man who sells, or through neglect loses or spoils any military property of the United States or the state of Montana, shall be punished as a court-martial may direct.

Article 9. Any officer or enlisted man who behaves himself with disrespect to his commanding officer shall be punished as a court-martial may direct.

Article 10. Any officer or enlisted man who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer, shall suffer such punishment as a court-martial may direct.

Article 11. Any officer or enlisted man who begins, excites, causes, or joins in any mutiny or sedition, shall suffer such punishment as a court-martial may direct.

Article 12. Any officer or enlisted man who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court-martial may direct.

Article 13. Every officer shall have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his own or another organization, and to order officers into arrest, and enlisted men into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or draws a weapon upon him, shall be punished as a court-martial may direct.

Article 14. Any enlisted man who thinks himself wronged by any officer may complain to the immediate commander of said officer, who shall examine into said complaint and take proper measures.

Article 15. Any enlisted man who absents himself from duty without leave shall be punished as a court-martial may direct.

Article 16. Any officer or enlisted man who fails, except when prevented by sickness or other necessity, to repair at the fixed time to the appointed place of parade, exercise, or other rendezvous, or goes from the same without leave, before he is dismissed or relieved, shall be punished as a court-martial may direct.

Article 17. No enlisted man shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability or leave of absence. Every enlisted man found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

Article 18. Every non-commissioned or petty officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

Article 19. Any officer who is found drunk on duty shall be dismissed from the service. Any enlisted man who so offends shall suffer such punishment as a court-martial may direct.

Article 20. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer such punishment as a court-martial may direct.

Article 21. Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer such punishment as a court-martial may direct.

Article 22. Any officer or enlisted man who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard which he is commanded to defend, or speaks words inducing another to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer such punishment as a court-martial may direct.

Article 23. Every enlisted man who deserts shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such enlisted man shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

Article 24. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent therefrom prior to notice of acceptance of the same, shall be deemed and punished as a deserter.

Article 25. Any officer or enlisted man who advises or persuades another officer or enlisted man to desert shall suffer such punishment as a court-martial may direct.

Article 26. All officers and enlisted men are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, or maliciously destroys any property whatsoever belonging to inhabitants of the United States or of the state of Montana, shall, besides such other penalties as he may be liable by law, be punished as a court-martial may direct.

Article 27. Any member of the organized militia of Montana:

(1) Who makes or causes to be made any claim against the United States or the state of Montana, or any officer thereof, knowing such claim to be false or fraudulent; or

(2) Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or the state of Montana, or any officer thereof, knowing such claim to be false or fraudulent; or

(3) Who enters into any agreement or conspiracy to defraud the United States or the state of Montana, by obtaining or aiding others to obtain the allowance or payment of any false or fraudulent claim; or

(4) Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Montana, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statement; or

(5) Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Montana, or any officer thereof, makes, or procures or advises the making of, any oath to any pact or to any writing or other paper, knowing such oath to be false; or

(6) Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Montana, or any officer thereof, forges or counterfeits, or procures or advises the forgery or counterfeiting of any signature upon any writing or other paper, or uses, or procures or advises the use of any such signature, knowing the same to be forged or counterfeited; or

(7) Who, having charge, possession, custody or control of any money or other property of the United States or the state of Montana, furnished or intended for the military service thereof, knowingly delivers or causes to be delivered to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(8) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state of Montana, furnished or intended for the military service thereof, makes or delivers

to any person such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States or the state of Montana; or

(9) Who steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or wrongfully sells or disposes of any ordnance, arms, ammunition, equipments, clothing, subsistence, stores, money, or other property of the United States or of the state of Montana, furnished or intended for the military service thereof; or

(10) Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any enlisted man, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence, stores, or other property of the United States or the state of Montana, such enlisted man, officer, or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may direct, or by any or all of said penalties.

And if any person, having committed any of the offenses aforesaid while a member of the organized militia of Montana, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

Article 28. Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. All crimes not capital, and all disorders and neglects, of which officers and enlisted men may be guilty, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, may be taken cognizance of by a court-martial as provided herein, according to the nature and degree of the offense and punished at the discretion of such court.

Article 29. When an officer is put in arrest for the purpose of trial, the officer by whose order he is arrested shall see that a copy of the charge on which he is to be tried is served upon him within ten days after his arrest, and that he is brought to trial within twenty days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said twenty days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provision of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

Article 30. For each general or special court-martial of the national guard the governor shall appoint a judge-advocate.

Article 31. When the requisite number of officers to form a general court-martial is not present at any station or detachment, the governor shall, in cases which require the cognizance of such court, thereupon order a court to be assembled at the nearest place where such trial can be conveniently held, and shall order the accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

Article 32. Officers shall be tried only by general court-martial.

Article 33. The judge-advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation:

"You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you between the state of Montana and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to the provisions of the rules and articles for the government of the organized militia of the state of Montana, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course by the same. So help you God."

Article 34. When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the judge-advocate an oath or affirmation in the following form:

"You, A. B., do swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God."

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form:

"You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form:

"You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form:

"You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God."

In case of affirmation the closing sentence of adjuration will be omitted.

Article 35. A court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

Article 36. All members of a court-martial are to behave with decency and calmness.

Article 37. Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

Article 38. When a prisoner, arraigned before a court-martial, from obstinacy and deliberate design stands mute or answers foreign to the

purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

Article 39. The judge-advocate shall prosecute in the name of the state of Montana, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading questions to any witness, and to any question to the prisoner the answer to which might tend to incriminate himself.

Article 40. All persons who give evidence before a military court shall be examined on oath or affirmation in the following form: "You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

Article 41. A court-martial shall for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just.

Article 42. Members of a court-martial, in giving their votes, shall begin with the youngest in commission.

Article 43. When a court-martial suspends an officer from command it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

Article 44. No person shall be tried a second time for the same offense.

Article 45. No person shall be liable to be tried and punished by a court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.

Article 46. No sentence of a general court-martial shall be carried into execution until the same shall have been approved by the governor.

Article 47. Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance may admit, forward the original proceedings and sentence of such court to the adjutant-general.

Article 48. Every person tried by a general court-martial shall, upon proper demand therefor, be entitled to a copy of the proceedings and sentence of such court.

Article 49. A court of inquiry to examine into the nature of any transaction of, or accusation or imputation against, any officer or enlisted man may be ordered by the governor, and shall make a report of its findings to the governor within twenty days after its inquiry.

Article 50. The recorder or judge-advocate of a court of inquiry shall administer to the members the following oath:

"You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God."

After which the president of the court shall administer to the recorder or judge-advocate the following oath:

"You, A. B., do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

Article 51. A court of inquiry, and the recorder or judge-advocate thereof, shall have the same power to summon and examine witnesses as is given to general courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before general courts-martial, and the party accused shall be permitted to examine and cross-examine them, so as to fully investigate the circumstances in question.

Article 52. A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.

Article 53. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder or judge-advocate and the president thereof, and delivered to the adjutant-general or convening authority.

Article 54. The proceedings of a court of inquiry may be admitted as evidence by a court-martial in cases not extending to the dismissal of an officer; provided, that the circumstances are such that oral testimony can not be obtained.

Article 55. If, upon marches, or in quarters, different organizations of the national guard of Montana happen to join or do duty together, the officer highest in rank of the line by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful in the service, unless otherwise specially directed by the governor, according to the nature of the case.

Article 56. In case of death of any enlisted man, his commanding officer shall immediately secure all his effects in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the adjutant-general.

History: En. Sec. 70, Ch. 191, L. 1919.

CHAPTER 109.

GENERAL PROVISIONS AND EMERGENCY CLAUSE.

Section 1399. Rifle Ranges.
1400. Armories.
1401. Exempt From All Jury Duty and Payment of Poll-Tax.
1402. Travel on Railroad Not to Exceed One Cent Per Mile.
1403. Prizes for Marksmanship.
1404. Articles of War of the United States to Govern.
1405. Unauthorized Association Forbidden.
1406. Regulations Governing Armories, Rifle Ranges, etc.
1407. Lease of Property of the National Guard.
1408. Wrongful Taking of Government Property From Armory.
1409. Governor to Promulgate Rules and Regulations.
1410. Use of Insignia of Military Orders Prohibited.
1411. When Customs and Usage of the United States Army Shall Govern.
1412. Emergency Clause.

1399. Rifle ranges. Under the direction of the governor, the adjutant-general shall, at the expense and in the name of the state, buy or lease, establish, equip, maintain, and control such rifle ranges, and issue such ammunition, transportation, and supplies as may be necessary to provide each organization of the organized militia of Montana with adequate means and opportunity for thorough instruction in rifle practice.

History: En. Sec. 71, Ch. 191, L. 1919.

1400. Armories. The board of county commissioners of any county in the state of Montana, in which a company or companies of Montana

national guard shall be organized and regularly stationed in such county, is hereby authorized to erect and provide in cities of ten thousand population or more an armory of sufficient size and suitable for the drill of such company or companies, and the preservation and keeping of the arms and equipment of such company or companies, and any city of ten thousand or more in population in Montana is hereby authorized and empowered to bear a pro rata part of the expense of erecting and providing said armory as may be agreed upon by the board of county commissioners [and the city council] of said city.

History: En. Sec. 72, Ch. 191, L. 1919.

1401. Exempt from all jury duty and payment of poll-tax. Every commissioned officer and every enlisted man of the national guard of Montana shall be exempt from all jury duty, and from the payment of poll-tax, or head-tax, of every description, during the term of his service in the national guard.

History: En. Sec. 73, Ch. 191, L. 1919.

Cited or applied as section 1068, Revised Codes, before amendment, in Pohl v. Chicago, Milwaukee & St. Paul Ry. Co., 52 Mont. 572, 576, 160 Pac. 515.

1402. Travel on railroad not to exceed one cent per mile. From and after the passage and approval of this act, all railroads or railroad companies operating and doing business in the state of Montana shall carry the troops of the state of Montana, or officers or enlisted men thereof, while in the performance of their military duties within the state, at a rate of not to exceed one cent per mile.

History: En. Sec. 74, Ch. 191, L. 1919.

Validity of statute requiring transportation of militia at free or reduced rate, see notes in Ann. Cas. 1913E, 498, Ann. Cas. 1916E, 959, 41 L. R. A. (N. S.) 524.

1403. Prizes for marksmanship. The adjutant-general is authorized to expend from the appropriations for the maintenance of the organized militia of Montana the sum of five hundred dollars per annum for prizes for marksmanship, under such regulations as may be prescribed by the governor.

History: En. Sec. 75, Ch. 191, L. 1919.

1404. Articles of war of the United States to govern. Whenever any portion of the militia of the state shall be on duty under or pursuant to orders of the governor, or whenever any part of the militia shall be ordered to assemble for duty in time of war, insurrection, invasion, or imminent danger thereof, breach of the peace, tumult, riot, public danger, or resistance to process, the articles of war and regulations for the government of the army of the United States, so far as applicable and not in conflict with any rule or regulation herein prescribed, and with such modifications as the governor may prescribe, shall be considered in force and regarded as a part of this act until such forces shall be duly relieved from such duty.

History: En. Sec. 76, Ch. 191, L. 1919.

Whether state militias are subject to the articles of war of the United States, see note in 40 L. R. A. (N. S.) 354.

1405. Unauthorized association forbidden. It shall not be lawful for any body of men, other than the national guard or troops of the United

States, to associate themselves together as a military company with arms, without the consent of the governor; but members of social and benevolent associations are not prohibited from wearing swords. Every person who shall associate with others in violation of this section shall be guilty of a misdemeanor.

History: En. Sec. 77, Ch. 191, L. 1919.

1406. Regulations governing armories, rifle ranges, etc. The commander-in-chief shall promulgate in general orders such regulations for the use of armories, rifle ranges, and other real property owned or leased by the state for military purposes, as may be proper; provided, that no armory shall be used for any other than a strictly military purpose without the recommendation of the officer in charge thereof; and further provided, that all civilian rifle clubs affiliated with the national rifle association of America shall be permitted the use of the rifle ranges in the armories owned by the state at least one night each week, under such regulations as the commander-in-chief may direct.

History: En. Sec. 78, Ch. 191, L. 1919.

1407. Lease of property of the national guard. All armories and rifle ranges, and all property, real or personal, used by the national guard and not owned by the state of Montana or the United States, shall be leased or rented to the state upon such terms and conditions as shall be approved by the commander-in-chief.

History: En. Sec. 79, Ch. 191, L. 1919.

1408. Wrongful taking of government property from armory. Any enlisted man taking any government property from an armory, without the written consent of his company commander, shall be considered as appropriating government property to his own use, and may be tried in any court of competent jurisdiction, and on conviction thereof shall suffer a fine in any sum not exceeding one hundred dollars, together with the cost of such government property, or imprisonment in the county jail for a period not exceeding sixty days, or shall suffer both such fine and imprisonment.

History: En. Sec. 80, Ch. 191, L. 1919.

1409. Governor to promulgate rules and regulations. The governor shall promulgate in general orders such rules and regulations and amendments thereto, not inconsistent with the law, as he may deem necessary. Such rules and regulations, when so promulgated, shall have the same force and effect as though herein enacted.

History: En. Sec. 81, Ch. 191, L. 1919.

1410. Use of insignia of military orders prohibited. Every person who shall wilfully wear the badge, button, insignia, or rosette of any military order, or of any secret order or society, or any similitude thereof, or who shall use any such badge, button, insignia, or rosette to obtain aid or assistance, or any other benefit or advantage, unless he shall be entitled

to so wear or use the same under the constitution, by-laws, rules and regulations of such order or society, shall be guilty of a misdemeanor.

History: En. Sec. 82, Ch. 191, L. 1919.

1411. When customs and usage of the United States army shall govern. All matters relating to the organization, discipline, and government of the national guard, not otherwise provided for in this act or in the general regulations, shall be decided by the custom and usage of the United States army.

History: En. Sec. 83, Ch. 191, L. 1919.

1412. Emergency clause.

Whereas, the public peace and safety of the United States and of the state of Montana depend upon an adequate system of national defense; and

Whereas, the militia of the various states is an important element of the national defense; and

Whereas, by the constitution of the United States, authority is conferred upon congress to provide for the calling forth the militia to execute the laws of the union, suppress insurrection, and repel invasion, and to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be called into the service of the United States; and

Whereas, by the constitution of the United States, the authority of training the militia according to the discipline prescribed by congress and the appointment of the officers thereof are reserved to the several states; and

Whereas, congress, in accordance with the authority conferred upon it, has recently enacted certain laws providing for organizing, arming, and disciplining the militia, and for the governing of such part of them as may be called into the service of the United States, and has made appropriations of money and military supplies, accoutrements, and stores for the maintenance, support, equipment, and discipline of the militia, contingent upon compliance by the states respectively with the conditions set forth in said enactments; and

Whereas, said enactments have been duly and regularly approved by the president of the United States, and for some time past have been and now are in full force and effect; and

Whereas, it is the duty of the state of Montana and it is necessary for it forthwith to comply with said acts, and each of them, in order that its militia may be promptly qualified for the efficient service of both state and nation; and

Whereas, this act is a compliance therewith:

A public emergency is hereby declared to exist, and this act is necessary for the immediate preservation of the public peace and safety and the support of the state government and its existing public institutions, and shall take effect immediately.

History: En. Sec. 6, Ch. 191, L. 1919.

PUBLIC INSTITUTIONS. CHAPTERS 110 TO 121.

Chapter 110. Insane Asylum.
111. Hospital for Inebriates.
112. School for the Deaf and Blind.
113. Training School for Feeble-Minded Persons.
114. Orphans' Home.
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117. State Library, Including Circulating Libraries.
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CHAPTER 110.

INSANE ASYLUM.

Section 1413. Management—Board of Commissioners for Insane.
1414. Powers and Duties of Board.
1415. Superintendent of Asylum and Assistant.
1416. Control in Superintendent—Additional Medical Assistants.
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1421. Discharge of Patient.
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1443. Proceedings Before Commissioners—Review by District Judge.
1444. Maintenance of Insane Person.

1413. Management—Board of commissioners for insane. The management, control, and supervision of the state insane asylum, located at Warm Springs, county of Deer Lodge, state of Montana, is hereby vested in the state board of commissioners for the insane, which consists of the governor, the secretary of state, and the attorney-general, of which the governor is president and the secretary of state the secretary.

History: Ap. p. Secs. 2260 and 2261, Pol. C. 1895; re-en. Sec. 1111 and 1112, Rev. C. 1907; amd. Sec. 1, Ch. 57, L. 1913. Cal. Pol. C. Secs. 2136-2199.

1414. Powers and duties of board. The powers and duties of such board are as follows:

1. To make rules and regulations for its own government not inconsistent with the laws of the state.

2. To prescribe the duties of the superintendent of the state insane asylum.

3. To provide for the care, custody, maintenance, and treatment of the insane in a safe and suitable building or buildings for that purpose, to be known as the state insane asylum.

4. To make inquiry into the condition of the asylum, and to see that the inmates are properly cared for in respect to clothing, food, and medical attendance, and that they have proper apartments.

5. To make a report biennially to the legislative assembly, giving a statement of the receipts and expenditures, the conditions of the asylum, the number of inmates under treatment, and such other matters as may be advisable.

6. To keep a record of their proceedings, which must be open at all times to the inspection of any citizen.

History: Ap. p. Sec. 2262, Pol. C. 1895; re-en. Sec. 1113, Rev. C. 1907; amd. Sec. 2, Ch. 57, L. 1913.

1415. Superintendent of asylum and assistant. A superintendent of the state insane asylum and an assistant superintendent, who shall be regularly licensed physicians of the state of Montana, shall be appointed by the governor, and such appointments must be transmitted to and approved by the senate. The tenure of office of the appointees shall be for a period of four years from the date of appointment, and until their successors have been appointed and qualified. The salary of the superintendent is hereby fixed at the sum of four thousand dollars per year, the salary of the assistant superintendent at three thousand dollars per year, payable in monthly instalments of one-twelfth each at the end of each and every month. They shall be subject to removal by the state board of commissioners for the insane at any time for misfeasance, nonfeasance, or malfeasance in office, but before the superintendent or the assistant superintendent be so removed, formal charges in writing must be preferred, and the superintendent or the assistant charged shall be given opportunity to appear and defend himself against any such charges. When charges shall have been preferred asking the removal of the superintendent or the assistant superintendent, notice of the time and place of hearing of said charges shall be served upon the accused at least five days prior to the day set for the hearing; provided, however, that when such charges have been preferred, the state board of commissioners for the insane shall have the power and authority to suspend the accused until after the determination of the charges preferred against him.

History: En. Sec. 3, Ch. 57, L. 1913.

1416. Control in superintendent—Additional medical assistants. The superintendent shall have immediate control and charge of the state insane asylum and the inmates thereof, subject, however, to the orders, rules, and regulations made and prescribed by the state board of commissioners for the insane, and not inconsistent with this act; and said superintendent shall appoint additional medical assistants, whose appointment shall be

subject to the approval of the state board of commissioners for the insane, and whose salaries shall be fixed by said board.

History: En. Sec. 4, Ch. 57, L. 1913.

1417. Oath of office and bonds. The superintendent and assistant superintendent, before entering upon the discharge of the duties of their respective positions, shall take the constitutional oath of office and file bonds in such sums as shall be fixed by the state board of commissioners for the insane, to be approved by the said board.

History: En. Sec. 5, Ch. 57, L. 1913.

1418. Board may send patient to friends. The board may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

History: En. Sec. 2280, Pol. C. 1895; re-en. Sec. 1121, Rev. C. 1907.

1419. May contract with some other institution. The board may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907.

1420. Idiotic persons are considered insane persons. Idiotic persons are considered as insane persons.

History: En. Sec. 2282, Pol. C. 1895; re-en. Sec. 1123, Rev. C. 1907.

1421. Discharge of patient. The board must cause to be discharged from the asylum any patient, upon the written report of any person appointed by the board to examine into the condition of such patient, that such patient is in fit condition to be at large. Such written report must be filed and kept in the office of the board, and every insane person, on recovery, must be discharged from the asylum or place of confinement.

History: En. Sec. 2283, Pol. C. 1895; re-en. Sec. 1124, Rev. C. 1907. Cal. Pol. C. Sec. 2189.

1422. Indigent persons discharged must be furnished with money and clothes. Any indigent person about to be discharged from the asylum must be furnished with twenty dollars in money and a suit of comfortable clothes, including hat, shoes, and socks, for which the contractor may be allowed, on presenting the claim to the board of examiners, the amount paid.

History: En. Sec. 2284, Pol. C. 1895; re-en. Sec. 1125, Rev. C. 1907. Cal. Pol. C. Sec. 2190.

1423. Postal rights of insane patients. The patients of all insane asylums, or any place where the insane are kept or confined in this state, must each be allowed to choose one person, in no way connected with such asylums or place, to whom he may write whenever and whatever he may desire, and over the letters to such person there must be no censorship exercised or allowed by any asylum official, contractor, employee, or other person. The postal rights of such patients as to the persons chosen by them must be as free and unrestricted as are those of any resident of

the state. Every patient has the right, once in three months, to choose a different person for his correspondent.

History: En. Sec. 2285, Pol. C. 1895; re-en. Sec. 1126, Rev. C. 1907.

1424. Same. The contractor or person in charge of every asylum or other place where the insane are confined in this state must furnish to every patient thereof, suitable material for writing, inclosing, sealing, stamping, and mailing letters at least twice a week.

History: En. Sec. 2286, Pol. C. 1895; re-en. Sec. 1127, Rev. C. 1907.

1425. Postoffice box must be provided. All such letters must be dropped by the writers thereof, accompanied by an attendant when necessary, into a postoffice box provided by the state at the insane asylum, and kept in some place easy of access to all patients; the attendant is required in all cases to see that these letters are directed to the patient's correspondent, and if they are not so directed they must be held subject to the disposal of the person in charge, and the contents of these boxes must be collected once every week by an authorized person, and by him placed in the United States mail for delivery.

History: En. Sec. 2287, Pol. C. 1895; re-en. Sec. 1128, Rev. C. 1907.

1426. Name of correspondent must be posted. The contractor, or person in charge, must register and post in some place in the asylum the name of the person chosen as the patient's correspondent, and by what patient chosen, and the contractor or the person in charge must inform each of the persons chosen of that fact, and request him to write on the outside of the envelope of every letter he writes the patient, his name, and all the letters bearing such superscription on the envelope must be delivered without opening or reading to the patient.

History: En. Sec. 2288, Pol. C. 1895; re-en. Sec. 1129, Rev. C. 1907.

1427. Copy of law posted in asylum. A printed copy, in large type, of the next preceding four sections must be kept posted in every room of every asylum or other place where the insane are confined in this state.

History; En. Sec. 2289, Pol. C. 1895; re-en. Sec. 1130, Rev. C. 1907.

1428. Insane convicts. Insane convicts must be received into the asylum and returned to the state prison again, as provided in the Penal Code.

History: En. Sec. 2290, Pol. C. 1895; re-en. Sec. 1131, Rev. C. 1907.

1429. Non-resident insane must not be received. No insane person, non-resident of this state, must be received into the asylum unless he became insane within this state.

History: En. Sec. 2291, Pol. C. 1895; re-en. Sec. 1132, Rev. C. 1907.

1430. Insane person not indigent must be paid for. None but indigent persons must be received into the insane asylum unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person, and all money received by the contractor for the care and maintenance of such persons must be accounted for in his settlement with the board.

History: En. Sec. 2292, Pol. C. 1895; re-en. Sec. 1133, Rev. C. 1907.

1431. Examination, before whom. Whenever it appears to the satisfaction of a magistrate of the county that any person within the county is so far disordered in his mind as to endanger health, person, or property, he must issue and deliver to some peace officer for service a warrant directing that such person be arrested and taken before any district judge in the county for examination; provided, that if the district judge is absent from the county wherein such person is arrested, then the said insane person shall be taken before the chairman of the board of county commissioners.

History: Ap. p. Sec. 2300, Pol. C. 1895; amd. Sec. 1, p. 163, L. 1897; re-en. Sec. 1134, Rev. C. 1907.

Determination of question of insanity, see 14 R. C. L. 554.

Right, without judicial proceedings, to arrest and detain one who is, or is suspected of being, mentally deranged, see note in 10 A. L. R. 488.

Due process of law as applied to insane persons, see notes in 43 A. S. R. 531, 1 Ann. Cas. 733, 13 Ann. Cas. 877, Ann. Cas. 1913C, 323.

1432. Evidence, number of witnesses. When the person is taken before the judge or the chairman of the board of county commissioners, the judge or chairman of said board must issue subpoenas to two or more witnesses best acquainted with said insane person, to appear before him and testify at such examination.

History: Ap. p. 2301, Pol. C. 1895; amd. Sec. 2, p. 163, L. 1897; re-en. Sec. 1135, Rev. C. 1907. Cal. Pol. C. Sec. 2169.

1433. Examining physicians. The judge, or in case of his absence, the chairman of the board of county commissioners, must also issue subpoenas for at least two graduates of medicine to appear and attend such examination.

History: Ap. p. Sec. 2302, Pol. C. 1895; amd. Sec. 3, p. 163, L. 1897; re-en. Sec. 1136, Rev. C. 1907.

1434. Witnesses, duty of. At the examination the persons subpoenaed must appear and answer all questions pertinent to the matter under investigation.

History: En. Sec. 2303, Pol. C. 1895; re-en. Sec. 1137, Rev. C. 1907.

1435. Physicians, duty of. The physicians must hear such testimony, and must make a personal examination of the alleged insane person.

History: En. Sec. 2304, Pol. C. 1895; re-en. Sec. 1138, Rev. C. 1907.

1436. Certificate of physicians. The physicians, after hearing the testimony and making the examination, must, if they believe such person to be dangerously insane, make a certificate, under their hand, showing as near as possible:

1. That such person is so far disordered in his mind as to endanger health, person, or property.

2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease.

3. The nativity, age, residence, occupation, and previous habits of the person.

4. The place from whence the person came, and the length of time he has resided in this state.

History: En. Sec. 2305, Pol. C. 1895; re-en. Sec. 1139, Rev. C. 1907. Cal. Pol. C. Sec. 2170.

1437. Forms of certificates. The certificate must be made in the form prescribed by, and, if they can be had, upon blanks furnished by the board of the commissioners for the insane.

History: En. Sec. 2306, Pol. C. 1895; re-en. Sec. 1140, Rev. C. 1907.

1438. Commitment. The judge, or the chairman of the board of county commissioners, if the hearing be had before him, after such examination and certificate made, if he believes the person so far disordered in his mind as to endanger health, person, or property, must make an order that the party be confined in the insane asylum, and a copy of such order must be filed with and recorded by the clerk of the district court of the county. The clerk must also keep in convenient form an index book, showing the name, age, and sex of each person so ordered to be confined in the insane asylum, with the date of the order and the name of the insane asylum in which the person is ordered to be confined. No fees must be charged by the clerk for performing any of the duties provided for by this section or in this chapter.

History: Ap. p. Sec. 2307, Pol. C. 1895; amd. Sec. 4, p. 163, L. 1897; re-en. Sec. 1141, Rev. C. 1907. Cal. Pol. C. Sec. 2171.

Cited or applied as section 2307, Political Code, before amendment, in Walter v. Mitchell, 25 Mont. 385, 388, 65 Pac. 5.

A complaint alleging that an insane person was "so declared by a court of competent jurisdiction," and "was duly committed to the insane asylum," does not show the duty of the keeper of the asylum to receive and keep him, since the allegation does not show the name of the court, or that any order was made or delivered to such keeper. Walter v. Mitchell, 25 Mont. 385, 388, 65 Pac. 5.

1439. Delivery of insane person at asylum. The insane person, together with the order of the judge or the chairman of the board of county commissioners, and the certificate of the physicians must be delivered to the sheriff of the county, and by him must be delivered to the officer in charge of the insane asylum.

History: Ap. p. 2308, Pol. C. 1895; amd. Sec. 5, p. 164, L. 1897; re-en. Sec. 1142, Rev. C. 1907. Cal. Pol. C. Sec. 2172.

1440. Moneys of insane person. Any moneys found on the person of an insane person at the time of arrest must be certified to by the judge, or the chairman of the board of county commissioners, and sent with such person to the asylum, there to be delivered to the person in charge of the asylum, whose receipt therefor shall be taken by the sheriff, or other officer delivering said insane person to said asylum. If the sum exceed one hundred dollars, the excess must be applied to the payment of the expenses of said person while in the asylum. If the sum is one hundred dollars or less, it must be kept and delivered to the person when discharged, or applied to the payment of funeral expenses if the person dies at the asylum. Any balance of said one hundred dollars or less remaining in the hands of the officers of the asylum, after the death of the insane person, shall be returned to the county treasurer of the county from which said insane person was sent, and if any sum remains after paying costs of trying and transporting said insane person to the asylum,

this balance shall be paid into the state treasury to the credit of the general fund.

History: Ap. p. Sec. 2309, Pol. C. 1895; amd. Sec. 6, p. 164, L. 1897; re-en. Sec. 1143, Rev. C. 1907.

1441. Fees of physicians. The physicians attending each examination of an insane person are allowed five dollars and in addition his actual traveling expenses, not to exceed the sum of ten cents for each and every mile actually and necessarily traveled by said physician in attending said examination, and in returning to his home therefrom, to be paid by the county treasurer of the county, where the examination was had, on the order of the board of county commissioners.

The clerk of the district court or the chairman of the board of county commissioners, if the hearing be had before him, must give to such physician a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated from the county treasurer.

History: Ap. p. Sec. 2310, Pol. C. 1895; re-en. Sec. 1144, Rev. C. 1907; amd. Sec. 1, Ch. 84, L. 1911.

1442. Cost of examination and commitment. The cost of the examination, committal, and taking an insane person to the asylum must be paid by the county in which he resides at the time he is adjudged insane. The sheriff must be allowed the actual expenses incurred in taking an insane person to the asylum, as provided by section 4885 of this code.

History: En. Sec. 2311, Pol. C. 1895; re-en. Sec. 1145, Rev. C. 1907. Cal. Pol. C. Sec. 2175.

Note.—This section changed to harmonize with section 3137, Revised Codes 1907 (4885).

Cited or applied as section 2311, Political Code, in Proctor v. Cascade County, 20 Mont. 315, 317, 50 Pac. 1017.

1443. Proceedings before commissioners—Review by district judge. Whenever any insane person is examined and committed by hearing had before the chairman of the board of county commissioners, it shall be the duty of said chairman to have all the evidence reduced to writing, and the same, together with all orders, subpoenas, complaints, warrants, and papers used on said hearing, or made by said chairman of the board of county commissioners, shall be filed in the office of the clerk of the district court of the proper county, and said clerk shall enter upon the journal of the minutes of probate proceedings, a transcript of all proceedings had by the chairman of the board of county commissioners at any examinations and committal of an insane person, in the same manner as proceedings in probate in vacation are entered by the clerk of the court, and it shall be the duty of the district judge, at the first term of court after such examination, to examine and approve such proceedings or said insane inquest and committal, in the same manner as probate proceedings transacted by the clerk in vacation are approved; and in no case shall the finding of the chairman of the board of county commissioners be final. In all cases where hearings are had by the chairman of the board of county commissioners, the proceedings must be examined and certified and approved or rejected by the judge of the district court.

History: En. Sec. 7, p. 164, L. 1897; re-en. Sec. 1146, Rev. C. 1907.

1444. Maintenance of insane person. Whenever a hearing for examination or committal is had before the judge or chairman of the board of

county commissioners, and the person is adjudged to be insane and ordered confined in the insane asylum, it shall be the duty of the judge or person before whom the hearing is had to take evidence as to the financial worth of said insane person, which evidence shall be reduced to writing and filed as provided in the preceding section, and if it appear from said evidence that said insane person has any means, money, or property out of which the expenses of his maintenance in the insane asylum, or any part thereof could be paid, it shall be the duty of the judge or person before whom hearing is had, to issue a citation to the parties in possession of his property, and to the relatives of said insane person, if any there be in the county where said insane person resided, citing them to appear and show cause why a guardian should not be appointed for said insane person, and why said guardian should not be ordered to pay the costs of the maintenance of said insane person, or so much thereof as his means will permit, which citation shall be served and all proceedings thereunder conducted as provided by section 10355 to 10376 of these codes, and if it appear to the court that said insane person has property that can be applied towards his maintenance, it shall be the duty of the court to make an order to that effect, stating how much of the said insane person's property shall be applied, the amount to be fixed with due regard to the proper preservation of the estate of said insane person.

History: En. Sec. 8, p. 165, L. 1897; re-en. Sec. 1147, Rev. C. 1907. Cal. Pol. C. Secs. 2179-2180.

Confinement and support of insane persons, see 14 R. C. L. 563.

Right of state to recover maintenance of insane person from his estate, see notes in Ann. Cas. 1913A, 577, Ann. Cas. 1917E, 418.

CHAPTER 111.

HOSPITAL FOR INEBRIATES.

Section 1445. Establishment of Hospital for Inebriates.
1446. Commissioners for Insane to Control Hospital.
1447. Patients That May Be Admitted.
1448. Applications for Commitment to Hospital.
1449. Examination of Applicant and Commitment—Dismissal of Patient.
1450. Costs of Examination and Commitment.
1451. Charges for Maintenance and Treatment of Patient.
1452. Financial Condition of Patient—Liability of Relatives.
1453. Detention and Release of Patient—Arrest and Return of Patient.
1454. Rules and Regulations of Hospital.
1455. Furnishing Liquor or Drugs to Patient a Felony—Penalty.

1445. Establishment of hospital for inebriates. There shall be established at the state insane asylum at Warm Springs a department of said institution, which shall be called the state hospital for inebriates, and shall be used for the detention, care, and treatment of all persons suffering from mental affliction occasioned by the use of drugs or intoxicants.

History: En. Sec. 1, Ch. 139, L. 1911.

1446. Commissioners for insane to control hospital. The state board of commissioners for the insane shall have supervision and control of said state hospital for inebriates, and the officers, contractors, and employees

of the state insane asylum shall constitute the officers, contractors, and employees of said hospital for inebriates, and shall receive no additional compensation for their services in connection with said hospital.

History: En. Sec. 2, Ch. 139, L. 1911.

Note.—Section 3 of chapter 139, Laws of 1911, is omitted from this code, being no longer a part of the permanent laws of the state.

1447. Patients that may be admitted. Said hospital for inebriates shall receive all patients regularly committed to it who are dipsomaniacs, inebriates, or who are addicted to the excessive use of morphine, cocaine, or other narcotic drugs, and who shall have been regularly examined and found of unsound mind as a result of the use of any such intoxicant or drug.

History: En. Sec. 4, Ch. 139, L. 1911.

1448. Applications for commitment to hospital. Applications for commitment to said hospital for inebriates shall be made to the judge of the district court of the district which embraces the county in which the person whom it is proposed to commit resides, and said application may be made in person by any dipsomaniac, inebriate, or user to excess of morphine, cocaine, or other narcotic drug, or may be made against any such person by any other person.

History: En. Sec. 5, Ch. 139, L. 1911.

1449. Examination of applicant and commitment—Dismissal of patient. On presentation of the application provided for in section five hereof, unless made in person by an inebriate, dipsomaniac, or user to excess of a narcotic drug, the judge shall issue an order, which may be served by any peace officer, directing him to bring the accused person before him for examination, and on the appearance of the accused the judge shall proceed in the manner now provided by law for the examination of insane persons. The accused may be represented by counsel, and the judge may, if he deems it necessary, require the county attorney of the county where the hearing is had to attend and assist in such hearing. In case said application be voluntarily or involuntarily made, and said judge shall determine that the accused is a proper person to be committed to said hospital for inebriates, he shall make the order committing him thereto; otherwise he shall be discharged. The term of detention and treatment shall be until the patient is cured; provided, however, that the superintendent of such hospital may discharge any person committed to said hospital when satisfied that such person is not receiving substantial benefit from further hospital treatment.

History: En. Sec. 6, Ch. 139, L. 1911.

Validity of statute for commitment of inebriate to public or private institution, see note in 17 L. R. A. (N. S.) 984.

1450. Costs of examination and commitment. All costs and expenses incurred in the arrest and examination, and the costs and expenses incurred in taking the accused to said hospital, shall be paid in the manner now provided by law for the arrest, examination, and commitment of persons to the state insane asylum.

History: En. Sec. 7, Ch. 139, L. 1911.

1451. Charges for maintenance and treatment of patient. The board of commissioners for the insane shall fix the per capita monthly allowance, which may be charged by said hospital for the care, treatment, and maintenance of each patient therein, which shall be certified by the superintendent to said board of commissioners for the insane and paid out in the manner now provided by laws applicable to the state insane asylum, unless provisions shall be made for the conduct of said institution exclusively as a state institution, in which event such patients shall be cared for at the expense of the state and as directed by the state board of commissioners for the insane.

History: En. Sec. 8, Ch. 139, L. 1911.

1452. Financial condition of patient—Liability of relatives. Whenever an examination or hearing for committal to the state hospital for inebriates is had before the judge, or chairman of the board of county commissioners, and the person adjudged and ordered to be confined in the state hospital for inebriates, it shall be the duty of the judge or person before whom the hearing is had to take evidence as to the financial worth of said person committed to the state hospital for inebriates, which evidence shall be reduced to writing and filed as provided in the preceding section, and if it appears from said evidence that said person committed to the state hospital for inebriates has any means, money, or property out of which the expenses of his maintenance in the state hospital for inebriates, or any part thereof, could be paid, it shall be the duty of the judge or person before whom the hearing is had to issue a citation to the parties in possession of his property, and to the relatives of said person committed to the state hospital for inebriates, if any there be in the county where said person committed to the state hospital for inebriates resided, citing them to appear and show cause why a guardian should not be appointed for said person committed to the state hospital for inebriates, and why said guardian should not be ordered to pay the costs of the maintenance of said person committed to the state hospital for inebriates, or so much thereof as his means will permit, which citation shall be served and all proceedings thereunder conducted as provided by sections 10355 to 10376 of these codes, and if it appear to the court that said person committed to the state hospital for inebriates has property that can be applied towards his maintenance, it shall be the duty of the court to appoint a guardian whose duty it shall be to apply such property, or so much thereof as may from time to time be necessary, to the cost of the care and maintenance of such person committed to the state hospital for inebriates while an inmate of the state hospital for inebriates, and it shall be the duty of the court to make an order to that effect, and to cause certified copies of such order appointing a guardian, and of the final report of such guardian when made, to be by the clerk of the court forthwith forwarded to the state board of commissioners for the insane.

The husband, wife, father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of a person committed to the state hospital for inebriates, if they or either of them be of sufficient ability, in the order named, shall be liable for the care, support, and maintenance of such person committed to the state hospital for inebriates in the said

state hospital for inebriates to which he has been or may be hereafter committed. And it shall be the duty of the judge, or the chairman of the board of county commissioners if the hearing be had before him, during any such examination of any person, to ascertain the name and addresses of the husband, wife, father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such person, and at the conclusion of such examination to cause such names and addresses to be certified to the state board of commissioners for the insane.

History: En. Sec. 9, Ch. 139, L. 1911.

1453. Detention and release of patient—Arrest and return of patient. All persons so committed may be detained in said hospital two years; but when it shall appear to the superintendent of said hospital for inebriates that any person held in said hospital will not continue to be subject to dipsomania or inebriety, or will be sufficiently provided for by himself or his guardian, relatives, or friends, the superintendent may issue to such person a permit to be at liberty, upon such conditions as he may deem best, and he may revoke said permit at any time previous to its expiration. The violation by the holder of such permit of any of the terms or conditions of the same shall of itself make said permit void.

When any permit granted under the provisions of this section has become void in any manner, the superintendent may issue an order authorizing the arrest of the holder or holders of such permit and their return to the hospital, and such order of arrest may be served by any officer authorized to serve criminal process in any county in this state. Any person at liberty from the hospital upon a permit, as aforesaid, may voluntarily return to the hospital and put himself in the custody of the superintendent. The holder of such permit, when returned to said hospital as aforesaid, whether voluntarily or otherwise, shall be detained therein according to the term of his original commitment.

History: En. Sec. 10, Ch. 139, L. 1911.

1454. Rules and regulations of hospital. The rules and regulations in force at the state insane asylum shall be the rules and regulations for said state hospital for inebriates.

History: En. Sec. 11, Ch. 139, L. 1911.

1455. Furnishing liquor or drugs to patient a felony—Penalty. Any person who shall furnish any patient of said hospital for inebriates any intoxicating liquor or narcotic drug, except upon the written prescription of the superintendent, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a period of not less than six months nor more than five years, or by a fine of not less than five hundred dollars nor more than one thousand dollars. Any person who shall knowingly furnish any intoxicating liquor or narcotic drug to one who has been discharged from said hospital as cured, except upon the written prescription of a reputable practicing physician, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not more than one thousand dollars.

History: En. Sec. 12, Ch. 139, L. 1911.

CHAPTER 112.

SCHOOL FOR THE DEAF AND BLIND.

Section 1456. Name of School.
1457. Change of Name Not to Work Forfeiture of Grants.
1458. Objects of School.
1459. Supervision and Control.
1460. Exemption of Employees of School.
1461. Regulations Concerning Admission to School.
1462. Admission of Non-residents.
1463. Provisions for Pauper Inmates.
1464. Feeble-minded Persons—Admission to School.
1465. School District Clerks to Report Pupils Eligible.
1466. Education of Deaf and Blind Compulsory.
1467. Same—Penalty.
1468. Duty of School District Clerk.
1469. Expenditure of Funds.
1470. Powers of State Board of Education.
1471. Term of School.
1472. Lands Set Apart for School.
1473. Deaf and Dumb Fund.

1456. Name of school. That the educational institution of the state of Montana located at Boulder, Montana, now named and known as the "Montana Deaf and Dumb Asylum," shall no longer be known as the Montana deaf and dumb asylum, but shall hereafter be known as the "Montana School for the Deaf and Blind," and shall be named, designated, and known as the "Montana School for the Deaf and Blind."

History: Ap. p. Sec. 2330, Pol. C. 1895; amd. Sec. 1, Ch. 10, L. 1903; re-en. Sec. 1155, Rev. C. 1907. Cal. Pol. C. Sec. 2236.

Cited or applied as section 1155, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 583, 121 Pac. 784, 1057.

1457. Change of name not to work forfeiture of grants. The change of name herein provided for shall not be construed to impair or work a forfeiture or alteration of any rights, grants or purposes of said institution, and all laws of a special or general nature now affecting or applying to the Montana deaf and dumb asylum shall hereafter apply with equal force and effect to said Montana school for the deaf and blind.

History: En. Sec. 2, Ch. 10, L. 1903; re-en. Sec. 1156, Rev. C. 1907.

1458. Objects of school. The object of said school shall be to teach the English language to all the deaf and dumb children of the state, and to furnish all children who are debarred from the public schools by reason of deafness, dumbness, blindness, or feeble-mindedness, with at least an ordinary public school education in all customary branches, and to train them into mastery of such trades as shall enable them to become independent and self-sustaining citizens. Increased facilities shall be furnished from time to time for the more thorough and successful training of those who may show a special aptness for acquiring said trades. This provision shall apply to the female as well as the male department of said school. For the sake of economy and to the end that aforesaid trades shall be practically taught to the pupils, it shall be the duty of the state board of education to see that all the work necessary to be done for the school, such as carpentering, printing, painting, baking, sewing, and the like, shall, as soon as possible, be done by the pupils themselves, under

the supervision of competent foremen or teachers, permanently or temporarily employed for that purpose.

History: En. Sec. 2331, Pol. C. 1895; re-en. Sec. 1157, Rev. C. 1907. Cal. Pol. C. Sec. 2237.

1459. Supervision and control. The general supervision and control of the Montana school for the deaf and blind is vested in the state board of education and a local executive board.

Note.—New section recommended by code commissioner to conform to later acts.

1460. Exemption of employees of school. All persons employed in the school, while so employed shall be exempt from serving on juries or working on roads and highways, but not from paying road tax or property tax; and the certificate of the superintendent, under the official seal of the school, shall be sufficient evidence of such employment.

History: En. Sec. 2340, Pol. C. 1895; re-en. Sec. 1166, Rev. C. 1907.

1461. Regulations concerning admissions to school. The state board of education, according to such rules and regulations as they may prescribe, on application shall admit into the school all deaf, dumb, blind and feeble-minded residing in the state of Montana, between the ages of six and twenty-one years, who are not unsound of mind or dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability. All pupils of said school shall be entitled to ten years of attendance at said school, and upon special petition to the board by any pupil who has completed the course of ten years, which petition is approved by the superintendent, said pupil shall be allowed two additional years in the school; provided, that said grant of two additional years shall be conditioned upon the previous record of the petitioner as a pupil and as a moral character in the school, which record shall be considered by the board, who shall then judge as to the justice and utility of granting any extension of time to said petitioner; and provided further, that nothing in this section shall be so construed as to prevent suspension or expulsion of any pupil for insubordination or other good and sufficient cause.

History: En. Sec. 2342, Pol. C. 1895; re-en. Sec. 1168, Rev. C. 1907. Cal. Pol. C. Sec. 2238.

1462. Admission of non-residents. Deaf and blind persons, not resident in the state of Montana, may be admitted to the privileges and advantages of the school, subject to all the personal qualifications prescribed in the preceding section, and not until the payment in advance of a sum of money, the amount of which shall be determined by careful estimate of the whole per capita cost of maintaining said school during the year immediately preceding the date of application by said non-resident persons; provided, that no non-resident deaf or blind person shall be admitted to the exclusion or detriment of any resident deaf or blind person.

History: En. Sec. 2343, Pol. C. 1895; re-en. Sec. 1169, Rev. C. 1907. Cal. Pol. C. Sec. 2239.

1463. Provisions for pauper inmates. In all cases where a person to be sent to said school is too poor to pay for necessary clothing and trans-

portation, the judge of the district court of the district where such person resides, upon application of any relative or friend, or of any officer of the county where said person resides, shall, if he deem the person a proper subject, make an order to that effect, which shall be certified by the clerk of the court to the superintendent of said school, who shall then provide the necessary clothing and transportation at the expense of the county, and upon his rendering his proper accounts therefor quarter-annually the county commissioners shall allow and pay the same out of the county treasury.

History: En. Sec. 2344, Pol. C. 1895; re-en. Sec. 1170, Rev. C. 1907. Cal. Pol. C. Sec. 2240.

1464. Feeble-minded persons—Admission to school. All feeble-minded persons, resident in the state of Montana and qualified after the general manner prescribed in section 1461 of this code, shall be admitted into this school; provided, that every such person shall be capable, in the judgment of the trustees, of at least some mental, moral, or physical training, such as falls within the proper function of a school as distinct from an asylum. To the end that the board of trustees may arrive at some definite method of judging such cases, they are hereby empowered to ascertain and establish certain tests, which tests shall be thoroughly and impartially applied to each case before final admission into the school, and it shall be the object of said tests to ascertain in each case if there be any capacity for mental, moral, or physical training; and provided, further, that as soon as possible, in the judgment of the board of trustees, by and with the consent of the state board of education, a separate building and premises, adjoining yet distinct from those of the deaf and blind, shall be provided for such feeble-minded persons, which building and premises shall be more especially adapted to the peculiar needs of said feeble-minded class of persons. The said feeble-minded department shall be under the general control and supervision of said board of trustees and superintendent; but the trustees, after consultation with the superintendent and at his request, may appoint an assistant superintendent, together with especially trained teachers and attendants, whenever in their judgment said feeble-minded department herein provided for shall seem to need such additional attention and supervision; and provided, that the said officers are hereby authorized to retain in the care of said school for life, such feeble-minded pupils as have passed the age of twenty-one years and are not fit mentally to make their way or become useful members of society. The authorities of said school are directed to establish a farm colony for the feeble-minded on the ranch belonging to the school. The adult feeble-minded, under skilled supervision, shall be required, by their labor, to contribute as far as possible to their own support and to the support of the school.

History: En. Sec. 2346, Pol. C. 1895; re-en. Sec. 1171, Rev. C. 1907; amd. Sec. 1, Ch. 137, L. 1909.

1465. School district clerks to report pupils eligible. The school district clerks of each county in this state shall annually report to the county superintendent of schools, on or before the twentieth day of September, the names, ages, and postoffice addresses, and the names of parents and guard-

ians, of every deaf or blind or feeble-minded person, between the ages of five and twenty-one years, residing in said school district, including all who are too deaf or too blind to obtain an education in the public schools; and any district clerk failing to furnish such list within the time specified herein shall be guilty of a misdemeanor, and shall be liable to a fine of not less than five, nor more than twenty-five dollars for each offense. The county superintendent of schools shall, on or before the first day of October of each year, send a complete list of the names, ages, and addresses of all such persons in his county to the superintendent of the school for the deaf and blind at Boulder, Montana.

History: Ap. p. Sec. 2345, Pol. C. 1895; amd. Sec. 1, Ch. 25, L. 1903; re-en. Sec. 1172, Rev. C. 1907.

1466. Education of deaf and blind compulsory. Every parent, guardian, or person having control or custody of any child or children, who is or are too deaf or too blind to be educated in the public schools, shall be required, under the penalties hereafter specified, to send such child or children, who are of lawful school age, to said institution for the deaf and blind for six months of each school year for the period of eight years, unless such child or children be taught in a private school, at home, or in a similar institution in another state, in such branches as are taught in said institution, or unless such child or children be excused by the authorities on account of his or their physical or mental disability; provided, that such child or children shall be required to attend such private school or institution, as hereinbefore provided, not less than six months of each year for eight years, or until he or they have arrived at the limit of the lawful school age.

History: En. Sec. 1, Ch. 9, L. 1903; re-en. Sec. 1173, Rev. C. 1907.

1467. Same—Penalty. Any parent, guardian, or other person, having control, charge, or custody of any deaf or blind child or children failing to comply with the provisions of this act, shall be liable to a fine of not less than five dollars nor more than twenty-five dollars for the first offense, nor less than twenty-five dollars nor more than fifty dollars for each subsequent offense, besides the cost of prosecution.

History: En. Sec. 2, Ch. 9, L. 1903; re-en. Sec. 1174, Rev. C. 1907.

1468. Duty of school district clerk. It shall be the duty of the clerk of the school district to make diligent efforts to see that this law is enforced in their respective districts.

History: En. Sec. 3, Ch. 9, L. 1903; re-en. Sec. 1175, Rev. C. 1907

1469. Expenditure of funds. No moneys belonging to the deaf and dumb fund created by sections 1472-1473 of this code, shall be otherwise expended than for the deaf and dumb department alone of this school; and no moneys belonging to any fund which may be hereafter created especially for the blind or the feeble-minded department of this school shall be otherwise expended than for such department alone, as is expressly designated in the act or acts creating said fund or funds.

History: En. Sec. 2347, Pol. C. 1895; re-en. Sec. 1176, Rev. C. 1907.

1470. Powers of state board of education. The state board of education shall have power to receive, hold, manage, and dispose of any and all real and personal property made over to them by purchase, gift, devise, bequest or otherwise, the proceeds and interests thereof to be for the use and benefit of the school.

History: En. Sec. 2348, Pol. C. 1895; re-en. Sec. 1177, Rev. C. 1907.

1471. Term of school. The regular term of school shall begin on the second Wednesday of September in each year, and close on the second Wednesday of June following.

History: En. Sec. 2349, Pol. C. 1895; re-en. Sec. 1178, Rev. C. 1907.

1472. Lands set apart for school. The lands heretofore granted by the government of the United States to the state of Montana, for the use and benefit of the deaf and dumb, are hereby set apart and declared to be for the use in perpetuity of said school, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be sacredly applied to the proper use and benefit thereof, and all donations, gifts, devises or grants, which shall hereafter be made by any person or corporation to said school, shall rest in the state of Montana for the use and benefit thereof.

History: En. Sec. 8, p. 182, L. 1893; re-en. Sec. 2353, Pol. C. 1895; re-en. Sec. 1182, Rev. C. 1907.

The provisions of the original act touching devises and bequests to the Montana school for the deaf and blind have remained in force and unchanged until the present time. In re Beck's Estate, 44 Mont. 561, 583, 121 Pac. 784, 1057.

1473. Deaf and dumb fund. There is hereby created a fund to be known as the "Deaf and Dumb Fund," in which all moneys for the use of said school shall be kept by the state treasurer.

History: En. Sec. 9, p. 182, L. 1893; re-en. Sec. 2354, Pol. C. 1895; re-en. Sec. 1183, Rev. C. 1907.

CHAPTER 113.

TRAINING SCHOOL FOR FEEBLE-MINDED PERSONS.

Section 1474. Establishment of Training School.
1475. Application for Admission to School—Service of Copies.
1476. Examination of Proposed Inmate.
1477. Admission of Epileptic Citizens of State.
1478. Laws Applicable to Admission, Care, and Control of Epileptics.
1479. Duty of Court to Ascertain Whether Subject Can Be Accommodated.
1480. Expenses of Commitment a County Charge.
1481. Course of Study and Training.
1482. Procedure for Removal of Inmate—Costs—Appeal to Supreme Court.
1483. Limitation Upon Construction of Act.

1474. Establishment of training school. There is hereby established at Boulder, Montana, in connection with and under the control of the Montana school for the deaf and blind, a Montana training school for feeble-minded persons, for the training and detention of epileptics and feeble-minded minors and adults; and said unfortunates are to be admitted to said institution and cared for therein as provided in this act.

History: En. Sec. 1, Ch. 102, L. 1919.

1475. Application for admission to school—Service of copies. Application for admission to said training school may be made to the district court, or to a judge thereof, by any parent of the subject; by any person entitled to its legal custody; by a superintendent of a county hospital; by any officer of the state bureau of child and animal protection; by the applicant in person; or by the superintendent of any of the state institutions; provided, however, that whenever an application for admission is made by any person, a copy of such application for admission, together with a copy of the order of the court or judge fixing the time and place for hearing such application, shall be served upon the parent of the subject, or upon the person entitled to the legal custody of the subject, as the case may be, and upon the subject, at least five days before the day fixed for such hearing. Said applications shall state therein the age, sex, race, general mental, moral, and physical condition, residence, and family history of the proposed inmate, and that the proposed inmate is to be a county charge of the county of which the subject is a resident at the time of application, together with such other allegations of fact as may be required by the rules of said court.

History: En. Sec. 2, Ch. 102, L. 1919.

1476. Examination of proposed inmate. Upon a hearing on said application, the court or judge may name two physicians to make examination, and with the assistance of the county attorney and the attorney representing the parent or person entitled to the legal custody of such subject, or the subject, if any such attorney shall appear at such hearing, examine the subject and make to the court or judge recommendations on the facts found, and if the facts found by the court or judge show that the subject, or proposed inmate, is a proper person to be admitted to the said institution, the court or judge shall make an order or decree admitting and committing said subject to said Montana training school for feeble-minded persons.

History: En. Sec. 3, Ch. 102, L. 1919.

1477. Admission of epileptic citizens of state. Citizens of this state who are afflicted with epilepsy may also be admitted to said institution, under such rules and regulations as the local executive board of said institution shall from time to time make, subject to the approval of the state board of education, and when suitable buildings shall have been provided.

History: En. Sec. 4, Ch. 102, L. 1919.

1478. Laws applicable to admission, care and control of epileptics. The laws applicable to admission, care, and control of the feeble-minded inmates shall also apply, as far as possible, to the admission, care, and control of epileptics.

History: En. Sec. 5, Ch. 102, L. 1919.

1479. Duty of court to ascertain whether subject can be accommodated. Before any court or judge shall issue any commitment or make any order of admission for any subject to said institution, he shall first

consult, by telephone or otherwise, with the superintendent of said institution, as to whether or not there is room to accommodate the feeble-minded or epileptic subject therein.

History: En. Sec. 6, Ch. 102, L. 1919.

1480. Expenses of commitment a county charge. The expenses of examination, transportation, and clothing of the inmates admitted under this act shall be paid by the county from which they were committed, upon the rendering of a sworn itemized account of said expenses, and the county in turn shall collect, in its own name, from the parents, guardian, or estate of the inmate, provided they are financially able to meet such expenses. Said inmate, whether a minor or adult, shall remain such county charge so long as he is in this institution.

History: En. Sec. 7, Ch. 102, L. 1919.

1481. Course of study and training. The president of said institution, under the direction of the state board of education, shall prepare a course of study and determine the training to be given all or any of the inmates of said institution.

History: En. Sec. 8, Ch. 102, L. 1919.

1482. Procedure for removal of inmate—Costs—Appeal to supreme court. No inmate may be removed from said institution, permanently or temporarily, except upon a written order of the superintendent, or upon an order of any district court of the state, and the provisions of this section shall apply to adults as well as to the minors therein. The costs of such court action shall be borne by the party bringing the action. Any order of the district court pursuant to this act may be reviewed by the supreme court, provided said appeal is taken within sixty days after the making of such order.

History: En. Sec. 9, Ch. 102, L. 1919.

1483. Limitation upon construction of act. This act is not to be construed as amending or repealing chapter 137, laws of the eleventh legislative assembly (section 1464), which act relates to the admission, care, and retention of persons in said school, but as supplemental thereto, but any and all other acts or parts of acts in conflict with the provisions of this act are hereby repealed.

History: En. Sec. 10, Ch. 102, L. 1919.

CHAPTER 114.

ORPHANS' HOME.

Section 1484. Establishment of Home.
1485. Who Entitled to Admittance.
1486. Supervision and Control.
1487. Employment of Superintendent and Matron.
1488. Qualifications and Powers of Superintendent.
1489. Duty of Matron.
1490. Course of Study.
1491. Training of Inmates.
1492. Free Education for Inmates at Expense of Home.
1493. Free Education of Inmates in Higher Institutions of State.
1494. Expense of Education to Be Borne by Home.
1495. Record to Be Kept of Habits and Scholarship of Inmates—Selection of Students.
1496. Institution Inmate Shall Attend to Be Designated by Executive Board.
1497. Inmates Attending Other Educational Institutions Remain Subject to Control of Home.
1498. Grounds, etc., for Home.
1499. Funds.
1500. Penalty.
1501. County Superintendent of School to Act as Agent of Board.
1502. Record of Agent.
1503. Application for Admission.
1504. Court May Commit Children on Divorce of Parents to the Home.
1505. Age Limit.
1506. Incorrigible Children.
1507. Montana Children's Home Society—Authority to Take Children From Orphans' Home.
1508. Placing and Care of Children.
1509. Record of Children and Report to Governor.
1510. Compensation.

1484. Establishment of home. There is hereby established, to be located and permanently maintained at or within one mile of the town of Twin Bridges, in the county of Madison, a home for the support and care of orphans, foundlings, and destitute children resident within the state of Montana.

History: En. Sec. 1, p. 189, L. 1893; re-en. Sec. 2470, Pol. C. 1895; re-en. Sec. 1249, Rev. C. 1907.

As to the character of the state orphans' home as a public institution, see In re Beck's Estate, 44 Mont. 561, 572, 121 Pac. 784, 1057.

1485. Who entitled to admittance. Every orphan, foundling, or destitute child, under twelve years of age, of sound mind and body, shall be entitled to be received into said home at the expense of the state. Children over twelve years of age and under sixteen years of age, and children with slight physical defects, may be admitted to the home, if deemed advisable by the board of trustees. The board of trustees shall have the power to return to any county and at the expense of that county any child forwarded to the orphans' home, provided it is ascertained that such child is not a proper subject for said institution.

History: Ap. p. Sec. 2, p. 190, L. 1893; amd. Sec. 2471, Pol. C. 1895; amd. Sec. 1, Ch. 40, L. 1903; re-en. Sec. 1250, Rev. C. 1907.

1486. Supervision and control. The general supervision and control of the state orphans' home is vested in the state board of education and a local executive board.

Note.—New section recommended by code commissioner to state law as it now exists.

1487. Employment of superintendent and matron. The state board of education shall have power to employ a superintendent and a matron for the state orphans' home and to prescribe the general duties and fix the compensation and term of office of said employees.

History: En. Sec. 1, Ch. 68, L. 1921.

1488. Qualifications and powers of superintendent. The superintendent of the home shall be a person of acknowledged ability and fitness for his office, and shall sustain a good moral character. He shall have entire control of the educational, moral, and dietetic treatment of the inmates and pupils, and shall see that the several employees in the institution faithfully and diligently discharge their respective duties. He shall employ such attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical management of the institution, and assign them their respective places and duties. The superintendent and matron shall devote their entire time to the interests of the home.

History: En. Sec. 2480, Pol. C. 1895; re-en. Sec. 1259, Rev. C. 1907.

1489. Duty of matron. The matron, under the direction of the superintendent and not otherwise, shall have the general supervision of the domestic arrangements of the institution, and do what she can to promote the comfort and welfare of its inmates.

History: En. Sec. 2481, Pol. C. 1895; re-en. Sec. 1260, Rev. C. 1907.

1490. Course of study. The state board of education shall afford to all pupils under their charge such literary, technical, industrial, and other education as can be made beneficial to them. The trustees shall have power to establish schools for the purpose of education, and shall also establish and maintain, within the grounds of the home, shops wherein suitable trades may be taught and practiced in a thorough and comprehensive manner, and under their regulation the superintendent shall have power to employ the proper persons to teach the pupils under their charge, and to dismiss such instructors for cause.

History: En. Sec. 2482, Pol. C. 1895; re-en. Sec. 1261, Rev. C. 1907.

The state orphans' home is not, strictly speaking, an educational institution, the common school instruction provided for by the foregoing section being only an incident to the main purpose for which it was established. In re Beck's Estate, 44 Mont. 561, 573, 121 Pac. 784, 1057.

1491. Training of inmates. The curriculum of the studies of the home for those having passed the thirteenth year shall be such as to assist them most effectively in their future pursuits. The division and assignment into schools and classes shall be so regulated that the pupils may have the benefit of instruction in approved literary branches, at such hours as would appear to be most practicable, whether given in evening schools, half-time schools, or in schools during certain seasons only.

History: En. Sec. 2486, Pol. C. 1895; re-en. Sec. 1265, Rev. C. 1907.

1492. Free education for inmates at expense of home. That the local executive board of the Montana state orphans' home is hereby authorized, in its discretion, to provide free education at the expense of the state orphans' home for any orphan, foundling, or destitute child who now is

or may hereafter be admitted to said orphans' home, subject, however, to the terms of this act.

History: En. Sec. 1, Ch. 162, L. 1919.

1493. Free education of inmates in higher institutions of state. Any inmate of the Montana state orphans' home who, while in said home, shall have completed the course of study there given, and shall have shown evidence of studious and industrious habits, shall be entitled, upon recommendation of the local executive board of said orphans' home, to receive free education at the expense of the state for a period of four years at either the University of Montana, the Montana state normal college, the agricultural college of Montana, or the Montana school of mines, and shall likewise be entitled to receive at the expense of the state the necessary high school or other training, if any be needed, to enable such student to enter any of the institutions of higher learning herein mentioned.

History: En. Sec. 2, Ch. 162, L. 1919.

1494. Expense of education to be borne by home. The state orphans' home of the state of Montana shall bear the expense of the education herein provided for, and all bills for the same shall be presented and paid in the same manner as are other expenses incurred by said state orphans' home. The expense which said orphans' home shall pay for each student shall consist of the actual necessary cost of transportation, board and room, clothing, books, stationery, and tuition, and shall not exceed in all the sum of four hundred dollars per year for each student.

History: En. Sec. 3, Ch. 162, L. 1919.

1495. Record to be kept of habits and scholarship of inmates—Selection of students. It shall be the duty of the local executive board of the state orphans' home to keep a record of the habits and scholarship of all inmates of the state orphans' home, and said board shall annually, on or before the first day of August of each year, certify to the state board of education the names of all inmates of said home designated by said local executive board as eligible to the free education provided for in this act. Said local executive board shall fairly and impartially select from said state orphans' home all the inmates thereof who shall have proved themselves eligible to the free education provided for by this act, and such persons, when so selected and designated by said local executive board, shall be entitled to the free education provided for in this act.

History: En. Sec. 4, Ch. 162, L. 1919.

1496. Institution inmate shall attend, to be designated by executive board. The local executive board of the state orphans' home shall designate the particular educational institution to which each student shall be sent, including the designation of the high school or other preparatory institution in which said student shall receive the necessary preliminary training; provided, however, that in all cases the inmate of the orphans' home must first complete the course of study there given, and must, so far as is possible, fit himself while at said home for entrance to said higher educational institution.

History: En. Sec. 5, Ch. 162, L. 1919.

1497. Inmates attending other educational institutions remain subject to control of home. Any inmate of the state orphans' home while attending high school, college, or any other institution provided for in this act, shall remain subject to the control of the executive board of the state orphans' home, and said board shall have the authority to discontinue the free education of any student whenever, in the judgment of said executive board, the character, habits, or scholarship of said students are such that said student no longer merits the benefits of this act.

History: En. Sec. 6, Ch. 162, L. 1919.

1498. Grounds, etc., for home. The state board of education shall also have power, and it shall be their duty from time to time, as means shall be provided and placed at their disposal, to provide suitable grounds and buildings and make purchases or leases thereof for the use of said home.

History: En. Sec. 2488, Pol. C. 1895; re-en. Sec. 1267, Rev. C. 1907.

Note.—Section changed by code commissioner to conform to later enactments.

1499. Funds. The funds and revenues for the establishment and maintenance of said home for the payment of its officers, nurses, teachers, and employees, and for all purposes incident thereto, or necessary for the proper continuance and successful conduct thereof, shall be appropriated and apportioned in such manner as the legislative assembly shall by law provide.

History: En. Sec. 22, p. 193, L. 1893; re-en. Sec. 2491, Pol. C. 1895; re-en. Sec. 1270, Rev. C. 1907.

1500. Penalty. Any superintendent, clerk, physician, or matron, who shall conceal or convert to his or her own use, any money, or other property, belonging to said institution, or belonging to the state, or who shall cheat, or attempt to cheat, or collude with any other person to cheat or defraud such institution, or the state, in any manner whatever, shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the state prison and kept at hard labor not more than ten years nor less than one year; and any trustee, superintendent, physician, or matron, who shall be directly or indirectly interested in any contract for the purchase of any building material, or articles of furniture, supplies, provisions for the use of said institution, or for any building or improvement, shall, on conviction thereof, be punished by imprisonment in the state prison at hard labor not less than one nor more than ten years.

History: En. Sec. 25, p. 194, L. 1893; re-en. Sec. 2494, Pol. C. 1895; re-en. Sec. 1273, Rev. C. 1907.

1501. County superintendent of schools to act as agent of board. The county superintendent of schools of each county in the state is hereby made the agent of the local executive board of the state orphans' home, and as such agent it shall be his duty, under such rules and regulations as shall be prescribed by the said board, to see that the conditions upon which any child taken from said orphans' home are complied with by persons in his county who adopt or undertake, with the consent of said board, to nurture, care for, maintain, or educate any such child; and he shall, on the first Saturday in October in each year, make a report to said

board of the condition and surroundings of all such children in his county, and of all other facts relating thereto as may be required by said board.

History: En. Sec. 2, Ch. 40, L. 1903; re-en. Sec. 1275, Rev. C. 1907.

Note.—Section changed to conform to later enactments.

1502. Record of agent. Such county superintendent shall keep a record, in a book to be kept in his office, and open to public inspection, in such form as shall be prescribed by the local executive board of said orphans' home, of all children placed in said orphans' home, from the county, and of all children adopted or let out from said home, with the consent of said board, by residents of his county.

History: En. Sec. 3, Ch. 40, L. 1903; re-en. Sec. 1276, Rev. C. 1907.

1503. Application for admission. When it is desired to place any child in said orphans' home, application shall first be made to such county superintendent of schools, who shall make a full and complete investigation of said application, and the facts and circumstances relating thereto, and make a written report to the chairman of the board of county commissioners of his county, giving the results of his investigation; which report shall accompany the application of the board of commissioners for the admission of such child. Said report shall be upon blanks to be furnished by the local executive board of said orphans' home.

History: En. Sec. 4, Ch. 40, L. 1903; re-en. Sec. 1277, Rev. C. 1907.

1504. Court may commit children on divorce of parents to the home. Whenever in divorce proceedings the district court shall deem the parents improper persons to have the care, custody, or control of the children of the marriage, or whenever the abuse of parental authority shall be established by an action brought for that purpose, the court may order the child or children committed to the state orphans' home, and may order the parents to pay such sum or sums of money as under their circumstances shall be just, by discretion of the court, and to be paid monthly to the state to defray the expenses of such child or children in the home; and such sum or sums so paid shall be credited to the general fund of the state orphans' home.

History: En. Sec. 5, Ch. 40, L. 1903; re-en. Sec. 1278, Rev. C. 1907.

1505. Age limit. After any child shall have reached the age of sixteen years, the local executive board may discharge him from the home or return him to the county from whence he came; having always in mind due regard for his welfare in so doing.

History: En. Sec. 6, Ch. 40, L. 1903; re-en. Sec. 1279, Rev. C. 1907.

1506. Incorrigible children. Whenever any child, an inmate of the orphans' home, shall be incorrigible, or shall by continuous vicious or immoral conduct be a menace to the welfare of the other wards of the home, the superintendent, under the direction of the local executive board, shall make complaint to the county attorney, who shall thereupon bring proceedings in the district court against such accused child, and if in the opinion of the district judge such charges are sustained by competent evidence, he shall order the accused committed to the Montana state industrial school. The provisions of sections 12488 to 12515, of the

Penal Code, relating to the state industrial school, shall be applicable to this section.

History: En. Sec. 7, Ch. 40, L. 1903; re-en. Sec. 1280, Rev. C. 1907.

Cited or applied as section 1280, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 569, 121 Pac. 784, 1057.

1507. Montana children's home society—Authority to take children from orphans' home. The Montana children's home society of Helena is hereby given authority to take from the orphans' home at Twin Bridges, by and with the consent of the superintendent of said home, dependent children for adoption in carefully selected homes.

History: En. Sec. 1, Ch. 133, L. 1911.

1508. Placing and care of children. The Montana children's home society shall place such children in good homes and shall have supervisory care over such children to the end that such children may be given good care and educational advantages, and shall by proper contract entered into with the state of Montana undertake to exercise proper supervision over the children so placed until they reach their majority, such contract to be filed and preserved at the orphans' home at Twin Bridges.

History: En. Sec. 2, Ch. 133, L. 1911.

1509. Record of children and report to governor. The Montana children's home society shall keep a record of all children so placed and shall make a report to the governor of all children entrusted to its care on the first day of December of each year.

History: En. Sec. 3, Ch. 133, L. 1911.

1510. Compensation. The Montana children's home society shall receive for each child so placed and cared for one hundred dollars as full compensation for such service.

History: En. Sec. 4, Ch. 133, L. 1911.

CHAPTER 115.

TUBERCULOSIS SANITARIUM.

Section 1511. Establishment and Objects.
1512. Executive Board.
1513. Powers and Duties of Executive Board.
1514. Site of Sanitarium.
1515. Buildings and Improvements.
1516. President.
1517. Duties of President.
1518. Secretary and Treasurer.
1519. Medical Assistants and Examining Physicians.
1520. Admission of Patients to Sanitarium—Soldiers, Sailors, and Marines.
1521. Private Patients.
1522. Support of Free Patients—Payment.
1523. Support of Private Patients.
1524. State Board of Examiners.
1525. Donations, to Whom Made.

1511. Establishment and objects. There is hereby established a state hospital to be known as the "Montana State Tuberculosis Sanitarium" for the treatment of tuberculosis and also what is commonly called "miners'

consumption," the location thereof to be determined as hereinafter specified.

History: En. Sec. 1, Ch. 125, L. 1911.

Right of property owner to complain of location of hospital for tuberculosis in neighborhood, see note in 25 L. R. A. (N. S.) 228.

1512. Executive board. The governor, by and with the advice and consent of the state board of examiners, shall appoint two citizens of the state of Montana, one of which shall be a physician, who, together with the president of such institution, shall constitute the executive board of the Montana state tuberculosis sanitarium. The president of such institution shall be ex-officio a member of said board, and shall be the chairman thereof. The ex-officio member of said board shall hold his office during his continuance as president of such institution, and the two members appointed by the governor shall hold office for the term of four years, unless sooner removed by the governor; provided, that of the members of the executive board first appointed, one shall be appointed for the term of two years and one for a term of four years, and appointments to fill vacancies occurring by death, resignation, or other cause shall be made for the unexpired term. Such members shall qualify by taking and filing their oath of office with the state board of examiners. The members of said executive board, except the chairman, shall receive such compensation as shall be fixed by the state board of examiners, not exceeding the sum of five dollars for each day actually spent in the discharge of their official duties, and not exceeding the sum of one hundred twenty-five dollars in any one year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institution, all expenses necessarily incurred by them in the discharge of their official duties as members of said board.

Any member of said board may at any time be removed from office by the governor for any cause he may deem sufficient, after an opportunity to be heard in his defense, and others may be appointed in their places as herein provided. Two members of said board shall constitute a quorum.

History: En. Sec. 2, Ch. 125, L. 1911.

1513. Powers and duties of executive board. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of examiners, subject always to the supervision and control of said state board of examiners.

Subject to the approval of the state board of examiners, they shall establish such by-laws, rules, and regulations as they may deem necessary or expedient for regulating the appointment and duties of officers and employees of the sanitarium, and for the internal government, discipline, and management of the same; to maintain an effective inspection of the affairs and management of the institution; to keep in a book provided for that purpose an exact and full record of the doings of the board, which shall be open at all times to the inspection of its members, the governor of the state, the state board of examiners, the state

board of health, or any member thereof, or any person appointed by the governor or the legislative assembly.

The executive board shall meet in regular session at least once in each quarter, and monthly or oftener if the business of such institution requires it, and shall have general charge of the administration of said institution.

On or before the first Monday in June of each year, said board shall make a detailed statement and report of all its transactions and of the condition of the institution, including the number of physicians and other employees, with the salary or wages paid to each, and a detailed statement of all expenses and disbursements of such institution, which report shall contain such other information or recommendations as may be required by the state board of examiners, and the state board of examiners shall have authority to call for a report and statement from such executive board at any time such board may deem it advisable, which shall be immediately furnished upon request. All such reports by such executive board shall be made in duplicate, one copy shall be retained by such executive board, and the other copy shall be filed with the state board of examiners.

History: En. Sec. 3, Ch. 125, L. 1911.

1514. Site of sanitarium. The state board of examiners is hereby empowered to select a site for the establishment of said state sanitarium at such place in the state of Montana as it may deem advisable.

History: En. Sec. 4, Ch. 125, L. 1911.

1515. Buildings and improvements. The state board of examiners, as soon as a site for such sanitarium is selected, shall proceed with the construction and equipment of all necessary and suitable buildings, including heating, lighting, plumbing, laundry fixtures, and a water supply thereof, and the construction of roads thereto, and to provide and adopt such plans as may be necessary and approved by the state board of health for the construction of such buildings, at an expense not exceeding fifty thousand dollars; and for this purpose said state board of examiners shall make and award contracts for the erection and construction of said buildings and the equipment thereof, and employ a competent person to superintend the construction thereof at a salary not to exceed three per cent. of the cost of the buildings, which sum shall be paid out of the appropriation hereby made for the construction of said buildings. The state board of examiners shall require the contractor or contractors constructing the buildings and equipment herein provided for to give to the state of Montana a good and sufficient bond for the completion thereof within the time prescribed in the contract, and in accordance with the plans and specifications adopted therefor.

History: En. Sec. 5, Ch. 125, L. 1911.

1516. President. The governor, by and with the advice and consent of the state board of examiners, shall appoint a president of said sanitarium, who shall be a well-educated physician, legally qualified to practice medicine in Montana, with an experience of at least six years in the

actual practice of his profession, including at least a year's actual experience in a general hospital, and reasonable experience in the treatment of tuberculosis. The said president, may be discharged or suspended at any time by the state board of examiners in its discretion.

History: En. Sec. 6, Ch. 125, L. 1911.

1517. Duties of president. The president shall:

1. Appoint such employees as are necessary and proper for a due administration of the affairs of such institution, prescribe their duties and offices, and, subject to the approval of the state board of examiners, fix their compensation within the appropriation fixed therefor.

2. Oversee and secure the individual treatment and personal care of each and every patient in the sanitarium while resident therein, and keep a proper oversight of all the inhabitants thereof.

3. Have the general superintendence of the buildings and grounds, with their furnishing and fixtures, and the selection and control of all persons employed in and about the same.

4. Give from time to time such orders and instructions as he may deem best calculated to induce good conduct, fidelity, and economy in any department for the treatment of patients.

5. Maintain a salutary discipline among all employees, patients, and inmates of the sanitarium, and enforce strict compliance with his instructions and obedience to all the rules and regulations of the sanitarium. He shall, under the supervision and control of the executive board, discharge such patients as are sufficiently restored to health.

6. Cause full and fair accounts and records of the conditions and prospects of the patients to be kept regularly from day to day, in books provided for that purpose; and see that such accounts and records shall be in condition to be fully and properly inspected by the executive board at each regular meeting thereof; and that the principal facts and results, with a report thereon, shall be presented to the executive board at each regular meeting of said board.

7. Conduct the official correspondence of the sanitarium, and keep a record or copy of letters written and files of all letters received.

8. Prepare and present to the executive board annually, at the first quarterly meeting in each year, a true and perfect inventory of all the personal property and effects belonging to the sanitarium, and account when required by the board, for the careful keeping and economical use of all furnishings, stores, and other articles furnished for the sanitarium.

History: En. Sec. 7, Ch. 125, L. 1911.

1518. Secretary and Treasurer. The executive board shall appoint a secretary of said board, who may also act as treasurer, and who may or may not be a member of said executive board, and such secretary and treasurer shall give bond with good and sufficient sureties for the faithful performance of his duties as such, and for the faithful accounting for and paying over to and for the use of said institution of moneys received by him as treasurer. Said bond shall run to the state of Montana, and

shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by the said state board of examiners. The treasurer of the executive board shall be the treasurer of the institution.

The duties of the secretary and treasurer shall be such as are usually performed by such officers, or which may be designated by the state board of examiners.

History: En. Sec. 8, Ch. 125, L. 1911.

1519. Medical assistants and examining physicians. All medical assistants shall be appointed by the executive board. No medical assistant shall be appointed who is not a well-educated physician, legally qualified to practice medicine in Montana, and with an experience of at least two years in the actual practice of his profession, including at least one year's actual experience in a general hospital. The executive board shall also appoint, in all of the first, second and third-class cities of the state, reputable physicians, citizens of the state of Montana, who shall examine all persons applying for admission to said sanitarium for treatment. There shall be not less than one nor more than four such examining physicians appointed in cities of the first class, and not more than two in cities of the second and third class. Said examining physicians shall have been in the regular practice of their profession for at least five years, and shall be skilled in the diagnosis and treatment of diseases. Their fee or compensation, for each patient examined, shall not exceed three dollars.

History: En. Sec. 9, Ch. 125, L. 1911.

1520. Admission of patients to sanitarium—Soldiers, sailors, and marines. The executive board of said sanitarium is hereby given power and authority to receive therein patients who have no ability to pay, but no person shall be admitted to the sanitarium who has not been a citizen of this state for at least one year, excepting that a female who has been a resident of the state for at least five months preceding the date of the application may be so admitted, though not a citizen. Every person desiring free treatment in said sanitarium shall apply to the local authorities of his or her town, city, or county, having charge of the relief of the poor, who shall thereupon issue a written request to the president of said sanitarium for the admission and treatment of such person. Such request shall state in writing whether the person is able to pay for his or her care and treatment while at the sanitarium, which request and statement shall be kept on file by the president in a book kept for that purpose in the order of their receipt by him. No person shall be admitted as a patient in said institution without certificate of an examining physician, certifying that such applicant is suffering from tuberculosis, or what is commonly called miner's consumption, and, if upon the reception of a person at such sanitarium, it is found by the authorities thereof that he or she is not suffering from tuberculosis or miner's consumption, he or she shall be returned to the place of his or her residence, and the expenses of transportation to and from the sanitarium shall be paid by the county of which he or she is a resident. Admissions to said sanitarium shall be

made in the order in which the names of applicants shall appear upon the application book to be kept as above provided by the president of said sanitarium, in so far as such applicants are subsequently certified by the said examining physician to be suffering from tuberculosis or miner's consumption. Every person who is declared, as herein provided, to be unable to pay for his or her care and treatment, shall be transported to and from the sanitarium at the expense of said local authorities, and cared for, treated, and maintained therein at the expense of the county or municipality which would otherwise be chargeable with the support of such poor or indigent persons, and the expense of transportation, treatment, maintenance, and the actual cost of articles of clothing furnished by the sanitarium to such poor and indigent persons, shall be a county or town charge, as the case may be; provided, further, that any soldier, sailor, or marine, who has served in the army or navy of the United States, and was at the time thereof a citizen of or had established his residence in the state of Montana, who on discharge therefrom is found to be suffering from tuberculosis, and whose admission to the Montana state tuberculosis sanitarium is requested by the proper federal authorities shall be entitled to be admitted thereto, and shall be classed for the purpose of admission on the same basis as free patients, and all such soldiers, sailors, or marines shall be given priority for entrance thereto over other applicants in the order in which their applications for admission are received and filed.

The treasurer of the sanitarium shall collect and receive any sum or sums the federal government may allow or pay for such purpose, and shall pay the same over to the state treasurer.

History: En. Sec. 10, Ch. 125, L. 1911; amd. Sec. 1, Ch. 26, Ex. L. 1919.

1521. Private patients. Applicants for admission to this institution who are able to pay for their care and treatment are not required to obtain a written request from the local authorities having charge of the relief of the poor, but shall apply in person to the president, who shall enter the name of such applicant in the book to be kept by him for that purpose, as provided in the preceding section, and when there is room in said sanitarium for the admission of such applicant, without interfering with the preference in the selection of patients, which shall always be given to the indigent, such patient shall be admitted to the sanitarium upon the certificate of one of the examining physicians, which certificate shall be kept on file by the president.

History: En. Sec. 11, Ch. 125, L. 1911.

1522. Support of free patients—Payment. At least once in each month the president of the sanitarium shall furnish the executive board and to the local authorities of each county, city or town, as the case may be, having charge of the relief of the poor, a list of all the free patients in the sanitarium that are credited each respective county, city or town, and who are shown by the statement of such local authorities to be unable to pay for their care, treatment and maintenance, under the provisions of section 1520 of this code. He shall accompany each such list with a bill of charges for care, treatment and maintenance at a rate not exceed-

ing one dollar per day for each such free patient, together with items of expense of transportation, fee of the examining physician and the actual cost of articles of clothing furnished by the sanitarium to each such free patient. The treasurer of the sanitarium shall thereupon collect from the local authorities of the county, city or town, such sums as may be due therefrom, and pay the same over to the state treasurer.

History: En. Sec. 12, Ch. 125, L. 1911; amd. Sec. 1, Ch. 186, L. 1921.

1523. Support of private patients. The executive board shall have power and authority to fix the charges to be paid by patients who are able to pay for their care and treatment in said sanitarium, or who have relatives bound by law to support them who are able to pay therefor.

History: En. Sec. 13, Ch. 125, L. 1911.

1524. State board of examiners. The state board of examiners of the state of Montana shall have power, and it shall be its duty:

1. To have the general control and supervision of the sanitarium, and to provide, subject to the laws of the state, rules and regulations for the government of its affairs.

2. To adopt rules and regulations, not inconsistent with the constitution or laws of this state, for its government, and proper and necessary for the execution of the powers and duties conferred upon it by law.

3. To fix the compensation of the president and other employees of the institution.

4. To confer upon the president and executive board of said institution such authority relative to the immediate control and management, other than financial, and the selection of employees, as may be deemed expedient and for the best interests of said institution.

5. To have supervision and control of all expenditures of all moneys appropriated or received for the use of said institution from all sources, and said state board of examiners shall have power to select and to approve plans for buildings, let contracts, approve all bonds for any and all buildings and improvements, and shall audit all claims to be paid from any moneys, but said state board of examiners shall have authority to confer upon the executive board of said institution such power and authority in contracting current expenses, and in auditing, paying, and reporting bills for salaries or other expenses incurred in connection with said institution, as may be deemed by said board of examiners to be for the best interests of said institution.

History: En. Sec. 14, Ch. 125, L. 1911.

1525. Donations, to whom made. All donations, grants, gifts, or devises made to said institution shall be made in its legal name, and if made to any officer or board of said institution, the same shall be immediately transferred by such officer or board to said institution.

History: En. Sec. 15, Ch. 125, L. 1911.

CHAPTER 116.

SOLDIERS' HOME.

Section 1526. Governor Empowered to Accept National Aid.
1527. Auditor Authorized to Receive and Disburse Moneys.
1528. Soldiers' Home Established
1529. Board of Managers.
1530. Oath and Bond of Managers.
1531. Meeting—Organization—Officers.
1532. Meetings of Managers.
1533. Appointment of Officers—Rules and Regulations—Salaries—Suspension of Subordinate Officials.
1534. Records.
1535. Who Eligible to Admission.
1536. Admission of Wives or Widows of Soldiers.
1537. Proposals for Site—Conditions of Donation.
1538. Board May Accept Donations.
1539. Office of Board.
1540. Compensation of Managers.
1541. Insane Inmates.
1542. How Money Drawn From Treasury.
1543. Inspection.
1544. Contracts.
1545. Inmates Not Required to Assign Pension.
1546. Chaplain.

1526. Governor empowered to accept national aid. The governor is hereby empowered and directed to accept for the state the conditions imposed by an act of congress entitled "An act to provide aid to state or territorial homes for the support of disabled soldiers and sailors in the United States," approved August 27, 1888. He is further directed to send to the president of the board of managers of the national home for disabled volunteer soldiers a copy of all laws bearing upon the establishment, regulation, and maintenance of the soldiers' home at Columbia Falls, Montana, with all printed regulations relating to the management of said home, together with a copy of this and the next section.

History: En. Sec. 1, p. 93, L. 1897; re-en. Sec. 1281, Rev. C. 1907.

1527. Auditor authorized to receive and disburse moneys. The state auditor is hereby empowered and directed to receive and receipt for any and all moneys that may become due the state by reason of said act of congress, and to turn the same into the state treasury for the use and benefit of the state soldiers' home, to be disbursed and accounted for in the same manner as other money appropriated out of the state treasury for the maintenance of said home.

History: En. Sec. 1, p. 93, L. 1897; re-en. Sec. 1282, Rev. C. 1907.

1528. Soldiers' home established. There is hereby established in this state a soldiers' home, the object of which shall be to provide home and subsistence to honorably discharged soldiers, sailors, and marines who have served in the United States army or navy, and who have become unable to earn a livelihood by reason of such service, or from age or otherwise.

History: En. Sec. 2510, Pol. C. 1895; re-en. Sec. 1283, Rev. C. 1907.

Note.—Changed by code commissioner to conform to later enactments.

Cited or applied as section 1283, Revised Codes, in In re Beck's Estate, 44 Mont. 561, 584, 121 Pac. 784, 1057.

1529. Board of managers. The general supervision and government of said home shall be vested in a board of managers to consist of five members, one of whom shall be the department commander of the Grand Army of the Republic of the state of Montana for the time being, and the remaining four shall be appointed by the governor, by and with the advice and consent of the senate. Of the four members so appointed as aforesaid, two shall hold their office for the term of four years and two for the term of two years respectively, and until their successors are appointed and qualified. The governor, at the time of the making of said appointments, shall designate the period for which each member is appointed, and thereafter every two years the governor shall appoint two members of said board of managers, who shall hold their office for the term of four years, and until their successors are appointed and qualified. The governor shall have power to remove any member of the board for inefficiency or other good and sufficient cause, and in case of any vacancy in said board by death or otherwise the governor shall appoint a suitable person to fill the vacancy for the unexpired term. No less than three members of said board of managers shall be ex-soldiers or sailors of the United States, and one of the board shall be a regular practicing physician, duly licensed under the laws of the state of Montana.

History: En. Sec. 2511, Pol. C. 1895; re-en. Sec. 1284, Rev. C. 1907.

1530. Oath and bond of managers. Before entering upon his duties each member of the board of managers shall take the oath prescribed by law, and shall execute to the state of Montana a bond in the penal sum of one thousand dollars, to be approved by the governor and filed in the office of the secretary of state, conditioned for the faithful performance of his duties and the honest and faithful disbursement of and accounting for all moneys and property which may come into his hands as such manager.

History: En. Sec. 2512, Pol. C. 1895; re-en. Sec. 1285, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1911.

1531. Meeting—Organization—Officers. As soon as practicable after the board of managers are appointed and qualified, and not later than the first Tuesday in May, 1895, and upon due notice given, the members of said board shall meet at the capital of the state and organize by electing one of their number president, and one of their number secretary and treasurer of said board, who shall hold their respective offices until the first Tuesday in May, 1896, and they shall be elected annually thereafter. The secretary and the treasurer shall keep a faithful record of all the transactions of the said board of managers and the books and records and accounts pertaining to such soldiers' home, under such rules and regulations as may be established by said board, and shall receive such salary as said board may determine.

History: En. Sec. 2513, Pol. C. 1895; re-en. Sec. 1286, Rev. C. 1907.

Note.—Changed by code commissioner to conform to later enactments.

1532. Meetings of managers. The board of managers of the soldiers' home shall hold three regular meetings each year, to-wit: on the second Tuesday of March, July, and November in each year; and they may have special meetings, on the call of the president and one other member of the board, for the transaction of such business as may be stated in the

call. Three members of the board shall constitute a quorum for the transaction of business.

History: En. Sec. 2514, Pol. C. 1895; re-en. Sec. 1287, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1909.

1533. Appointment of officers—Rules and regulations—Salaries—Suspension of subordinate officials. The board of managers shall appoint a commandant of the home, who shall be a resident of the state, and shall have served in the army or navy of the United States during the late war of the rebellion, and shall have received an honorable discharge therefrom. They shall formulate and publish all necessary rules and regulations for the government of the home and its inmates, beneficiaries, officers, and employees, and shall provide penalties and forfeitures for violation of said rules and regulations, to be reasonably and impartially enforced by the commandant of the home, subject to appeal to the board of managers. All subordinate officers, such as may be provided for by the rules and regulations of the home, shall preferably be selected from residents of the state who served in the army or navy of the United States during the war of the rebellion, and received honorable discharge therefrom. The salaries of the commandant and all subordinate officials shall be fixed by said board of managers; provided, that the salary of the commandant shall not exceed one hundred and twenty-five dollars per month, and for such other employees as may be necessary the amounts so paid shall not exceed such reasonable compensation as is paid for like services in similar institutions. Any such subordinate official or employee may be suspended by such commandant for inefficiency or misconduct, but in case of suspension of such official or employee, a statement of the case shall be reported by the commandant to the said board, who shall, upon application, offer such official or employee a hearing. The action of the board thereon shall be final.

History: En. Sec. 2514, Pol. C. 1895; re-en. Sec. 1288, Rev. C. 1907; amd. Sec. 2, Ch. 23, L. 1909.

1534. Records. The board of managers shall keep a record of the proceedings of all regular and special meetings, as well as a full and complete account of all moneys or other property received by them, or that have come under their control, from any source whatsoever; a detailed and itemized account of all the expenses; the names, places of birth, full record of service in the army or navy of persons admitted, and the last place of residence before such admissions; all deaths, discharges, and removals, with the cause thereof; and the names of persons making donations to the home, with a description of the same. They shall on or before the first day of December in each year transmit to the governor of the state a report in writing containing a detailed statement of the transactions of the board, and a full account of the receipts and expenditures of said home for the preceding year, together with such suggestions as they may see fit to make for the future usefulness of said home.

History: En. Sec. 2516, Pol. C. 1895; re-en. Sec. 1289, Rev. C. 1907.

1535. Who eligible to admission. Any soldier, sailor or marine, who served in the army or navy of the United States during the late civil

war, or in the Mexican war, or during any troubles between the United States and the government of Mexico, or the people of Mexico, or in the late war with Spain, or in any insurrection in the Philippine Islands, or during the Boxer troubles with China, or who, within the borders of the territory of Montana, served in the Sioux war of 1876 or the Nez Perce war of 1877, or during the war with Germany and Austria, or who served in Russia, Siberia, or any other foreign country during the war with Germany and Austria, or who, while a citizen of the United States, served in the army or navy of any of the allies of the United States and has returned to and lives in Montana, or during any troubles arising or growing out of any such war or wars, and has received honorable discharge therefrom, who at the time of admission is an invalid by reason of disease contracted, wounds received, or by reason of other disability, shall be eligible to admission to the benefits of the home under the rules and regulations prescribed by the board of managers thereof, on the certificate of disability by a county commissioner and the county physician of the county in which the applicant may reside; and the transportation of such applicant to the said soldiers' home shall be a proper county charge, and be paid by said county if the applicant is unable to pay the same; provided, that the benefits of said home shall not be extended to anyone who has not resided within the state of Montana for a period of one year next preceding the date of his application, or to anyone who has not resided within the county from which he asks to be sent to the home for the period of three months from the date of his application, nor to anyone convicted of a felony or of a crime involving moral turpitude, nor shall anyone who has been an habitual drunkard be received without sufficient evidence of subsequent good conduct and reformation of character as may be satisfactory to the said board of managers; provided, further, that in case said soldiers' home shall not have the capacity to receive all persons designated here, that veterans of the civil war shall have preference as to admission.

History: En. Sec. 1, p. 50, L. 1899; 1, Ch. 93, L. 1913; amd. Sec. 1, Ch. 41, L. re-en. Sec. 1290, Rev. C. 1907; amd. Sec. 1919.

1536. Admission of wives or widows of soldiers. The board of managers of the soldiers' home is authorized and empowered to admit to the privileges of the home, under such rules as the board may prescribe, the wives or widows of soldiers or sailors who are inmates, or who may be or may have been eligible to admission as inmates, and who were married prior to the year 1902.

History: En. Sec. 1, Ch. 87, L. 1903; re-en. Sec. 1292, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1913.

1537. Proposals for site—Conditions of donation. It shall be the duty of the said board of managers at its first meeting to give notice in at least three newspapers of general circulation in the state of Montana, once a week for three consecutive weeks, that they will for a definite period and not less than thirty days from the date of said notice, receive proposals for a donation of lands for a location of said home, and of money to erect buildings thereon, and any other donation to aid the building, furnishing, or maintaining of said home; and at the expiration of the period named in said notice it shall be their duty to meet and consider any

proposals which may be submitted, and to examine such of the proposed sites as in their judgment will be best suited for a site for said home; and from the places so proposed they shall make a selection and make report thereof to the governor, and if he shall approve the same, then the site so selected shall become the permanent site of the soldiers' home of the state of Montana; provided, that the said board of managers may reject any and all proposals submitted to them, if in their judgment the best interests of the state are subserved thereby; and provided, further, that no proposals shall be considered by the board that does not contemplate the giving to the state of Montana in fee, for the purpose of a site for said soldiers' home, at least forty acres of good tillable land, with water-right appurtenant thereto sufficient to irrigate the same if such irrigation be necessary in the cultivation of such land.

History: En. Sec. 2518, Pol. C. 1895; re-en. Sec. 1292, Rev. C. 1907.

1538. Board may accept donations. Said board of managers shall have the power, on behalf of the state, to accept donations of land, money, or other valuables by gift, bequest, or otherwise. All titles to land and improvements thereon shall be vested in the name of the state for the use of said soldiers' home, so long as the same may be necessary, to revert to the state when the necessity for such home no longer exists.

History: En. Sec. 2519, Pol. C. 1895; re-en. Sec. 1293, Rev. C. 1907.

Cited or applied in In re Beck's Estate, 44 Mont. 561, 584, 121 Pac. 784, 1057.

1539. Office of board. The principal office of said board of managers, and place of holding all regular meetings, shall at all times after the erection thereof be located at the soldiers' home.

History: En. Sec. 2520, Pol. C. 1895; re-en. Sec. 1294, Rev. C. 1907.

1540. Compensation of managers. Said board of managers shall receive as compensation for their services the sum of five dollars per day and their actual traveling expenses incurred while attending the meetings, or in attending to the transaction of any business by and under the direction of the said board of managers.

History: En. Sec. 3, Ch. 23, L. 1909.

1541. Insane inmates. In case any member of the Montana soldiers' home shall become insane, and shall be so adjudged according to the law, and shall be sent to any one of the asylums for the insane, such insane inmate shall not thereby lose his connection with said Montana soldiers' home; and the proper officer of said soldiers' home shall draw from the general government any proportion of the cost of maintaining such insane inmate to which such said soldiers' home is entitled by law.

History: En. Sec. 2524, Pol. C. 1895; re-en. Sec. 1298, Rev. C. 1907.

1542. How money drawn from treasury. The method of drawing money from the state treasury and accounting for the same shall be similar to that now in force with other state institutions, as prescribed by the general law.

History: En. Sec. 2525, Pol. C. 1895; re-en. Sec. 1299, Rev. C. 1907.

1543. Inspection. Said soldiers' home shall at all times be subject to the inspection of the board of managers of the national home for disabled volunteer soldiers.

History: En. Sec. 2526, Pol. C. 1895; re-en. Sec. 1300, Rev. C. 1907.

1544. Contracts. All contracts for the erection of buildings and supplies of whatsoever nature needed for said home shall be advertised and let by contract as provided by the laws of the state of Montana, and no member of the board or officer of the home shall be interested, directly or indirectly, in any contract or award made by the board, under penalty of forfeiture of office and fine in similar cases provided by the laws of Montana.

History: En. Sec. 2527, Pol. C. 1895; re-en. Sec. 1301, Rev. C. 1907.

1545. Inmates not required to assign pension. Any and all persons admitted inmates of the said home shall not assign to the home for its support any of the pension they may receive from the general government.

History: En. Sec. 1, Ch. 18, L. 1903; re-en. Sec. 1302, Rev. C. 1907.

Effect on pension of pensioner becoming inmate of soldiers' home, see note in Ann. Cas. 1916C, 854.

1546. Chaplain. The board of managers shall select and appoint a chaplain for the soldiers' home, who must be a regular ordained minister of the gospel, and who shall hold divine services at the soldiers' home at least twice a month, and who shall also conduct the burial services upon the death of any of the inmates of the home. He shall receive as compensation for such services the salary of not less than ten dollars per month nor more than fifteen dollars per month, to be determined by the board of managers, which salary shall be paid out of the general appropriation fund for the maintenance of such home.

History: En. Sec. 1, Ch. 33, L. 1905; re-en. Sec. 1305, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1909.

CHAPTER 117.

STATE LIBRARY, INCLUDING CIRCULATING LIBRARIES.

Section 1547. What Constitutes State Library.
1548. Departments and Control.
1549. Powers and Duties of Board of Trustees.
1550. Librarian.
1551. Duties of Librarian.
1552. Use of Books.
1553. When to Be Returned.
1554. Books Taken by State Officers.
1555. Liability for Injuries to Books.
1556. Library Funds.
1557. Library Hours.
1558. Salaries.
1559. Bond of Librarian.
1560. Historical Department.
1561. Expenses for Freight, etc., How Paid.
1562. Other Expenses, How Paid.
1563. Library Historical Society of Montana.
1564. Assistants to Librarian of Historical Library.
1565. Law Librarian to Index Session Laws.
1566. Duties of the Secretary of State.
1567. Assistants to Law Librarian.
1568. Creation Legislative Reference Bureau.
1569. Assistant—Employment and Salary.
1570. Circulating Libraries of the State of Montana.
1571. Control.
1572. Purchase of Books.
1573. Composition of Libraries.
1574. Board May Make Rules.
1575. Use of Libraries.

1547. What constitutes state library. The books, pamphlets, papers, maps, charts, manuscripts, paintings, engravings, and other property belonging to the state, in the Montana library, and all that may be added thereto, constitute the state library of Montana.

History: Ap. p. Sec. 1, p. 60, L. 1881; amd. Sec. 1515, 5th Div. Comp. Stat. 1887; re-en. Sec. 2380, Pol. C. 1895; re-en. Sec. 1207, Rev. C. 1907. Cal. Pol. C. Secs. 2292-2316.

1548. Departments and control. The state library consists of two separate departments: First, the law library; second, the historical and miscellaneous library. The former is under the control of a board of seven trustees, of which the chief justice and the associate justices of the supreme court shall be ex-officio members, the secretary of state, and state auditor, of which board the chief justice is president and the secretary of state secretary. The latter shall be under the control of the board of five trustees, appointed by the governor with the advice and consent of the senate. The members of both boards shall serve without compensation, and the term of those not serving ex-officio shall be for two years, and until their successors are appointed and qualified.

History: En. Sec. 2381, Pol. C. 1895; re-en. Sec. 1208, Rev. C. 1907.

1549. Powers and duties of boards of trustees. The powers and duties of said boards are as follows:

1. To make rules and regulations, not inconsistent with law, for their own government and for the government of the libraries committed to their care.

2. Till otherwise provided, to rent suitable rooms for the libraries, and provide necessary furniture, fuel, and light for the same.

3. To appoint their respective librarians and prescribe their duties, not otherwise provided for.

4. To sell or exchange duplicate copies of books and pay the money arising therefrom into the library fund of the department to which it belongs.

5. To see that the books and other property of the respective departments are in order and repair.

6. To draw from the state treasury, at any time when needed for legitimate and authorized expenses, any moneys belonging to the fund of their respective departments.

7. To report to the governor biennially a statement of all important transactions, with suggestions of what they deem necessary for the increased utility of their respective departments.

History: En. Sec. 2382, Pol. C. 1895; re-en. Sec. 1209, Rev. C. 1907.

1550. Librarian. The librarian holds his office for the term of two years, unless sooner removed by a majority vote of the trustees.

History: En. Sec. 2383, Pol. C. 1895; re-en. Sec. 1210, Rev. C. 1907.

1551. Duties of librarian. It is the duty of the librarian of each department:

1. To be in attendance at the library during office hours.

2. To purchase, under the direction of the trustees, all books, maps, engravings, paintings, furniture, and supplies for the libraries.

3. To number and stamp all books, maps, papers, and pamphlets

belonging to the library, and keep a catalogue thereof, and, as the means are provided therefor, to have the same printed and distributed, under the direction of the trustees.

4. To have bound all books, pamphlets, and papers when directed thereto.

5. To keep a register of all books and property belonging to the libraries, the additions made each year, and the cost thereof.

6. To keep a register of all books or other property taken from the library under the authority of the trustees.

7. To establish and maintain a system of domestic and foreign exchange of books, maps, or other publications, and to obtain from the secretary of state such numbers of all state publications as may be needed to supply the demands of the system established.

History: En. Sec. 2384, Pol. C. 1895; re-en. Sec. 1211, Rev. C. 1907.

1552. Use of books. All persons during library hours are permitted to examine the libraries and their contents. During sessions of the legislative assembly the members thereof may take books from the libraries, and state officials may do so at any time. Law books may be taken from the library to the court-room by any attorney, and returned the same day. Such books belonging to the historical and miscellaneous department of the state library, other than reference books, as could be readily replaced in case of loss, may be loaned to any citizen of the state, who shall place such guarantee with the librarian of this department for the safe return of the same as the library board may demand, and who shall pay the cost of transportation of the book or books to and from the borrower; provided, that no book that could not be readily replaced in case of loss shall be removed from said library except by state officials, and by them only in pursuit of their official duty.

History: Ap. p. Sec. 2385, Pol. C. 1895; amd. Sec. 1, Ch. 81, L. 1905; re-en. Sec. 1212, Rev. C. 1907.

1553. When to be returned. Books taken by members of the legislative assembly must be returned at the close of the session; and before the state auditor draws his warrant in favor of any member of the legislative assembly for his last week's salary, he must be satisfied that such member has returned all books taken by him and paid for any injuries thereto.

History: En. Sec. 2386, Pol. C. 1895; re-en. Sec. 1213, Rev. C. 1907.

1554. Books taken by state officers. The state auditor, if notified by the librarian that any officer has failed to return books taken by him within the time prescribed by the rules, and after demand made, must not draw his warrant for the salary of such officer until the return is made, or three times the value of the books, or of any injuries thereto, has been paid to the librarian.

History: En. Sec. 2387, Pol. C. 1895; re-en. Sec. 1214, Rev. C. 1907.

1555. Liability for injuries to books. Every person who injures or fails to return any book taken is liable to the librarian in three times the value thereof, if such book is not replaced by a new one.

History: En. Sec. 2388, Pol. C. 1895; re-en. Sec. 1215, Rev. C. 1907.

1556. Library funds. The fund of the law library department of the state library consists of twenty per cent. of all fees collected and paid into the state treasury by the clerk of the supreme court, and any appropriations especially made for this department by the legislative assembly; if any part of said fund be not expended in any year, said balance shall not be covered back in the general fund at the end of the fiscal year, but the same shall be reserved and set apart as a surplus fund for the purchase of books for the law library, and the board of trustees of the law library department of the state library is hereby empowered and authorized to draw from the state treasury, at any time when needed for the purchase of additional books, any moneys belonging to said surplus fund. The fund of the historical and miscellaneous department of the state library consists of the receipts from the sale of any of its publications authorized to be sold, and of any appropriations especially made in its behalf by the legislative assembly.

History: Ap. p. Sec. 2389, Pol. C. 1895; amd. Sec. 1, Ch. 31, L. 1903; re-en. Sec. 1216, Rev. C. 1907.

1557. Library hours. During the sessions of the legislative assembly, and of the supreme court, the library must be kept open every day from nine o'clock a. m. until nine o'clock p. m., and at other times as the trustees may direct.

History: En. Sec. 2390, Pol. C. 1895; re-en. Sec. 1217, Rev. C. 1907.

1558. Salaries. The annual salary of the librarian of the law library shall be twenty-five hundred dollars, and librarian of historical library twenty-one hundred dollars, payable monthly out of the general fund of the state treasury.

History: En. Sec. 1, Ch. 77, L. 1907; Sec. 1218, Rev. C. 1907.

Note.—Salaries are here given as fixed by chapter 40, Laws of 1915.

1559. Bond of librarian. The librarian must execute an official bond in the sum of one thousand dollars, to be approved by the governor and deposited with the secretary of state.

History: En. Sec. 2392, Pol. C. 1895; re-en. Sec. 1219, Rev. C. 1907.

1560. Historical department. In addition to the duties prescribed in the foregoing sections the librarian of the historical and miscellaneous department shall, under the direction of the trustees thereof:

1. Procure by purchase, exchange, or donation, as far as means and opportunity allow, all books, writings, lectures, letters, journals, and narratives of pioneers, as well as autographs, photographs, maps, and charts illustrative of or relating to the history of Montana as a territory or state.

2. He shall also procure specimens of the metals and minerals, of the flora and fauna of the state, together with natural curiosities and antiquities, preserving, designating, and displaying the same under rules prescribed by the trustees.

3. He shall procure copies of all newspapers published in the state, also so far as possible of all books, magazines, pamphlets, written or published in the state, and have the same suitably bound for reference and preservation.

4. He shall each year publish a volume of transactions and contributions, under the supervision of the trustees, who shall also direct the distribution of the same to promote exchanges and secure additions to the library.

History: En. Sec. 2393, Pol. C. 1895; re-en. Sec. 1220, Rev. C. 1907.

1561. Expenses for freight, etc., how paid. The librarian of either department of the state library is authorized to pay reasonable freight, express, and mail charges upon books or other articles sent to the library by the general, state, or foreign governments, or private parties, taking proper vouchers therefor, and upon presentation of such vouchers to the board of examiners and the allowance thereof, the same must be paid out of the state treasury from the particular library fund to which they are chargeable.

History: En. Sec. 2394, Pol. C. 1895; re-en. Sec. 1221, Rev. C. 1907.

1562. Other expenses, how paid. All accounts for the rent of library rooms, fuel, light, and other necessaries, and for the purchase and printing of books, furniture, and fixtures, must be made out by the librarian and approved by the state board of examiners, and paid out of the state treasury from the library fund to which they are properly chargeable.

History: En. Sec. 2395, Pol. C. 1895; re-en. Sec. 1222, Rev. C. 1907.

1563. Library historical society of Montana. Whenever the historical society of Montana has donated and turned over to the state all books, papers, and other property owned by such society, the board of trustees of the historical and miscellaneous department of the state library must take charge of the same, and may make all proper rules in regard to the custody and management of the same.

History: En. Sec. 2397, Pol. C. 1895; re-en. Sec. 1223, Rev. C. 1907.

1564. Assistants to librarian of historical library. The librarian of the historical and miscellaneous department is hereby authorized and empowered to engage and employ two assistant librarians for said department at an annual salary as follows: The first assistant librarian shall receive a salary of twelve hundred dollars per annum and the second assistant librarian shall receive a salary of twelve hundred dollars per annum, payable monthly out of the general fund of the state treasury. The librarian of said department and each assistant shall be persons educated and experienced in library work, and shall be of good moral character.

History: En. Sec. 3, Ch. 77, L. 1907; Sec. 1227, Rev. C. 1907.

Note.—Salaries are here given as fixed by chapter 40, Laws of 1915.

1565. Law librarian to index session laws. It shall be the duty of the state law librarian to prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislative assembly of Montana, after this, the tenth session. Such index shall be a thorough index of such laws and resolutions, and of each subject contained in or covered by such laws and resolutions, together with such cross-index as will assist in readily finding any subject or matter contained in such volume; and for the purpose of procuring and preserving uniformity in such indexes, the index of each succeeding volume of the session laws shall

conform, as near as practicable, with those of the volumes preceding it, prepared by said librarian. He shall also prepare for each volume of such laws an additional index, showing what sections of the several codes of this state, and what session laws have been amended, repealed, altered, or changed by any laws published in that volume, which shall be known and designated as the "Code Index," and to deliver the said indexes to the secretary of state as soon as completed.

History: En. Sec. 1, Ch. 161, L. 1907; Sec. 1228, Rev. C. 1907.

1566. Duties of the secretary of state. It shall be the duty of the secretary of state to deliver to the state law librarian, at the earliest day practicable after the final adjournment of each session of the legislative assembly, correct copies of all laws and resolutions passed or adopted at such session, to be used by said librarian in preparing such indexes. The secretary of state shall cause such indexes to be published with such laws and resolutions.

History: En. Sec. 2, Ch. 161, L. 1907; Sec. 1229, Rev. C. 1907.

1567. Assistants to law librarian. The law librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indexes, and said assistant shall be paid out of any funds in the law library expense account.

History: En. Sec. 3, Ch. 161, L. 1907; Sec. 1230, Rev. C. 1907.

1568. Creation legislative reference bureau. There shall be established and conducted in connection with the law department of the state library a legislation reference bureau. The object of said bureau, in charge of the librarian of said state library, shall be to gather and make available such information as shall aid the members of the legislature in the discharge of their duties, and to collect information as to what legislation has been enacted upon important subjects in other state, and legal data as to the constitutionality and interpretation of laws.

History: En. Sec. 1, Ch. 77, L. 1921.
Note.—This act superseded chapter 65, Laws of 1909.

1569. Assistant—Employment and salary. To carry out the provisions of this act, the librarian of the law department of the state library is hereby authorized, and empowered to employ an assistant at a salary of fifteen hundred dollars per year.

History: En. Sec. 2, Ch. 77, L. 1921.

1570. Circulating libraries of the state of Montana. The libraries hereby created shall be known as the circulating libraries of the state of Montana.

History: En. Sec. 2410, Pol. C. 1895; re-en. Sec. 1231, Rev. C. 1907.
Note.—Owing to lack of any appropriation since 1895, the succeeding sections relative to state circulating libraries have never been made effective.

1571. Control. Said libraries shall be under the control and management of a board to be composed of the superintendent of public instruction, the attorney-general, and state auditor of said state.

History: En. Sec. 2412, Pol. C. 1895; re-en. Sec. 1233, Rev. C. 1907.

1572. Purchase of books. Said board shall expend said money for the purchase of books to compose said libraries.

History: En. Sec. 2413, Pol. C. 1895; re-en. Sec. 1234, Rev. C. 1907.

1573. Composition of libraries. Said board shall divide said books, when purchased, into libraries of one hundred books each, each library to be composed of different books, with a suitable designation or number.

History: En. Sec. 2414, Pol. C. 1895; re-en. Sec. 1235, Rev. C. 1907.

1574. Board may make rules. Said board shall have the control, care, and management of said libraries, and shall make such rules and regulations as it may think proper for the circulation, care, and preservation of said libraries.

History: En. Sec. 2415, Pol. C. 1895; re-en. Sec. 1236, Rev. C. 1907.

1575. Use of libraries. Any community, village, town, or city, in the order of its application therefor, may have the use of any one of said libraries at one time and for a period not exceeding six months, upon giving security for the proper return of such library, as the said board may deem proper, and upon paying all expenses, freight, and other charges for the shipment of such library to and from such community, village, town, or city.

History: En. Sec. 2416, Pol. C. 1895; re-en. Sec. 1237, Rev. C. 1907.

CHAPTER 118.

FARMERS' INSTITUTES.

Section 1576. Board of Administration—Composition and Powers.
1577. Expenses, How Paid.
1578. Meetings.
1579. Appropriations.

1576. Board of administration—Composition and powers. The board of administration of the farmers' institute as provided for in this act, shall consist as follows: The governor of the state, the president of the Montana state college of agriculture and the commissioner of agriculture, labor and industry of the state of Montana, all of whom shall be ex-officio members. Members of such board of administration shall be designated the "Directors of the Montana Farmers' Institute," and shall be authorized to hold institutes for the instruction of the citizens of this state in the various branches of farming and farm life, and shall prescribe such rules and regulations as they may deem best for organizing and conducting the same. Such institutes shall be held at such times and places as the directors may designate; provided the requirements of the board of administration have been complied with, such as county institute or local organizations providing a suitable hall, lighting and heating the same, and bearing the necessary advertising expense. The directors may employ an agent or agents to perform such work in organizing and conducting said institutes as they may deem best.

History: Ap. p. Sec. 1, p. 55, L. 1901; amd. Sec. 1, Ch. 105, L. 1903; re-en. Sec. 1306, Rev. C. 1907; amd. Sec. 1, Ch. 8, L. 1909; amd. Sec. 1, Ch. 133, L. 1921.

Note.—The office of commissioner of agriculture, labor, and industry was abolished by chapter 216, Laws of 1921.

1577. Expenses, how paid. The expense of such institute, or any expenditure made necessary in carrying out the provisions of this act, shall be paid out of such institute funds by the state treasurer upon warrants issued by the state auditor, which warrants shall only be drawn upon

the certificate of the chairman of the board of administration of the Montana farmers' institute.

History: En. Sec. 4, p. 55, L. 1901; re-en. Sec. 1308, Rev. C. 1907.

1578. Meetings. Immediately upon the passage and approval of this act, the board of administration shall meet in the city of Helena and arrange for the first series of institutes throughout the state, and thereafter such board shall meet annually on the second Tuesday in September to arrange for such institutes, and they shall again meet on the second Tuesday in March of each year to audit all expenditures and arrange for the printing in pamphlet form, within sixty days of said meeting, of the "Institute Annual," and that the cost of said annual shall not exceed one thousand five hundred dollars in any one year.

History: En. Sec. 5, p. 56, L. 1901; amd. Sec. 5, Ch. 105, L. 1903; re-en. Sec. 1309, Rev. C. 1907.

1579. Appropriations. For the purpose mentioned in this act, the directors may use the sum as they may deem proper, not exceeding the sum of four thousand dollars per annum, and that until otherwise provided by law the state treasurer shall pay, out of any money in the state treasury not otherwise appropriated, a sum not to exceed four thousand dollars during each fiscal year hereafter, on the order of the said board of directors. Each institute held under the authority of this act shall be entitled to a sum not exceeding fifty dollars from the amount appropriated under this act.

History: En. Sec. 2, Ch. 105, L. 1903; re-en. Sec. 1310, Rev. C. 1907.

CHAPTER 119.

STATE FAIR.

Section 1580. Establishment of State Fair.
1581. Objects and Purposes—Time for Holding.
1582. Management.

1580. Establishment of state fair. For the promotion of the public welfare and in order to give prominence and publicity to the resources of the state of Montana, there is hereby established a state institution to be known and designated as "The Montana State Fair."

History: En. Sec. 1, Ch. 47, L. 1911.

Note.—The Montana state fair was created by chapter 96, Laws of 1903; appearing as sections 1311 to 1322, Revised Codes of 1907. The law is here given as amended by chapter 47, Laws of 1911.

1581. Objects and purposes—Time for holding. The objects and purposes of said institution shall be to encourage the location and settlement of the public lands within this state, and to encourage immigration and capital in aid of the further development of our natural resources; and to better disseminate knowledge concerning the growth, prosperity, and possibilities of agriculture, stock-raising, horticulture, mining, mechanic arts, and industrial pursuits in this state. To this end the management of said institution shall provide an annual state fair or exposition of all said enumerated products, which fair shall be conducted for a period of not more than two weeks as the management may designate, between the fifteenth day of August and the fifteenth day of October of each year.

History: En. Sec. 2, Ch. 47, L. 1911.

1582. Management. The management of the state fair by the department of agriculture, labor and industry is provided for in sections 3640 to 3644 of this code.

Note.—New section recommended by code commissioner.

CHAPTER 120.

TERMINAL GRAIN ELEVATOR.

Section 1583. Bonds for Building Terminal Grain Elevator.
1584. Denominations and Interest.
1585. Condition of Bonds.
1586. Charge for Storage of Grain—Terminal Elevator Fund.
1587. County Assessors to Designate Lands for Taxation.
1588. Form and Execution of Bonds.
1589. Disposal of Bonds—Not to Be Sold for Less Than Par.
1590. Form of Ballots—Voting.
1591. Money—How Expended.
1592. Board of Managers, Appointment.
1593. Board of Managers, Organizations.
1594. Board of Managers, Compensation.
1595. Duties of Board of Managers.
1596. Issuance of Bonds.
1597. Construction of Elevator.
1598. Operation of Elevator.
1599. Inspection of Grain.
1600. Bonds.
1601. Terminal Elevator Fund.
1602. Penalties.

1583. Bonds for building terminal grain elevator. The state board of examiners of the state of Montana is hereby authorized, empowered and directed to issue bonds in the name of the state of Montana, to an amount not exceeding the sum of two hundred and fifty thousand dollars in excess of constitutional limitation of indebtedness and over and above any bonded indebtedness heretofore incurred for which the state is now obligated; that the money to be derived from the sale of said bonds, or so much thereof as may be required, shall be used for the purchasing or building of a terminal grain elevator with the necessary equipment at Great Falls, Montana, to be used for the storage and marketing of grain produced in Montana and the said money so acquired shall be deposited in the state treasury of Montana and paid out as provided by law for said purpose and for no other purpose.

Note.—A referendum measure enacted by the legislature as chapter 150, Laws of 1917; approved by the people November 5, 1918, effective under the governor's proclamation December 28, 1918.

Validity of bond issue sustained in State ex rel. Lyman v. Stewart, 58 Mont. 1, 3, 190 Pac. 129. Reversed on the ground of exempting personal property from payment of tax in Stoner v. Timmons, 59 Mont, 196 Pac. 519.

1584. Denominations and interest. The bonds provided for in this act shall be issued in denominations of one thousand dollars each and shall become due in ten years from the date of issuance and be redeemable and payable at the option of the state at any time after five years from the date thereof at any interest paying period and shall bear interest at the rate of not exceeding five per cent. per annum payable semi-annually on the fifteenth of June and December of each year at the office of the state treasurer of the state of Montana and shall bear date as of the day of the issuance thereof.

History: See Sec. 1583.

1585. Condition of bonds. Such bonds issued under the provisions of this act shall contain a condition substantially as follows:

"This bond is one of a series of state bonds of the denomination of one thousand dollars each of like tenor and date and numbered from one (1) to ..... (.....), inclusive, and aggregating the sum of ..... dollars. The right is hereby reserved to redeem this bond at any regular interest paying period as stated herein by payment of the principal and interest in full to the date of redemption; provided, that not less than ten (10) days' notice shall be given by the state treasurer in writing or by publication of such intention on the part of the state to make redemption."

The form of notice and method of giving same relative to the sale of such bonds shall be in accordance with the directions of the state board of examiners.

History: See Sec. 1583.

1586. Charge for storage of grain—Terminal elevator fund. The state board of examiners shall make a charge of not more than two and one-half cents per bushel for grain stored in the terminal elevator and the money so received after paying the expense of maintaining the terminal elevator shall be paid into the state treasury and credited to a separate fund designated as the "Terminal Elevator Fund," and said fund shall be used exclusively for the payment of the interest and redemption of such terminal elevator bonds herein provided for. If the money so paid into the "Terminal Elevator Fund" is not sufficient to pay the semi-annual interest on the bonds and the redemption thereof, then and in that event there shall be levied annually not exceeding one-half of a mill on the dollar on all lands, agricultural in character, which said tax when collected by the county treasurer shall be accounted for and paid over to the state treasurer to be by the state treasurer held in the "Terminal Elevator Fund," which fund shall be used exclusively for the payment of the interest on such bonds and for the redemption thereof.

History: See Sec. 1583.

The levy of a tax upon all lands, agricultural in character, for payment of bond issues for the construction of state terminal grain elevators, is not in violation of the uniformity clause of the constitution. State ex rel. Lyman v. Stewart, 58 Mont. 1, 190 Pac. 129. Reversed on the ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

This section does not fail to provide for the extinguishment of a debt within a specified time as required by section 1 of article XIII of the constitution, since by rules of statutory construction it can be ascertained that the legislature intended to impose a tax for the payment of the bonds and that the surplus from the operation of the elevator might be used to discharge the indebtedness of the bonds at such time as the legislature may make provision therefor. State ex rel. Lyman v. Stewart, 58 Mont. 1, 9, 190 Pac. 129. Reversed as to the validity of the tax levy on the ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

1587. County assessors to designate lands for taxation. The county assessors of the counties in Montana, commencing with the year wherein the bonds herein provided for may be issued and continuing so long as such bonds or any part thereof or any interest thereon may remain unpaid

shall designate upon the assessment-rolls the lands subject to the tax in the foregoing section provided for.

History: See Sec. 1583.

Since the words "agricultural in character" is a term meaning lands susceptible of being plowed and seeded or lands from which crops may be produced, they are sufficiently definite and certain to enable the assessors to determine what lands should be listed for taxation. State ex rel. Lyman v. Stewart, 58 Mont. 1, 7, 190 Pac. 129. Reversed as to the validity of tax levy on the ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

1588. Form and execution of bonds. The bonds herein referred to shall be in such form as may be prescribed by the attorney-general and approved by the state board of examiners and shall be signed by the members of said board and issued under the great seal of the state of Montana and shall be registered in the office of the state treasurer. Said bonds shall have interest coupons attached covering the interest due semi-annually and shall have the lithographed facsimile signature of the members of the state board of examiners affixed thereto.

History: See Sec. 1583.

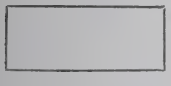
1589. Disposal of bonds—Not to be sold for less than par. The bonds herein authorized and provided for shall be disposed of by the state board of examiners in such manner and upon such notice as seems for the best interests of the state in carrying out the terms and provisions of this act and none of said bonds shall be sold for less than the face value thereof.

History: See Sec. 1583.

1590. Form of ballots—Voting. Each county clerk in the state, at the next general election shall have separate ballots printed and furnished to each precinct in his county in the same manner as other ballots are furnished to be used by the electors to vote upon the question herein submitted to them for their approval. The separate ballots herein referred to shall have printed thereon the following:



"For the law authorizing the issuance of state bonds in a sum not exceeding two hundred and fifty thousand ($250,000) dollars for terminal elevator purposes."



"Against the law authorizing the issuance of state bonds in a sum not exceeding two hundred and fifty thousand ($250,000) dollars for terminal elevator purposes."

The electors shall vote said ballot by marking an "X" in the square in front of the proposition for which he desires to cast his ballot.

History: See Sec. 1583.

1591. Money—How expended. The money derived from the sale of the bonds hereinbefore referred to shall be expended for the purposes hereinbefore referred to and in the manner perscribed by the legislative assembly.

History: See Sec. 1583.

1592. Board of managers, appointment. There is hereby created a board of managers to consist of five members, for the terminal grain eleva-

tor to be constructed at Great Falls, Montana, pursuant to the provisions of chapter 150 of the session laws of the fifteenth legislative assembly (1583-1591.) Within thirty days after the passage and approval of this act the governor shall appoint the said board of managers, one of whom must be chosen from the list of five names submitted to him by the Montana American society of equity, one from the list of five names submitted to him by the farmers' union and one from the list of five names submitted to him by the Montana state grange, all of whom shall be resident freeholders within the state of Montana and not less than three of whom shall be farmers who are growers of grain. Two of the members so appointed shall serve for a period of three years from and after the first day of April, A. D. 1919; two of the members so appointed shall serve for the term of two years from and after the first day of April, A. D. 1919; and one of the members so appointed shall serve for the term of one year from and after the first day of April, A. D. 1919. At the expiration of their several terms of office, the governor shall appoint members of the said board of managers for the period of three years. In case of a vacancy in the membership in the said board of managers by death, resignation or otherwise, the governor shall appoint to fill the unexpired term of such member.

History: En. Sec. 1, Ch. 204, L. 1919.

State ex rel. Lyman v. Stewart, 58 Mont. 1, 3, 190 Pac. 129. Tax levy for the payment of bonds held invalid on the ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

1593. Board of managers, organizations. The board of managers shall meet at the state capitol at the city of Helena on the second Monday in April, 1919, and there organize by choosing one of their number as president and one of their number as secretary. Meetings of the board of managers shall thereafter be held upon the call of the president or any two members thereof at a time and place to be designated in such call.

History: En. Sec. 2, Ch. 204, L. 1919.

1594. Board of managers, compensation. The members of the board of managers shall receive the sum of ten dollars per day and actual and necessary expenses incurred in attending meetings. All expenses incurred in the construction of said terminal grain elevator, including the charges and expenses of the board of managers, prior to the completion of said elevator, and all expenses incurred in investigations and in the employment of engineers and architects, shall be paid out of the fund derived from the sale of bonds.

History: En. Sec. 3, Ch. 204, L. 1919.

1595. Duties of board of managers. The board of managers shall make a careful study and complete investigation into the operation of terminal grain elevators and as to the prices of construction materials and labor, and all matters necessary to be determined pertaining to the construction and successful operation of a terminal grain elevator at Great Falls, Montana. Upon completing such study and investigation and having decided upon a workable plan for the construction and successful operation of said terminal elevator and within sixty days after its organization, the board of managers shall adopt rules and regulations for the

operation and management of said elevator, and proceed with the procuring of plans and specifications for the construction thereof.

History: En. Sec. 4, Ch. 204, L. 1919.

1596. Issuance of bonds. Upon completion of such study and investigation and having decided upon a workable plan for the construction and successful operation of said terminal elevator and within sixty days after its organization, the board of managers shall notify the state board of examiners that it is ready to proceed with the construction of said terminal grain elevator. The said board of examiners of the state of Montana is hereby authorized and directed to proceed with the issuance and sale of bonds of the state of Montana to the amount of two hundred and fifty thousand dollars for the purpose of constructing said terminal grain elevator with the necessary equipment at Great Falls, Montana, pursuant to the provisions of sections 1583 to 1591 of this code.

History: En. Sec. 5, Ch. 204, L. 1919.

State ex rel. Lyman v. Stewart, 58 Mont. 1, 4, 190 Pac. 129. Tax levy for payment of bonds held invalid on ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

1597. Construction of elevator. The board of managers are hereby authorized and directed to employ necessary engineers and architects for the purpose of procuring suitable plans and specifications for the construction of said terminal grain elevator. Such plans and specifications must be approved and adopted by the board of managers. Upon the adoption and approval of such plans and specifications the board of managers shall deliver to the board of examiners of the state of Montana the necessary number of copies of such plans and specifications. The board of examiners shall thereupon advertise in not less than three daily newspapers published in the state of Montana for a period of not less than thirty days for bids for the construction of the said terminal grain elevator at Great Falls and for the furnishing of necessary equipment therefor. At the time and place specified in such notices, the board of examiners shall proceed to open bids and to let a contract for the construction of such terminal grain elevator and for the furnishing and installation of the necessary equipment therefor. The state board of examiners are authorized to procure by purchase, by condemnation proceedings or otherwise, a necessary site for the said terminal grain elevator, the location of such site to be approved by the board of managers. The said terminal grain elevator shall be equipped with proper grain cleaning and other necessary machinery; the equipment for said elevator to be determined by the said board of managers and to be fully detailed in the said plans and specifications. The board of examiners of the state of Montana, are hereby vested with full power and authority to enter into a contract or contracts for the construction of said terminal grain elevator and the equipment thereof. The amount to be paid under such contract or contracts and all expenses incurred in procuring a necessary site, the plans and specifications and all other incidental expenses pertaining to the construction of said elevator, shall not exceed the sum of two hundred and fifty thousand dollars, all of which shall be paid out of the proceeds from the sale of the bonds authorized in the preceding section. All moneys shall be paid out on claims presented to the state board of examiners and

approved by the president and secretary of the board of managers and by the board of examiners.

History: En. Sec. 6, Ch. 204, L. 1919.

1598. Operation of elevator. The board of managers shall have full power and authority to manage the said terminal grain elevator and to receive for storage, cleaning and grading, all grain grown in the state of Montana and to sell the same upon the order of the owner thereof, remitting to the owner, the proceeds derived from the sale of such grain, less fair and reasonable charges to be fixed by the board of managers. The said board of managers are authorized and directed to employ a terminal elevator superintendent at a salary not exceeding five thousand dollars per annum. The board of managers shall authorize the issuance by the terminal elevator superintendent of registered warehouse receipts for all grain stored or handled, such receipts to be numbered consecutively and which may be assigned or transferred by endorsement. The board of managers are hereby authorized and directed to adopt necessary rules and regulations for the operation and management of said elevator. Upon the completion of the said elevator, the board of managers shall make a detailed report to the governor of its expenditures incurred in the construction of the said terminal grain elevator, and thereafter the board shall make annual reports of its doings to the governor.

History: En. Sec. 7, Ch. 204, L. 1919.

1599. Inspection of grain. Before any grain shall be received into the terminal grain elevator, the same shall be inspected and graded by an inspector holding a license issued by the United States department of agriculture.

History: En. Sec. 8, Ch. 204, L. 1919.

1600. Bonds. Each member of the board of managers is hereby required to give a bond to the state of Montana for the faithful performance of the duties devolving upon him in the sum of five thousand dollars and the terminal elevator superintendent shall be required to furnish a bond for the faithful performance of his duties in the sum of twenty thousand dollars. Each member of the board of managers and the said superintendent shall also take and subscribe the constitutional oath of office; said oaths of office and bonds shall be filed in the office of the secretary of state and the bonds shall be approved by the state board of examiners.

History: En. Sec. 9, Ch. 204, L. 1919.

1601. Terminal elevator fund. All moneys received for storing and handling grain, after the payment of the expenses of maintaining and operating the said terminal elevator, including the salary of the superintendent and expenses of the board of managers and premiums on the bonds provided for in section 1600, shall be paid into the state treasury quarterly and credited to a separate fund designated as "The Terminal Grain Elevator Fund," and the said fund shall be used exclusively for the payment of the interest and principal of the terminal elevator bonds.

History: En. Sec. 10, Ch. 204, L. 1919.

State ex rel. Lyman v. Stewart, 58 Mont. 1, 4, 190 Pac. 129. Tax levy for bonds held invalid on ground of exempting personal property from taxation in Stoner v. Timmons, 59 Mont. —, 196 Pac. 519.

1602. Penalties. If any member of the board of managers or the superintendent or any other person, either officer, agent or employee, shall knowingly issue false or fraudulent storage receipt or any receipt which purports to be or is represented to be a receipt for grain stored in the said terminal grain elevator when such grain has not in fact been received, or for a greater quantity than has been received, or stored, or shall in any manner issue a false receipt for the purpose of defrauding any person or persons, company or corporation, or the terminal elevator fund of the state of Montana, shall be deemed guilty of a felony and upon conviction shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars, or by imprisonment in the state penitentiary for not less than one or more than ten years, or by both such fine and imprisonment.

Any person guilty of wilfully violating any of the rules and regulations adopted by the board of managers for the operation and maintenance of the said terminal grain elevator shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding ninety days or by both such fine and imprisonment.

History: En. Sec. 11, Ch. 204, L. 1919.

CHAPTER 121.

PENAL AND REFORMATORY INSTITUTIONS.

1603. The control and management of the state prison and the state industrial school is provided for in sections 12434 to 12515 of the Penal Code.

Note.—New section recommended by code commissioner.

ROADS AND PUBLIC WAYS. CHAPTERS 122 TO 140.

Chapter 122. Public Waters.
123. Public Docks and Wharves.
124. Highways—Definition and Classification.
125. Road Taxes and Bonds.
126. Supervision of Public Highways.
127. Establishment, Alteration, and Vacating of Public Highways.
128. Special Road Districts.
129. Local Improvement Districts.
130. Public Bridges.
131. Guide-Boards.
132. Corrugated Iron Culverts.
133. Obstructions and Encroachments.
134. Speed and Traffic Regulations.
135. Registration of Motor Vehicles—Chauffeur's License.
136. Good-Roads Day.
137. Private Roads—How Established.
138. Ferries.
139. State Highway Commission.
140. Construction of Bridge Across Kootenai River.

CHAPTER 122.

PUBLIC WATERS.

Section 1604. What Waters Are Public Ways.

1604. What waters are public ways. Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and such transportation; provided, that this act shall not be so construed as to in any manner affect or impair any rights acquired prior to its passage by any person, association of persons, or corporation; and provided, further, that the right of any person, association of persons, or corporation shall not be abridged to take and use any water as now provided by law from any stream or streams for the purpose of irrigation, or any beneficial or industrial pursuit.

History: En. Sec. 2570, Pol. C. 1895; amd. Sec. 1, p. 126, L. 1901; re-en. Sec. 1326, Rev. C. 1907. Cal. Pol. C. Sec. 2348.

CHAPTER 123.

PUBLIC DOCKS AND WHARVES.

Section 1605. Who May Build Wharves and Docks—Proviso.
1606. Public Use of Wharves and Docks—Charges.
1607. Revocation of License.
1608. Land Under Navigable Water.
1609. Jurisdiction of Railroad Commission.

1605. Who may build wharves and docks—Proviso. Any person or persons owning land bordering upon any of the navigable waters within the state of Montana, are hereby granted a license and permit to build docks and wharves over, across, and upon the "lands under water" belonging to the state of Montana; provided, however, that such docks and wharves shall be extended out into such navigable water such distance only as may be necessary to permit any and all boats, steamboats, and vessels to safely land thereat, and discharge and take on its or their cargoes and passengers.

History: En. Sec. 1, Ch. 38, L. 1909.

Power of state to grant title to land under navigable water, see note in Ann. Cas. 1918B, 1107.

Right to erect wharves under grant, see note in 40 L. R. A. 640.

1606. Public use of wharves and docks — Charges. All docks and wharves built on any of the navigable waters of the state shall be public docks and wharves, and all boats, vessels, and steamboats plying such navigable waters shall have a right to land thereat, and take on and discharge its or their cargoes and passengers thereon; provided, however, the owner of such dock or wharf shall have the right to charge and collect from the owner or owners of such boat, steamboat, or vessel a reasonable compensation therefor.

History: En. Sec. 2, Ch. 38, L. 1909.

Right to and liability for wharfage charges in absence of express contract, see note in 13 Ann. Cas. 384.

1607. Revocation of license. The license granted in section 1605 of this code to build docks and wharves over and upon the lands under the navigable waters of this state conveys no title in such lands, and such license may be revoked by the state of Montana at any time.

History: En. Sec. 3, Ch. 38, L. 1909.

1608. Land under navigable water. By the term "land under water" is meant all land under any navigable waters of this state, extending from high-water mark, or from the meander line where the shores of lakes or streams have been meandered, to the lake or stream.

History: En. Sec. 4, Ch. 38, L. 1909.

1609. Jurisdiction of railroad commission. The railroad commission of this state shall have jurisdiction over all docks and wharves within the state, and have full power to regulate, determine, and fix all dockage and wharfage fees.

History: En. Sec. 5, Ch. 38, L. 1909.

CHAPTER 124.

HIGHWAYS—DEFINITION AND CLASSIFICATION.

Section 1610. Name or Title of Act.
1611. Highways Deemed to Include What.
1612. Public Highways Defined.
1613. Classification—Common and Main Highways.
1614. Abandonment or Vacation of Highways.
1615. Width of Way or Road.
1616. Rights Acquired by Public in Highway.

1610. Name or title of act. This act shall be known as the "General Highway Law."

History: En. Sec. 1, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 141, L. 1915; re-en. Sec. 1, Ch. 172, L. 1917.

Note.—For earlier acts see chapter 44, Laws of 1903, and sections 1337-1456, Revised Codes of 1907.

For discussion of law of highways, see 13 R. C. L. 1.

1611. Highways deemed to include what. Within the meaning of this act, a highway shall be deemed to include its necessary embankments, retaining walls, culverts, sluices, and drains, and a bridge shall be deemed to include its superstructures, abutments, and piers and approaches, except dirt fills.

History: En. Sec. 2, Ch. 72, L. 1913; amd. Sec. 2, Ch. 141, L. 1915; re-en. Sec. 2, Ch. 172, L. 1917.

1612. Public highways defined. All highways, roads, lanes, streets, alleys, courts, places, and bridges laid out or erected by the public, or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the partition of real property, are public highways.

History: En. Sec. 2600, Pol. C. 1895; amd. Sec. 1, Ch. 44, L. 1903; re-en. Sec. 1337, Rev. C. 1907; amd. Sec. 3, Ch. 72, L. 1913; re-en. Sec. 3, Ch. 141, L. 1915; re-en. Sec. 3, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2618.

Note.—For history of this and following sections see Barnard Realty Co. v. City of Butte, 48 Mont. 102, 111, 136 Pac. 1064.

This section, as it appeared in the Political Code of 1895, was construed to be a remedial statute, curing irregularities, but not supplying jurisdiction, where none was acquired, in the creation of roads, and as recognizing the existence of highways by prescription when they had been used or traveled by the people generally for the period named in the statute of limitations. State v. Auchard, 22 Mont. 14, 16, 55 Pac. 361; Montana Ore Purchasing Co. v. Boston & B. Consol. Min. Co., 25 Mont. 427, 431, 65 Pac. 420.

Dedication or abandonment is not shown by mere user until the period of limitations of actions to recover real property has elapsed. Montana Ore Purchasing Co. v. Boston & B. Consol. Min. Co., 25 Mont. 427, 431, 65 Pac. 420.

The keeping of a record by the county commissioners of a certain county road, together with other facts showing its use by the public, was prima facie evidence showing that it was a public road within

the meaning of the above section. Smith v. Zimmer, 45 Mont. 282, 293, 125 Pac. 420.

Those roads only are declared to be public highways which had been established by the public authorities, or were recognized by them and used generally by the public, or which had become such by prescription or adverse use, at the time of the enactment of this section as section 2600 of the Political Code of 1895. Barnard Realty Co. v. City of Butte, 48 Mont. 102, 109, 136 Pac. 1064.

In view of the statute upon the subject, a bridge is a part and parcel of the highway upon which it is built. State ex rel. Foster v. Ritch, 49 Mont. 155, 157, 140 Pac. 731; State ex rel. Donlan v. Board of Commrs., 49 Mont. 517, 523, 143 Pac. 984; State ex rel. Furnish v. Mullendore, 53 Mont. 109, 113, 161 Pac. 949, 953.

It was not the intention of the legislature that all public highways, including roads, streets, alleys, courts, culverts, and bridges composing the same, should be appraised as county property, and the value thus set upon them considered in the adjustment of the property rights and liabilities of counties out of which a new one has been created. State ex rel. Foster v. Ritch, 49 Mont. 155, 157, 140 Pac. 731.

Where one voluntarily erects a bridge intending that it should become a part of an existing public highway and belong to the public as such, or does so under an arrangement by which he might be compensated for the labor and materials furnished in constructing it, he may not claim to be the owner, or attempt to restrain the public in the free use thereof. State ex rel. Donlan v. Board of Commrs., 49 Mont. 517, 523, 143 Pac. 984.

The grant authorized by section 2477, Revised Codes of the United States, is nothing more than an offer of a right of way for the construction of a public highway across the public domain, and can only become fixed when the highway is established and constructed in the manner authorized by the laws of the state in which the land is situated, and where that offer is accepted by user, that user must be shown to have continued over the exact route claimed for the statutory period prior to July 1st, 1895. State ex rel. Dansie v. Nolan, 58 Mont. 167, 172, 191 Pac. 150.

Cited or applied as section 2600, Political Code in State ex rel. Rocky Mt. Bell Tel. Co. v. Red Lodge, 30 Mont. 338, 340, 76 Pac. 758; as section 3, chapter 1, Laws of 1913, in State ex rel. Furnish v. Mullendore, 53 Mont. 109, 113, 161 Pac. 949, 953.

1613. Classification—Common and main highways. Public highways in this state shall hereafter be classed as common highways, main highways, and state highways. All highways which are not established or improved in the manner hereinafter provided for state highways, shall be common or public highways. Common or public highways shall be such as are established or improved in the manner provided by chapter IV of this act (1635-1651.)

History: En. Sec. 4, Ch. 72, L. 1913; re-en. Sec. 4, Ch. 141, L. 1915; re-en. Sec. 4, Ch. 172, L. 1917.

1614. Abandonment or vacation of highways. All public highways once established must continue to be public highways until abandoned by operation of law, or by judgment of a court of competent jurisdiction, or by the order of the board of county commissioners of the county in which they are situated; but no order to abandon any highway shall be valid unless preceded by due notice and hearing as provided in this act; and no state highway can be abandoned except on the joint order of the board of county commissioners and the state highway commission.

History: En. Sec. 5, Ch. 72, L. 1913; re-en. Sec. 5, Ch. 141, L. 1915; re-en. Sec. 5, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2619.

Note.—For earlier acts see section 2601, Political Code, 1895; re-enacted as section 2, chapter 44, Laws of 1903; re-enacted as section 1338, Revised Codes of 1907.

The mere use of land by the public as a street for the statutory period, not coupled with an assumption of jurisdiction over it by the city authorities, is insufficient to clothe the city with title by prescription. Barnard Realty Co. v. City of Butte, 48 Mont. 102, 113, 136 Pac. 1064; id. 55 Mont. 384, 390, 177 Pac. 402.

A highway, whether a county road or a street, once established, cannot be vacated, except by an order of the public authorities having jurisdiction over it.

Barnard Realty Co. v. City of Butte, 48 Mont. 102, 114, 136 Pac. 1064.

Travel by one or more persons over a given route, outside of an incorporated city or town, is not of itself, in the absence of an assumption of jurisdiction by the board of county commissioners, by some definite action, sufficient to constitute adverse use of it as a highway Barnard Realty Co. v. City of Butte, 48 Mont. 102, 113, 136 Pac. 1064.

A public road established at public expense in strict conformity with statutory provisions and with the consent of the owner, who relinquished compensation as to such part of the road as ran through his land, remained such until abandoned as provided in the above section, notwithstanding the failure of the county commissioners to comply with the conditions attached to owner's consent. Flynn v. Beaverhead County, 49 Mont. 347, 352, 141 Pac. 673.

Power to vacate street, see note in 2 Ann. Cas. 877.

Persons entitled to compensation on vacation of street, see notes in 15 Ann. Cas. 687; Ann. Cas. 1913D, 790; Ann. Cas. 1916C, 238; 26 L. R. A. 662; 36 L. R. A. (N. S.) 1115.

1615. Width of way or road. The width of all public highways, except bridges, alleys, lanes, must be sixty feet unless a greater or less width is ordered by the board of county commissioners on petition of the person interested. The width of all private highways and by-roads, except bridges, must be at least twenty feet. Nothing in this act must be construed as to increase or diminish the width of either kind of a highway already established or used as such.

History: Ap. p. Sec. 10, p. 106, L. 1874; re-en. Sec. 1061, 5th Div. Rev. Stat. 1879; re-en. Sec. 1822, 5th Div. Comp. Stat. 1887; amd. Sec. 2602, Pol. C. 1895; amd. Sec. 3, Ch. 44, L. 1903; re-en. Sec. 1339, Rev. C. 1907; re-en. Sec. 6, Ch. 72, L. 1913; re-en. Sec. 6, Ch. 141, L. 1915; re-en. Sec. 6, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2620.

It is no objection to the proceedings to open a road that the width of such proposed road was not designated either in the report of the viewers or the order opening the road, since the width of highways within the state being regulated by statute, such width prevails where the proceedings are silent upon that point. Crowley v. Board of Commissioners, 14 Mont. 292, 297, 36 Pac. 313.

In this state, the lawful width of public highways is generally sixty feet. City of Butte v. Mikowitz, 39 Mont. 350, 357, 102 Pac. 593.

When a sufficient portion of a public highway is graded or otherwise prepared for travel, the invitation to the public to use the highway is confined to the prepared or used portion, and the duty then devolves upon the traveler to keep within that portion prepared for its use, and for injuries received outside of that portion he cannot recover, unless he can excuse his presence at the place where he was injured. Howard v. Flathead Independent Tel. Co., 49 Mont. 197, 202, 141 Pac. 153.

While theoretically a public highway in this state is sixty feet in width, the county is not required to grade or keep it, for its entire width, in condition for public travel; but its duty is fully discharged if the portion graded or made ready for travel is of sufficient width to accommodate the use which may be fairly anticipated to be made of it, and the authorities in control may use the remaining portions for purposes inconsistent with their use as driveways, as, for instance, for piling stones, cutting down and leaving steep embankments, or for drainage ditches. Howard v. Flathead Independent Tel. Co., 49 Mont. 197, 201, 141 Pac. 153.

Width of highways acquired by adverse user, see note in 2 Ann. Cas. 973.

Rights acquired as against public by enclosure and adverse possession of part of width of highway, see note in 18 L. R. A. 149.

1616. Rights acquired by public in highway. By taking or accepting land for a highway, the public acquires only the right of way and the incidents necessary to enjoying and maintaining the same, subject to the regulations in this act and the civil code provided.

History: En. Sec. 2620, Pol. C. 1895; re-en. Sec. 6, Ch. 44, L. 1903; re-en. Sec. 1342, Rev. C. 1907; re-en. Sec. 7, Ch. 72, L. 1913; re-en. Sec. 7, Ch. 141, L. 1915; re-en. Sec. 7, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2631.

CHAPTER 125.

ROAD TAXES AND BONDS.

Section 1617. Road Tax Levy—General Road Tax.
1618. Issuance of Highway Bonds—Limit of Indebtedness.
1619. Employers to Furnish Lists of Employees Liable to Tax.
1620. County Treasurer to Notify Employer of Liability for Tax.

1617. Road tax levy—General road tax. For the purpose of raising revenue for the construction, maintenance, and improvement of public highways, the board of county commissioners of each county in this state shall annually levy and cause to be collected a general tax upon the taxable property in the county of not less than two mills, and not more than five mills on the dollar, which shall be payable to the county treasurer with other general taxes. There is also established a general road tax of two dollars per annum on each male person over the age of twenty-one years, and under the age of fifty years, inhabitant within the county, and payable by each person liable therefor at any time within the year. The collection of these taxes shall be under the direction of the board of county commissioners; taxes from freeholders to be collected the same as other taxes, and from non-freeholders as commissioners may direct; provided, that the foregoing provisions of this section shall not apply to incorporated cities and towns which, by ordinance, provide for the levy and collection of a like general tax and a like special tax within such cities and towns for road, street, and alley purposes. All moneys collected under the provisions of this act shall belong to the general road fund of the county.

History: Ap. p. Sec. 19, p. 110, L. 1874; re-en. Sec. 1070, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 119, L. 1885; re-en. Sec. 1796, 5th Div. Comp. Stat. 1887; amd. Sec. 2640, Pol. C. 1895; amd. Sec. 1, p. 176, L. 1897; amd. Sec. 1, p. 69, L. 1899; amd. Sec. 11, Ch. 44, L. 1903; re-en. Sec. 1344, Rev. C. 1907; amd. Sec. 1, Ch. 2, Ch. 72, L. 1913; amd. Sec. 2, Ch. 2, Ch. 141, L. 1915; amd. Sec. 2, Ch. 2, Ch. 172, L. 1917. Cal. Pol. C. Secs. 2651-2655.

1618. Issuance of highway bonds—Limit of indebtedness. Whenever, in the judgment of the board of county commissioners of any county, it becomes necessary or advisable for the construction or improvement of any main highway or state highway therein, to raise revenue in addition to that furnished by the taxes and licenses authorized by this act, it shall be lawful for such board to issue, on the credit of the county, coupon bonds to such amounts as said board may find necessary; provided that such bonds shall not, together with all other outstanding indebtedness of the county, exceed five per centum of the value of the taxable property within such county, to be ascertained by the last preceding general assessment therein; and provided, further, that such proceedings be had prior to and in the issuance of such bonds, as are required in the case of other county bonds by sections 4614 to 4636 and by 4717 to 4722 of this code.

History: En. Sec. 2, Ch. 2 of Ch. 72, L. 1913; re-en. Sec. 2, Ch. 2 of Ch. 141, L. 1915; re-en. Sec. 2, Ch. 2, Ch. 172, L. 1917.

1619. Employers to furnish lists of employees liable to tax. Every employer having in his or its employment any person or persons liable for the special road tax of two dollars, mentioned in this act, must on or before the third Monday of March in each year, and monthly thereafter

until the first day of October, furnish to the county treasurer a complete list of all the persons so employed, and if any such employer shall neglect or refuse to furnish such list, he shall forfeit to the county, in which said road tax is collectible, the sum of fifty dollars, to be recovered by an action brought in the name of the state in any justice court of said county, and the further sum of fifty dollars for each refusal or neglect to furnish such list after any demand shall have been made by the county treasurer. Upon the receipt of said lists it shall be the duty of said county treasurer to furnish to said employer furnishing such lists, printed special road tax receipt-books, with proper stubs containing memorandum of name, amount, and date attached.

History: Ap. p. Sec. 1838, 5th Div. Comp. Stat. 1887; amd. Sec. 2681, Pol. C. 1895; amd. Sec. 26, Ch. 44, L. 1903; re-en. Sec. 1353, Rev. C. 1907; amd. Sec. 3, Ch. 2, Ch. 72, L. 1913; re-en. Sec. 3, Ch. 2, Ch. 141, L. 1915; re-en. Sec. 3, Ch. 2, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2671.

Constitutionality of poll-taxes, see notes in 12 Ann. Cas. 317; Ann. Cas. 1917E, 1208; 29 L. R. A. 406.

Classification for poll-tax as affected by constitutional requirement of uniformity, see note in 1 Ann. Cas. 639.

1620. County treasurer to notify employer of liability for tax. If any person required to pay the special road tax mentioned in this act does not pay the same and has no property subject to taxation, and the person owning the same is in the employment of any other person, the county treasurer must deliver to the employer a written notice, stating the amount of tax due for such employee, and from the time of receiving said notice the employer is liable to pay said tax, and the tax so paid may be deducted by such employer from the amount then due or to become due to such employee.

History: Ap. p. Sec. 1837, 5th Div. Comp. Stat. 1887; amd. Sec. 2680, Pol. C. 1895; amd. Sec. 3, p. 176, L. 1897; amd. Sec. 27, Ch. 44, L. 1903; re-en. Sec. 1354, Rev. C. 1907; re-en. Sec. 4, Ch. 2, Ch. 72, L. 1913; re-en. Sec. 4, Ch. 2, Ch. 141, L. 1915; re-en. Sec. 4, Ch. 2, Ch. 172, L. 1917.

Legislative power to compel employer to pay employee's poll-tax, see note in 13 L. R. A. (N. S.) 901.

CHAPTER 126.

SUPERVISION OF PUBLIC HIGHWAYS.

Section 1621. Highway Proceedings to Be Included in Minutes.
1622. Powers and Duties of County Commissioners Respecting Highways.
1623. Purchase of Machinery and Materials.
1624. Road Supervisors—Appointment and Compensation.
1625. Duties of Road Supervisors—Reports, Accounts, and Statements.
1626. Employment of Laborers, Teams, etc.
1627. Removal of Obstructions and Repair of Bridges.
1628. Limit on Amount Expended in Road District.
1629. Examination of Supervisor's Report—Warrant for Claims.
1630. Construction of Drains and Ditches—Penalty for Obstructions.
1631. Tools and Implements for Use of Road Supervisor.
1632. Inspection of Construction Work—Compensation.
1633. Law Declared an Emergency Measure.
1634. Minute Entry of Inspection.

1621. Highway proceedings to be included in minutes. The county clerk must include in the minutes of the board of county commissioners all proceedings and orders of the board relative to each highway within the county.

History: En. Sec. 1, Ch. 3 of Ch. 141, L. 1915; re-en. Sec. 1, Ch. 3 of Ch. 172, L. 1917.

1622. Powers and duties of county commissioners respecting highways. The boards of county commissioners of the several counties of the state have general supervision over the highways within their respective counties:

1. They may, in their discretion, keep the county divided into suitable road districts, place each of such road districts in charge of a competent road supervisor, and order and direct each of such supervisors concerning the work to be done upon the public highway in his district.

2. They may, in their discretion, provide and order the county surveyor, or if the county surveyor is incompetent, some other competent surveyor designated by the board, to prepare suitable plat books and have recorded therein with the county clerk a full description of every public highway within the county, showing each course by bearing and distance, with a full and complete map thereof, together with a record of all other proceedings with reference to the same.

3. They must cause to be surveyed, viewed, laid out, recorded, opened, worked, and maintained such highways as are necessary for public convenience, as in this act provided, and cause to be erected and maintained thereon guide-posts, as provided in this act.

4. They must abolish or abandon in the manner provided in this act such public highways as are not necessary for the public convenience.

5. They must contract, agree for, purchase, or otherwise lawfully acquire the right of way over private property for the use of public highways, and for that purpose institute, when necessary, proceedings under sections 9933 to 9958 of the Code of Civil Procedure, paying for such right of way from the general road fund of the county.

6. They may, in their discretion, but subject to the limitations and provisions in the constitution and codes provided, issue bonds upon the faith and credit of the county for the construction or improvement of main highways, state highways, and bridges.

7. They may, in their discretion, but subject to the limitations and restrictions provided in the codes for the letting of public contracts, let out by contract the construction, maintenance, and improvement of the public highways, and the construction, maintenance, or repairs of bridges, when the amount of work to be done exceeds the sum of one thousand dollars.

8. They may, in their discretion, cause to be done whatever may be necessary for the best interests of the roads and road districts of their several counties.

9. They must make such reports, relating to the state roads under their supervision, to the state highway commission, as may be requested by said commission.

10. They may, in their discretion, employ a competent road builder, who shall, in counties of the first class, be the county surveyor, and who shall be paid for his services not to exceed eight dollars per day and his actual expenses, who shall serve during the pleasure of the board, whose duty it shall be, under the direction and control of said board, to prescribe the time and place, when and where, all work shall be done on the roads of the county; report any delinquency or inefficiency of any road overseer, or any other person employed upon such road, to the board of county com-

missioners, and perform such other duties as may be prescribed by the said board.

History: En. Sec. 2, Ch. 3, Ch. 172, L. 1913; amd. Sec. 2, Ch. 3, Ch. 141, L. 1915; amd. Sec. 2, Ch. 3, Ch. 172, L. 1917; amd. Sec. 1, Ch. 15, Ex. L. 1919. Cal. Pol. C. Secs. 2641-2643.

The liability of county commissioners for injuries resulting from defective highways is not absolute, but depends upon a solution of the question whether or not they have been guilty of negligence. Smith v. Zimmer, 45 Mont. 282, 303, 125 Pac. 420.

Before the individual members of a board of county commissioners can be held personally answerable for negligent conduct in refusing to repair a public highway, the board of which they are members must have actual notice of such defective condition; but if, after such actual notice to the board, any two or more members thereof negligently or wilfully refuse to cause the defect to be repaired, either directly or through the agency of the road supervisors, the members, so guilty of negligent conduct, are answerable to one who, without contributory negligence on his part, is injured thereby. Smith v. Zimmer, 45 Mont. 282, 306, 125 Pac. 420.

Cited or applied as section 2, chapter 141, Laws of 1915, before amendment, in State v. Story, 53 Mont. 573, 581, 165 Pac. 748.

1623. Purchase of machinery and materials. The board of county commissioners may also, in their discretion, out of the general road fund of the county, purchase and operate grading and other machinery that they may deem necessary or desirable for the improvement of the public highways in the county, and may also acquire, out of the same fund, by purchase, condemnation, lease, or gift, deposits or quarries of suitable road-building material; and any crushed rock or gravel, not directly used or needed by such county in the construction, repair, or maintenance of its roads, may be sold at not less than actual cost of production to any person, firm, or corporation desiring to use the same upon any public street or highway within the county, and the proceeds of any such sale shall be paid into the general road fund.

History: En. Sec. 3, Ch. 3 of Ch. 72, L. 1913; re-en. Sec. 3, Ch. 3 of Ch. 141, L. 1915; amd Sec. 3, Ch. 3 of Ch. 172, L. 1917.

1624. Road supervisors—Appointment and compensation. Road supervisors, when appointed, shall serve during the pleasure of the board of county commissioners, and shall in all things be under the direction and control of said board. Every road supervisor must, before entering upon the duties of his office, be a resident elector of the road district for which he is appointed and must file with the county clerk the customary oath of office, together with a bond approved by said board for the faithful performance of his duties. As compensation for his services he shall receive not more than six dollars per day for eight hours' labor, but the time taken in going to or from his home to the place of labor shall not be included within such period of eight hours.

History: En. Sec. 4, Ch. 3, Ch. 72, L. 1913; amd. Sec. 4, Ch. 141, L. 1915; re-en. Sec. 4, Ch. 3, Ch. 172, L. 1917; amd. Sec. 2, Ch. 15, Ex. L. 1919.

1625. Duties of road supervisors—Reports, accounts and statements. Road supervisors, when appointed and under the direction and supervision of the board of county commissioners, must:

1. Take charge of all highways, bridges, and causeways within their respective districts; open all new roads when the same are duly established and ordered to be opened by the board of county commissioners; perform at the time and in the manner directed by the board of county commis-

sioners whatever shall be lawfully directed by the board concerning the public highways within their respective districts.

2. Make and file with the county clerk verified reports quarterly, or oftener if required by the county commissioners, showing the number of days they have been employed during the previous three months and when and how employed; the number of days' labor performed upon the public highways in their respective districts, when and by whom performed, the character and kind of work done, and the wages agreed to be paid per day; the number of teams and implements, and the amount, value, and kind of material used, by whom and where used, and the price agreed to be paid therefor; the number and character of all the tools and implements belonging to the county within their respective districts.

3. Keep a correct account of all labor performed and animals, implements, or material furnished by himself or others upon the public highways, and give to persons performing such work or furnishing such animals, implements, or materials, a certificate stating the number of days' work performed, the character and kinds of such work, and the price agreed to be paid therefor; and the number of days any animals or implements have been used, and the price to be paid therefor, and the amount and character of all materials furnished.

History: Ap. p. Sec. 13, p. 68, L. 1899; amd. Sec. 2632, Pol. C. 1895; amd. Sec. 10, Ch. 44, L. 1903; re-en. Sec. 1360, Rev. C. 1907; amd. Sec. 5, Ch. 3, Ch. 72, L. 1913; re-en. Sec. 5, Ch. 3, Ch. 141, L. 1915; re-en. Sec. 5, Ch. 3, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2645.

1626. Employment of laborers, teams, etc. Whenever it becomes necessary for any road supervisor, in the repairing of any public highway in his district, to secure the assistance of other persons, he shall be empowered to employ suitable laborers, teams, and implements, and to contract as to the price to be paid therefor, which must not exceed the rates fixed by the board of county commissioners for such laborers, teams, and implements per day of eight hours; provided, that the time taken by such laborers or teams in going to and from the place of labor shall not be included within such period of eight hours.

History: En. Sec. 6, Ch. 3, Ch. 72, L. 1913; re-en. Sec. 6, Ch. 3, Ch. 141, L. 1915; re-en. Sec. 6, Ch. 3, Ch. 172, L. 1917; amd. Sec. 3, Ch. 15, Ex. L. 1919.

1627. Removal of obstructions and repair of bridges. Whenever any public highway becomes obstructed from any cause, or any bridge needs repairing or becomes dangerous for the passage of teams or travelers, the board of county commissioners, or the supervisor of the road district, if there be one, upon being notified thereof, must forthwith cause such obstruction to be removed, or bridge repaired, for which purpose the board of county commissioners or the road supervisor of the district may order out such number of inhabitants of the district as may be necessary to aid in removing such obstructions or repairing such bridge. If any persons after three days' notice, whether said notice be oral or written, being physically able to respond, shall fail to be present at the time and place designated, or, having attended, refuses to obey the direction of the person in charge of the work, or passes his time in idleness, or inattention to the duty assigned him, he shall be liable to punishment as for a misdemeanor; provided, that every person responding to any such order and performing

the duties assigned him shall be compensated for his labor at a rate not to exceed four dollars per day of eight hours, the time taken in going to and from the place of labor not included.

History: Ap. p. Sec. 12, p. 119, Ex. L. 1873; amd. Sec. 24, p. 113, L. 1874; re-en. Sec. 1075, 5th Div. Rev. Stat. 1879; re-en. Sec. 1802, 5th Div. Comp. Stat. 1887; amd. Sec. 2720, Pol. C. 1895; amd. Sec. 36, Ch. 44, L. 1903; re-en. Sec. 1372, Rev. C. 1907; amd. Sec. 7, Ch. 3, Ch. 72, L. 1913; amd. Sec. 7, Ch. 3, Ch. 141, L. 1915; re-en. Sec. 7, Ch. 3, Ch. 172, L. 1917.

Note.—The above section rewritten to correct obvious grammatical errors.

Though a road supervisor or a board of county commissioners do not have sufficient funds at their disposal to repair a dangerous place in a highway, this does not excuse them from taking suitable measures to give notice of the obstruction, or to provide suitable barriers to prevent a traveler from being injured by it. Smith v. Zimmer, 45 Mont. 282, 301, 125 Pac. 420.

Right to temporarily obstruct highway by erecting barrier, see note in Ann. Cas. 1914A, 1197.

1628. Limit on amount expended in road district. The amount of expenditures in any road district for labor and teams, together with the compensation to be paid to the supervisor, shall not exceed in the aggregate the sum apportioned quarterly by the board of county commissioners to such road district, but if such sum is not sufficient, said board may appropriate from the general road fund any amount which may be necessary in their judgment for the use and benefit of such district; provided, however, that the full amount of all road taxes collected in remote and outlying districts shall be expended annually by the county commissioners on the roads within the boundaries of said districts.

History: En. Sec. 8, Ch. 3 of Ch. 72, L. 1913; amd. Sec. 8, Ch. 3 of Ch. 141, L. 1915; re-en. Sec. 8, Ch. 3 of Ch. 172, L. 1917.

1629. Examination of supervisor's report—Warrant for claims. The board of county commissioners, at the first monthly or quarterly meeting held after the filing of any supervisor's report, must examine the same and if found correct and the work reported to have been done was necessary and properly done, cause an order to be drawn on the county treasurer against the road fund for the amount due any road supervisor for his services; and upon the presentation of any certificate issued by road supervisors for labor performed by others, and the verification by the owners thereof, as in other cases of claims against the county, the board shall cause to be issued to the owner or holder of such claims a warrant for the amount thereof, drawn on the county treasurer against the road fund.

History: Ap. p. Sec. 4, p. 118, L. 1885; re-en. Sec. 1834, 5th Div. Comp. Stat. 1887; re-en. Sec. 2695, Pol. C. 1895; amd. Sec. 33, Ch. 44, L. 1903; re-en. Sec. 1367, Rev. C. 1907; amd. Sec. 9, Ch. 3, Ch. 72, L. 1913; re-en. Sec. 9, Ch. 3, Ch. 141, L. 1915; re-en. Sec. 9, Ch. 3, Ch. 172, L. 1917.

1630. Construction of drains and ditches—Penalty for obstructions. The road supervisor, or other person designated by the board of county commissioners, has authority to open or construct drains and ditches for the making and preserving of roads and highways, doing as little injury as may be to the adjoining land, and any person stopping or obstructing the drains or ditches so made forfeits the sum of fifty dollars, to be recovered by the supervisor or board of county commissioners in a civil action in any court of competent jurisdiction. If any person feels aggrieved by the act of any supervisor, or other person designated by the board of county commissioners, he may make complaint in writing to the board of

county commissioners, who will allow just damages and pay the same out of the road fund.

History: Ap. p. Sec. 1801, 5th Div. Comp. Stat. 1887; re-en. Secs. 2700 and 2701, Pol. C. 1895; amd. Sec. 34, Ch. 44, L. 1903; re-en. Sec. 1370, Rev. C. 1907; amd. Sec. 10, Ch. 3, Ch. 72, L. 1913; re-en. Sec. 10, Ch. 3, Ch. 141, L. 1915; re-en. Sec. 10, Ch. 3, Ch. 172, L. 1917.

1631. Tools and implements for use of road supervisor. Upon the requisition of any road supervisor, the board of county commissioners shall, whenever necessary, furnish to said supervisor any plows, scrapers, or other tools and implements necessary for the use of his road district, and cause the same to be paid for out of the general road fund of the county. The supervisor must preserve such tools and implements, and must not allow the same to be used except on public highways; at the expiration of his term of office, or upon his removal therefrom, he must turn over all such tools and implements to his successor or to the board of county commissioners.

History: Ap. p. Secs. 2710-2711, Pol. C. 1895; amd. Sec. 35, Ch. 44, L. 1903; re-en. Sec. 1371, Rev. C. 1907; amd. Sec. 11, Ch. 3, Ch. 72, L. 1913; re-en. Sec. 11, Ch. 3, Ch. 172, L. 1917.

1632. Inspection of construction work—Compensation. The board of county commissioners may direct the county surveyor, or some member or members of said board, to inspect the condition of any proposed highway or highways or work on any highway or bridge in the county during the progress of the work, and before payment therefor, and such member or members of said board shall receive for making said inspection the sum of eight dollars per day and actual expenses, and the county surveyor shall receive for making such inspection when directed, and for all other work performed for the county under the direction of the board of county commissioners, the sum of eight dollars per day and actual expenses, which shall be audited and allowed in the same manner as any other claims against the county.

History: Ap. p. Sec. 1805, 5th Div. Comp. Stat. 1887; amd. Secs. 2740-2741, Pol. C. 1895; amd. Secs. 51-52, Ch. 44, L. 1903; amd. Secs. 1-2, Ch. 76, L. 1905; re-en. Secs. 1387-1388, Rev. C. 1907; amd. Secs. 12-13, Ch. 3, Ch. 72, L. 1913; amd. Secs. 12-13, Ch. 3, Ch. 141, L. 1915; amd. Sec. 1, Ch. 106, L. 1917; amd. Sec. 12, Ch. 3, Ch. 172, L. 1917; amd. Sec. 4, Ch. 15, Ex. L. 1919.

As respects per diem, a commissioner may receive eight dollars per day for each day's attendance upon sessions of the board and for each day given to inspection of contract road work under order of the board, but shall receive no other compensation. State v. Story, 53 Mont. 573, 583, 165 Pac. 748.

1633. Law declared an emergency measure. This act is hereby declared to be an emergency law, and a law necessary for the immediate preservation of the public peace and safety.

History: En. Sec. 5, Ch. 15, Ex. L. 1919.

1634. Minute entry of inspection. The county surveyor, or such member or members of said board, when they act jointly, if there be no prior board order so directing, must, at the next regular meeting of the board, make proper entries of such inspection.

History: Ap. p. Sec. 2742, Pol. C. 1895; amd. Sec. 53, Ch. 44, L. 1903; amd. Sec. 3, Ch. 76, L. 1905; re-en. Sec. 1389, Rev. C. 1907; amd. Sec. 14, Ch. 3, Ch. 72, L. 1913; re-en. Sec. 14, Ch. 3, Ch. 141, L. 1915; amd. Sec. 13, Ch. 3, Ch. 172, L. 1917.

CHAPTER 127.

ESTABLISHMENT, ALTERATION AND VACATING OF PUBLIC HIGHWAYS.

Section 1635. Petition by Freeholders to Establish, Change, or Discontinue.
1636. Contents of Petition.
1637. Investigation of Petitions for Change in or Discontinuance of Public Highways.
1638. Minute Entry of Action on Petition—Notice to Interested Parties.
1639. Opening of Highway—Survey of Same—Claims for Damages.
1640. Determination of Damages.
1641. Award of Damages Deemed Rejected, When—Proceeding to Secure Right of Way—Validity.
1642. Fund Out of Which Expenses Are to Be Defrayed.
1643. Record of Opening or Alteration of Highway.
1644. Opening Highway Through or Along Growing Crops.
1645. Notice to District Supervisor of Opening of Highway—Award of Contract—Bond of Contractor.
1646. Recording Deeds and Judgments for Right of Way.
1647. Crossing of Railroad, Canals, and Ditches.
1648. Removal of Fences—Notice.
1649. Highways to Follow Subdivision or Section Lines.
1650. Change of Highway Upon Petition of Freeholders.
1651. Defects in Proceedings Not to Invalidate.

1635. Petition by freeholders to establish, change, or discontinue. Any ten, or a majority of the freeholders of a road district, taxable therein for road purposes, may petition in writing the board of county commissioners to establish, change, or discontinue any common or public highway therein. When such a highway is petitioned for upon the dividing line between two counties, the same course must be pursued as in other cases, except that a copy of the petition must be presented to the board of county commissioners of each county, who shall act jointly.

History: En. Sec. 55, p. 35, L. 1901; amd. Sec. 54, Ch. 44, L. 1903; re-en. Sec. 1390, Rev. C. 1907; amd. Sec. 1, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 4, Ch. 141, L. 1915; amd. Sec. 1, Ch. 4, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2681.

In the absence of statutory provision, the commissioners are not required to state in their proceedings to open a road that the petitioners were citizens of the United States or the county. Crowley v. Board of Commrs., 14 Mont. 292, 297, 36 Pac. 313.

In the absence of constitutional restrictions or prohibitory legislation, the people of a county can establish and construct as many highways, bridges, and ferries as they deem necessary, and by whatsoever method of procedure they may elect. The power of the county to establish a highway by any method of procedure it may elect, and to issue of bonds for that purpose after a valid election, is not taken away because the requisite number of freeholders may not petition therefor, or because it may not be able to acquire rights of way, or because permission has not been obtained from congress to erect a bridge across a navigable stream, where permission has been obtained since the election. Reid v. Lincoln County, 46 Mont. 31, 64, 125 Pac. 429.

See Flynn v. Beaverhead County, 54 Mont. 309, 170 Pac. 13, construing similar sections of Revised Codes of 1907, relating to vacating, opening, laying out, or changing highways.

For general discussion as to establishment, alteration and discontinuance of highways, see 13 R. C. L. 21, 60.

1636. Contents of petition. The petition must set forth and describe particularly the highways to be abandoned, discontinued, altered, or constructed, and if the same are to be altered, laid out, or constructed, the general route thereof, over what lands, who are owners thereof, whether such of them as can be found consent thereto, and if not, the probable

cost of the right of way, where consent is not had, the necessity for, and advantage of the proposed road.

History: En. Sec. 56, p. 35, L. 1901; amd. Sec. 55, Ch. 44, L. 1903; re-en. Sec. 1391, Rev. C. 1907; amd. Sec. 2, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 2, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 2, Ch. 4, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2682.

1637. Investigation of petitions for change in or discontinuance of public highways. When any petition is filed as authorized in the preceding section, the board of county commissioners shall, at their next regular or special meeting, or at some date within thirty days thereafter, proceed and cause an investigation to be made as to the feasibility, desirability, and cost of granting the prayer of said petition, causing such investigation to be had as may be necessary to properly determine the merits or demerits of the petition.

History: En. Sec. 3, Ch. 4 of Ch. 141, L. 1915; amd. Sec. 3, Ch. 4 of Ch. 172, L. 1917; amd. Sec. 1, Ch. 4, Ex. L. 1919.

1638. Minute entry of action on petition—Notice to interested parties. After the commissioners shall have considered the petition, provided that not more than one member of the board of county commissioners and the county surveyor shall act as viewers in making the investigation, they shall make an entry on their minutes of their decision with reference thereto, and cause notice to be sent by registered mail to the parties interested therein of their findings on said petition.

History: En. Sec. 4, Ch. 4 of Ch. 172, L. 1917. Cal. Pol. C. Secs. 2685, 2686.

1639. Opening of highway—Survey of same—Claims for damages. If the petition is for the opening of a highway, and the board grants the prayer of said petition and orders the same opened, they shall proceed at once to have the same opened to the public and declare it to be a public highway; and the board may order the county surveyor, or if the county surveyor is incompetent, some other competent surveyor designated by the board to survey the same and plat it and file his field notes with the county clerk and recorder, for which the surveyor shall receive seven dollars per day and actual traveling expenses.

The board of county commissioners, upon making each and every order establishing the location or alteration of any highway, must find the amount of damages sustained by each and every person owning or claiming lands, or any improvements thereon and affected thereby, such amounts to be paid to the proper owner or claimant, if known, upon their showing or establishing their right or title to such lands or improvements, and furnishing proper deeds and releases. If the awards are all accepted, the road must be declared a public highway and opened.

History: En. Sec. 5, Ch. 4, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2689.

It is not essential that the compensation due a non-consenting landowner for land appropriated for a public highway be paid in money. The benefit which he might derive from the opening of the new road over a particular route might furnish consideration for the right of way over his land. Flynn v. Beaverhead County, 54 Mont. 309, 313, 170 Pac. 13.

1640. Determination of damages. The damage must be determined by ascertaining the benefits and damages accruing to any person by reason of altering, changing, or laying out such roads, and the sum estimated, as

benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

History: En. Sec. 2760, Pol. C. 1895; re-en. Sec. 65, p. 38, L. 1901; re-en. Sec. 63, Ch. 44, L. 1903; re-en. Sec. 1399, Rev. C. 1907; re-en. Sec. 8, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 8, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 6, Ch. 4, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2688.

1641. Award of damages deemed rejected, when—Proceeding to secure right of way—Validity. If any award of damages is not accepted within twenty days from the day of the award, it shall be deemed rejected by the land owners. The board must, by order, direct proceedings to procure the right of way to be instituted by the county attorney of the county as provided by sections 9933 to 9958 of the Code of Civil Procedure, against all non-accepting land owners. When the board of county commissioners direct the institution of such proceedings the failure of the board of county commissioners to give any notices, or to do any act or thing necessary to be done, as provided in the preceding sections of this chapter, shall in no manner affect or invalidate said proceedings to procure the right of way, nor shall such failure to give any notice as hereinbefore provided be considered by the court as a defense in any proceedings instituted for the purpose of procuring said right of way and such proceedings when instituted, shall be had and taken as separate and apart from any act of the board of county commissioners hereinbefore mentioned, provided that the fact that rights of way sought to be secured shall have been declared by resolution of the board of county commissioners as necessary and desirable for the construction of a public highway shall be made to appear.

History: Ap. p. Sec. 2761, Pol. C. 1895; amd. Sec. 66, p. 38, L. 1901; amd. Sec. 64, Ch. 44, L. 1903; re-en. Sec. 1400, Rev. C. 1907; amd. Sec. 9, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 9, Ch. 4, Ch. 141, L. 1915; amd. Sec. 7, Ch. 4, Ch. 172, L. 1917; amd. Sec. 2, Ch. 4, Ex. L. 1919. Cal. Pol. C. Secs. 2689-2690.

Note.—This section rewritten to correct ambiguous phraseology.

1642. Fund out of which expenses are to be defrayed. All awards by agreement, ascertained by the board of county commissioners or by the proper court, and all expenses, including their own expenses and per diem as is authorized by section 4464 of this code, must be paid out of the general road fund on the order of the board of county commissioners.

History: Ap. p. Sec. 2762, Pol. C. 1895; re-en. Sec. 67, p. 38, L. 1901; amd. Sec. 65, Ch. 44, L. 1903; re-en. Sec. 1401, Rev. C. 1907; re-en. Sec. 10, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 10, Ch. 4, Ch. 141, L. 1915; amd. Sec. 8, Ch. 4, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2691.

1643. Record of opening or alteration of highway. If a highway is opened or altered, the findings of the commissioners and the plat field-notes, and report of the surveyor must be recorded in the office of the county clerk in books kept for that purpose.

History: En. Sec. 2763, Pol. C. 1895; re-en. Sec. 68, p. 38, L. 1901; re-en. Sec. 66, Ch. 44, L. 1903; re-en. Sec. 1402, Rev. C. 1907; re-en. Sec. 11, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 11, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 9, Ch. 4, Ch. 171, L. 1917.

1644. Opening highway through or along growing crops. No highway must be ordered opened through fields of growing crops, or along the line

where crops would thereby be exposed to stock, until the owner thereof has sufficient time to harvest and care for such crops.

History: En. Sec. 2765, Pol. C. 1895; re-en. Sec. 70, p. 38, L. 1901; re-en. Sec. 68, Ch. 44, L. 1903; re-en. Sec. 1404, Rev. C. 1907; re-en. Sec. 13, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 13, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 10, Ch. 4, Ch. 171, L. 1917.

1645. Notice to district supervisor of opening of highway—Award of contract—Bond of contractor. When a highway is to be opened, constructed, altered, or widened, the county clerk must notify the supervisor of the proper district and furnish him with a certified copy of the order of the county commissioners; provided, that when the estimated cost of opening, constructing, altering, or widening exceeds two hundred dollars, the work may, in the discretion of the county commissioners, be let by contract; and if such estimated cost exceeds the sum of five hundred dollars, such work may be let by contract unless the board shall find that such work may be otherwise done at less cost; but before any contract shall be let, as provided herein, the board of county commissioners shall advertise for bids therefor, at least once a week for two successive weeks, in a newspaper of general circulation in the county, and the contract shall then be awarded to the lowest responsible bidder, who shall, before entering upon the performance of the work, execute and deliver to the board of county commissioners an undertaking with two or more sureties, to be approved by the board of county commissioners, in a sum not less than equal the amount for which the contract is awarded, and conditioned for the prompt, faithful, and efficient performance of such work; provided, however, the board of county commissioners may reserve the right to reject any and all bids.

History: Ap. p. Sec. 2766, Pol. C. 1895; amd. Sec. 69, Ch. 44, L. 1903; re-en. Sec. 1405, Rev. C. 1907; amd. Sec. 14, Ch. 4, Ch. 72, L. 1913; amd. Sec. 14, Ch. 4, Ch. 141, L. 1915; amd. Sec. 11, Ch. 4, Ch. 172, L. 1917.

1646. Recording deeds and judgments for right of way. In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned and paid for, either an instrument in writing, conveying the right of way and incident thereto, signed and acknowledged by the party making it, or a certified copy of the judgment of the court condemning the same, must be made and filed and recorded in the office of the county clerk, in which the land so conveyed or condemned must be particularly described.

History: En. Sec. 2767, Pol. C. 1895; re-en. Sec. 72, p. 39, L. 1901; re-en. Sec. 70, Ch. 44, L. 1903; re-en. Sec. 1406, Rev. C. 1907; re-en. Sec. 15, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 15, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 12, Ch. 4, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2693.

1647. Crossing of railroad, canals, and ditches. Whenever highways are laid out across railroads, canals, or ditches, or public lands, the owners or corporations using the same must, at their own expense, so prepare their roads, canals, or ditches, that the public highway may cross the same without damage or delay; and when the right of way for a public highway is obtained through the judgment of any court over any railroad, canal, or ditch, no damage must be awarded for the simple right to cross the same.

History: En. Sec. 2768, Pol. C. 1895; re-en. Sec. 73, p. 39, L. 1901; re-en. Sec. 71, Ch. 44, L. 1903; re-en. Sec. 1407, Rev. C. 1907; re-en. Sec. 16, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 16, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 13, Ch. 4, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2694.

1648. Removal of fences—Notice. When the alteration of an old or the opening up of a new road makes it necessary to remove the fences on land given, purchased, or condemned by order of the court for road or highway purposes, notice to remove the fence must be given by the road supervisor, or other person designated by the board of county commissioners, to the owner, the occupant, or agent, by registered mail, postage prepaid, to his or her address; and if the same is not done within ten days thereafter, or commenced and prosecuted with due diligence, the road supervisor or other person designated by the board of county commissioners must cause it to be removed at the expense of the owner and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment.

History: En. Sec. 2769, Pol. C. 1895; re-en. Sec. 74, p. 39, L. 1901; re-en. Sec. 72, Ch. 44, L. 1903; re-en. Sec. 1408, Rev. C. 1907; re-en. Sec. 17, Ch. 4, Ch. 72, L. 1913; amd. Sec. 17, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 14, Ch. 4, Ch. 172, L. 1917. Cal. Pol. C. Sec. 2695.

1649. Highways to follow subdivision or section lines. Highways must be laid out and opened when practicable upon subdivision or section lines; provided, however, that this section shall not be construed to prevent roads being laid out on diagonal lines when public purposes shall be best subserved thereby

History: En. Sec. 2770, Pol. C. 1895; re-en. Sec. 75, p. 40, L. 1901; re-en. Sec. 73, Ch. 44, L. 1903; re-en. Sec. 1409, Rev. C. 1907; re-en. Sec. 18, Ch. 4, Ch. 72, L. 1913; re-en. Sec. 18, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 15, Ch. 4, Ch. 172, L. 1917.

1650. Change of highway upon petition of freeholders. Upon petition signed by a majority of the freeholders or owners residing upon any common highway, or portion thereof, petitioning that such highway or a portion thereof be so changed as to run on subdivision or section lines, the board of county commissioners must proceed to investigate the same, to all intents and purposes as though it were a petition to establish, change, or discontinue any common highway, as such proceedings are provided for in this chapter, and after such investigation or hearing, may make such change; provided, it can be done without material damage, injury, or serious inconvenience to the public customarily using such highway or portion thereof; provided, further, that those petitioning for such change shall bear all or such portion of the cost and expense thereof as the county commissioners may order.

History: Ap. p. Sec. 2771, Pol. C. 1895; re-en. Sec. 76, p. 40, L. 1901; re-en. Sec. 74, Ch. 44, L. 1903; re-en. Sec. 1410, Rev. C. 1907; amd. Sec. 19, Ch. 4, Ch. 72, L. 1913; amd. Sec. 19, Ch. 4, Ch. 141, L. 1915; re-en. Sec. 16, Ch. 4, Ch. 172, L. 1917.

1651. Defects in proceedings not to invalidate. None of the proceedings authorized by this chapter shall be invalid by reason of any defect, informality, or irregularity therein which does not materially affect the interests of the county, or prejudice the substantial rights of property owners immediately concerned.

History: En. Sec. 20, Ch. 4 of Ch. 72, L. 1913; re-en. Sec. 20, Ch. 4 of Ch. 141, L. 1915; re-en. Sec. 17, Ch. 4 of Ch. 172, L. 1917.

CHAPTER 128.

SPECIAL ROAD DISTRICTS.

Section 1652. Special Road Districts—Objects, Powers, and Duties.
1653. Appointment of County Superintendent of Roads and Bridges—Compensation.
1654. Election of Board of Directors—Officers—Bond of Treasurer.
1655. Petition for Creation of Special Road District—Notice of Hearing Thereon.
1656. Action of County Commissioners Upon Petition.
1657. Power and Authority of Board of Directors.
1658. Additional Powers of Board.
1659. Tax Levies for Road Purposes.
1660. County Assessor to Report Assessed Valuation of District to Board.
1661. Duty of County Treasurer With Respect to Road Funds.
1662. Issuance of Warrants in Payment of Bills.
1663. Special Road Tax.
1664. Election of Directors—Notices.
1665. Qualifications of Voters—Challenges—Oath of Challenged Elector.
1666. Penalty for Illegal Voting—Judges of Election.
1667. Canvass of Returns and Declaration of Result—Proceedings Upon a Tie Vote.
1668. Duty of County Commissioners With Respect to Highway Marking Boundary Between Districts.
1669. Compensation of Board of Directors.
1670. Meetings of Board of Directors.
1671. Provisional Fund for Road and Bridge Purposes.
1672. Power of County Commissioners Regarding New Roads—Exclusive Jurisdiction of Road District.
1673. Purpose and Construction of Act.
1674. Abolition of Special Road District—Proceedings.
1675. Moneys of Road Districts Not to Be Expended in Incorporated Cities or Towns.

1652. Special road districts—Objects, powers, and duties. Every special road district No. ....., hereinafter organized and formed as herein provided, is hereby declared to be a corporate body, by the name and style of special road district of the county of ....., and state of Montana, and in that name may hold property, sue and be sued and make contracts. But nothing in this act shall be deemed or construed to extend to any special road district the right, power, or authority to issue bonds for any purpose whatsoever. The purpose of such road districts is to provide for the proper care, supervision, and maintenance of existing public highways within such road districts, it being the intention of this act that county commissioners and county surveyors, or special deputy county surveyors, as herein provided, shall continue to have and exercise the authority now provided by law for them, in laying out, establishing, and constructing new roads and bridges, and repairing such existing roads and bridges in the county as the county commissioners may at any time by resolution determine; provided, however, that the county commissioners of the county shall appoint a special deputy county surveyor to do the work of the county surveyor in all cases where the work can be done more economically and efficiently by said deputy. A copy of any such resolution by said commissioners, when passed, shall be by them sent to the secretaries of the districts through which such new road or road repairs may extend. Bridges over twelve feet in length shall be known as "county bridges," and be constructed by the county. Bridges twelve feet and under shall be known as "district bridges," and be constructed by the special road district wherein the same is located; provided, that nothing

in this act shall be construed to exempt any ditch company or owner from the duty of construction or maintenance of any bridges as now provided by law. Except as herein limited, all supervision, repair, and maintenance of roads and highways shall be done by and be a charge upon the special road districts; provided, that when the county surveyor, or special county surveyor, as provided in this section, may estimate any repair or construction work on any bridge or road to exceed three hundred dollars per mile in cost in any one year, such repair or construction shall be a charge upon the county.

History: En. Sec. 1, Ch. 145, L. 1917.

1653. Appointment of county superintendent of roads and bridges—Compensation. Upon the organization of a county into road districts under the provisions of this act, the county commissioners may designate the county surveyor, or special deputy county surveyor, as provided in this act, as the county superintendent of roads and bridges, who shall have general supervision over road supervisors and over the construction and maintenance of county bridges, and over such roads as the county commissioners may direct, and upon the request therefrom, he shall act as general road advisor to the district directors and road supervisors hereinafter mentioned. The county surveyor, or special deputy county surveyor, as herein provided, shall receive such compensation as now fixed by law, and when any work is performed in a special road district he shall be paid out of the special road district fund.

History: En. Sec. 2, Ch. 145, L. 1917.

1654. Election of board of directors—Officers—Bond of treasurer. There shall be elected in each road district created under the provisions of this act, at the next general election, a board of directors, consisting of three members, to hold office a term of two years or until their successors are elected and qualified. Said directors shall be freeholders and taxpayers within their districts, and shall be actual residents therein. The said board of directors shall, from their own number, elect a president, secretary, and treasurer of said road district, and said board of directors shall have power to fill any vacancy occurring in said board, by appointment, such appointments to continue only until the next election of directors, when such vacancy shall be filed by election. Before entering upon his duties the treasurer shall give a bond to his district in the sum of five hundred dollars, with good and sufficient sureties to be approved by the president and secretary of said district, and conditioned for the faithful performance of his duties as such treasurer, and to secure all moneys that may come into his hands as such treasurer; after approval, such bond to be filed with the county clerk.

History: En. Sec. 3, Ch. 145, L. 1917.

1655. Petition for creation of special road district—Notice of hearing thereon. If a county is not divided into special road districts as provided for in sections 1654-1655 of this code the registered voters of any voting precinct or precincts of any county in the state, desiring to establish a special road district under this act, may do so by first filing with the board of county commissioners a petition duly and regularly signed by fifty-one per cent. of the registered electors of the proposed district,

praying for the organization of a special road district, conforming to the boundary lines of one or more voting precincts of said county. It shall be the duty of the board of county commissioners to receive said petition, and set the same for hearing at a date not less than ten nor more than twenty days from date of presentation thereof. Said commissioners shall give notice of hearing by publishing said notice in at least one newspaper of general circulation published in said county.

History: En. Sec. 4, Ch. 145, L. 1917.

1656. Action of county commissioners upon petition. The hearing provided in the preceding section shall be limited in its scope to the consideration of the regularity and sufficiency of the petition as herein provided. Upon the determination of the said board of county commissioners that the petition is sufficient, it shall be the duty of said commissioners to immediately establish the proposed special road district as provided for in the petition, by making an order and entering same on the minutes of the commissioners proceedings, defining the boundary lines of said established special road district, and appoint a board of three directors to serve until the next general election.

History: En. Sec. 5, Ch. 145, L. 1917.

1657. Power and authority of board of directors. Within the limits of the special road districts the said board of directors shall have all the powers heretofore granted by law to road supervisors, and shall have full authority over and are hereby charged with the duty of the general repair and maintenance of all roads and public highways, and all bridges of twelve feet in length and under, within their districts, and they shall keep same in a state of proper repair and safety for public travel thereover. The said board of directors shall have authority to appoint a road supervisor, who may be discharged by said board of directors with or without cause, to oversee and superintend the actual construction and repair work authorized by the board of directors of said district, and said board shall have authority to borrow from, and the county commissioners shall, when practicable, loan to said districts any road graders or other necessary road machinery belonging to said county for not to exceed sixty days at one time. Said machinery when so borrowed shall be by said district returned to some convenient place to be designated by the county commissioners. All special road districts borrowing tools or equipment from the county shall return the same in as good condition as when received, ordinary wear excepted, and any repairs necessary to place same in condition shall be paid for by the district borrowing same.

History: En. Sec. 6, Ch. 145, L. 1917.

1658. Additional powers of board. Said board of directors shall have the further power and authority to enter into contracts for purchase of materials and supplies, necessary for the construction, maintenance, operation, and repair of roads, highways, and bridges as heretofore limited, within the limits of its district. They may employ and discharge such laborers, overseers, foremen, employees, or other persons, as they may deem necessary in carrying out the proper performance of their duties under this act.

History: En. Sec. 7, Ch. 145, L. 1917.

1659. Tax levies for road purposes. The board of county commissioners of any county where special road districts under the provisions of this act are organized, may levy a tax for general road purposes of not to exceed two mills on each dollar of assessed valuation in said special road district, and in addition to such two-mill levy shall levy a tax of not to exceed five mills on each dollar of assessed valuation, if such levy shall be requested by the directors of the special district in writing, on or before the tenth day of August in each year. The said tax shall be levied and collected, as provided by law, each year. Nothing in this section shall apply to any incorporated city or town which by ordinance provides for the levy and collection of a like general or special tax within such cities or towns, for road, street, and alley purposes.

History: En. Sec. 8, Ch. 145, L. 1917.

1660. County assessor to report assessed valuation of district to board. It shall be the duty of the county assessor in each county where special road districts have been created, to make report to the board of directors of special road districts, on or before the first day of August in each year, giving the assessed valuation of the several special road districts for that year.

History: En. Sec. 9, Ch. 145, L. 1917.

1661. Duty of county treasurer with respect to road funds. The county treasurer shall keep each of said funds so collected in a separate fund for each district, each entitled, "Road fund of special road district No. ..... of the county ....., and state of Montana," and whenever sums are so collected and placed in each of said respective funds they shall be used in the creation, maintenance, operation, and repair of the public highways and bridges, within the limits of such district, and not otherwise or in any other road district. It shall be the duty of the county treasurer to report in writing, on or before the first day of each month, to the board of directors of the special road district, the amount of money to the credit of said fund, together with a list of all warrants paid during the preceding month.

History: En. Sec. 10, Ch. 145, L. 1917.

1662. Issuance of warrants in payment of bills. The county treasurer shall pay out money from said fund upon the written warrant of the president of the board of directors of said road district, countersigned and attested by the secretary thereof, which said warrants shall be drawn after verified bills have been regularly allowed at regular monthly meetings as hereinafter provided for. All bills allowed against the said district shall be kept on file by the treasurer of the district, and each bill shall be numbered in consecutive order, and a duplicate of such number shall appear upon the face of the warrant issued in payment thereof. At the regular June and December meetings of the board of county commissioners, the treasurer of said district shall forward the bills allowed during the previous six months to the county treasurer, who shall check them with the paid warrants of said district, and report to the board of commissioners at such meetings result of said checkings; thereafter such bills shall be retained in the office of the county treasurer.

History: En. Sec. 11, Ch. 145, L. 1917.

1663. Special road tax. Every able-bodied man between the ages of twenty-one and fifty years shall annually pay to the treasurer of the board of directors of his road district wherein he resides, and it shall be the duty of the said treasurer to collect, a special road tax of two dollars, or in lieu of such sum every man shall labor one day of eight hours, or four hours' work with a team, upon the public highways of his road district, under the direction of the road supervisor of his road district, whenever given not less than forty-eight hours' notice by the secretary of the board of directors. The district treasurer shall pay all moneys received by him in payment of said special road tax monthly to the county treasurer, to be placed by him in the special road tax fund. Said district treasurer shall be paid a commission of ten per cent. on all moneys so collected by him under the provisions of this section, to be paid in the same manner as other charges against said special road district. It is hereby made the duty of the district treasurer to proceed to collect said special road tax as herein provided, as soon as possible, beginning the first day of March in every year. The district treasurer shall, on or before the fifteenth day of August in each year, make report in writing to the county treasurer of the names of all persons who have paid their special road tax in cash, and a list of those who have performed labor in lieu thereof. The county treasurer shall credit all persons whose names appear on the assessment-roll of the county and are charged with the special road tax of two dollars, who may own real property, with the amount so reported paid by the district treasurer. Nothing in this section shall apply to incorporated cities and towns which by ordinance provide for the levy and collection of a like special road tax within such cities and towns, for road, street, and alley purposes.

History: En. Sec. 12, Ch. 145, L. 1917.

1664. Election of directors—Notices. The regular election for the electing of members of the board of directors shall be held in such district at the same time as regular general elections. The secretary of such board shall cause written or printed notice to be posted at six different and public places in said special road district, specifying the date and place of such election and the time during which the ballot-box or boxes shall be opened, not less than four hours, however, at each election. Said notices shall be posted in at least three conspicuous and public places as aforesaid in such district and whenever a newspaper published within ten miles of such road district, it shall be the duty of the president and secretary of said board to cause a notice to be published therein at least once, ten days previous to said election, giving notice of such election, and if the said officers of said district fail to give such notice required by this act, then any two legal voters in and being freeholders there, may give such notice over their names and signatures, whereupon said election may be held at the date fixed by this act for said election.

History: En. Sec. 13, Ch. 145, L. 1917; amd. Sec. 1, Ch. 138, L. 1921.

1665. Qualifications of voters—Challenges—Oath of challenged elector. Every elector, a taxpayer, who is legally qualified to vote at any general election, who is a bona fide resident and taxpayer, as aforesaid, of the road district for thirty days preceding the day of election, shall be entitled

to vote. Any person offering to vote may be challenged by any legal and qualified elector of the district, or by any judge of election, and any judge of such election shall, to determine the qualifications of a voter, administer to the person challenged, an oath as follows:

"You do swear (or affirm) that you are a citizen of the United States; that you have resided in this state for the period of one year, or over, preceding this election; that you are over the age of twenty-one years; that you have resided in this county thirty days, and that you are a taxpayer and resided in this road district thirty days next preceding this election; that you have not voted at this election, so help you God (or under the pains and penalties of perjury)."

History: En. Sec. 14, Ch. 145, L. 1917.

1666. Penalty for illegal voting—Judges of election. If any person challenged shall refuse to take said oath, his vote shall be rejected; and if any person shall be guilty of voting illegally, he shall be punished as provided in the general election laws of this state. The three members of the board of directors of the road district shall act as judges of election, but should any of them be absent for any cause, at the time of opening of the polls, the electors present thereat shall appoint a legal voter to fill such vacancy.

If more than one polling-place be provided in said road district, the directors shall appoint three judges of election who shall perform the duties required by law.

History: En. Sec. 15, Ch. 145, L. 1917.

1667. Canvass of returns and declaration of result—Proceedings upon a tie vote. Immediately after the closing of the polls, the said judges shall proceed to count the ballots, and the person or persons qualified to be elected under this act, who shall receive the largest number of votes, shall be declared elected, and the report of said election, signed by said judges, shall forthwith be transmitted to the county clerk and recorder of the county where such election is held, to be presented to the board of county commissioners for action and hearing as to the regularity of the election so held, and to be confirmed by said county commissioners. If upon counting the votes there shall be a tie vote, the two persons having received such tie vote shall meet within twenty-four hours before the board of directors of such road district, and one of such persons shall be elected by lot. All ballots shall be carefully preserved, and after said count shall be placed in the ballot-boxes, and said ballots shall be preserved by the secretary of road district for ninety days, at the end of which time, if there is no contest, all such ballots shall be destroyed.

History: En. Sec. 16, Ch. 145, L. 1917.

1668. Duty of county commissioners with respect to highway marking boundary between districts. In such road districts where a public road or highway shall be the boundary line between contiguous road districts, the board of county commissioners shall, at the time of fixing the boundaries thereof, divide such boundary road, and shall provide what part of said road shall fall within the jurisdiction of each of said districts, and such

decision may be appealed from to the district court, whose decision shall be final therein.

History: En. Sec. 17, Ch. 145, L. 1917.

1669. Compensation of board of directors. The members of the board of directors of such road districts shall be entitled to no fee or compensation for acting as such directors, except a fee of two dollars for each meeting of the board actually attended. They shall also be entitled to receive the same compensation as judges of election as provided by law.

Whenever the board of commissioners require a road to be viewed in any manner required by law, they may appoint as road reviewers the directors of the road district in which the road may be situated. Such directors when acting as road viewers shall receive as compensation the sum of three dollars per day, to be paid out of the general road funds of the county.

History: En. Sec. 18, Ch. 145, L. 1917.

1670. Meetings of board of directors. Regular meetings of the boards of directors shall be held on the first Monday of each month for the consideration and transaction of necessary business. Special meetings of the boards of directors may be called at any time by the president thereof.

History: En. Sec. 19, Ch. 145, L. 1917.

1671. Provisional fund for road and bridge purposes. In order to provide the several road districts organized under the provisions of this act with funds for the purpose of maintaining the roads and bridges therein, and until such time as they may be able to levy and collect tax for such purpose, the county commissioners shall set aside and place to the credit of each district fifty per cent. of the amount of taxes collected in such districts for road and bridge purposes.

History: En. Sec. 20, Ch. 145, L. 1917.

1672. Power of county commissioners regarding new roads—Exclusive jurisdiction of road district. The county commissioners shall have the sole and exclusive power to open and establish new roads in manner as now provided by law. Said roads when so opened, established, and constructed shall be maintained at the expense of said road district, and shall thereafter be within the exclusive jurisdiction of said road district and the board of directors thereof, as herein provided.

History: En. Sec. 21, Ch. 145, L. 1917.

1673. Purpose and construction of act. The provisions of this act are intended to enable special road districts to be created when desired, but shall not be construed to repeal in any manner, any laws, except so far as they affect the special road district when created. All provisions of the road laws of Montana are to apply to special road districts, except as in this act otherwise provided.

History: En. Sec. 22, Ch. 145, L. 1917.

1674. Abolition of special road district—Proceedings. Whenever any county has been divided into special road districts, as herein provided, when twenty per cent. of the registered electors of the county shall, at least thirty days before any regular school election, petition the board of

county commissioners for the abolishment of the special road district, and expressing a desire to be governed by the provisions of the general road district law, the board of commissioners shall require the question to be submitted at the next special road district election, and if a majority of the qualified electors voting at such election vote in favor of the abolishment of special road districts, the board of commissioners shall by resolution declare such special road districts to be general road districts, and all directors or other officers shall cease to exercise public duties, or to have any control of roads or highways, except as directed by the board of county commissioners.

History: En. Sec. 23, Ch. 145, L. 1917.

1675. Moneys of road districts not to be expended in incorporated cities or towns. No moneys collected under the provisions of this act shall be expended upon the streets, avenues, or alleys of any incorporated city or town situate within such special road district.

History: En. Sec. 24, Ch. 145, L. 1917.

CHAPTER 129.

LOCAL IMPROVEMENT DISTRICTS.

Section 1676. Duty of County Commissioners to Construct Main Highways and Levy Assessments.
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1700. Disposition of Residue of Funds.
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1702. Construction of Chapter.

1676. Duty of county commissioners to construct main highways and levy assessments. The board of county commissioners of any county in this state shall have power as hereinafter provided and it shall be its duty to cause to be constructed, laid out, and improved main highways within their respective counties and to levy and cause to be collected an

assessment upon all lots, tracts and parcels of land specifically benefited by such improvements, laying out, or construction for paying the cost and expense thereof which assessment shall become a first lien upon the property liable for, prior and superior to all other liens and encumbrances, and to provide for the payment of such assessment either on the immediate payment plan or by instalments, and to issue local improvement district bonds and coupons for each instalment.

History: En. Sec. 1, Ch. 12 of Ch. 172, L. 1917.

1677. Resolution of public interest. Upon presentation of a petition as provided in this act, the board of county commissioners shall pass a resolution that the public interest demands the improvement, laying out, or construction of such road, or part thereof, and described in such resolution, but such description shall not include any portion of a highway within the boundaries of any city or incorporated town.

History: En. Sec. 2, Ch. 12 of Ch. 172, L. 1917.

1678. Petition for construction or improvement of highway. The owners of two-thirds of the lineal feet of land fronting on such road or proposed road, or part thereof, sought to be laid out, constructed, or improved, may present to the board of county commissioners, a petition setting forth that the petitioners are such owners and that they desire such road to be opened, laid out, or constructed under the provisions of this act; the kind and nature of the improvement desired and the mode of payment of the assessments to be levied for defraying the cost thereof. If any such property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian, as the case may be, shall be deemed equivalent to the signature of the owner of the property.

History: En. Sec. 3, Ch. 12 of Ch. 172, L. 1917.

1679. Proceedings upon receipt of petition. On receipt of such petition the board shall make an order appointing a place in the vicinity of said road and fix the time when said petitioners and all owners of the land fronting upon said road or lands owned within two miles on either side of said road and upon whose lands special assessments will be levied to pay for such construction or improvements may meet with the county surveyor or his duly appointed deputy and the county clerk shall immediately notify the said county surveyor of such meeting and shall cause a notice thereof to be given by publication in a newspaper printed and published in the vicinity of said road and nearest thereto, in said county, for three consecutive weeks next prior to the time of such meeting, which notice shall state the time and place of said meeting and in general terms the kind of construction and improvements petitioned for, the place of beginning, intermediate points and place of determination of said road or the portion thereof sought to be constructed and improved. At the said meeting the county surveyor or his deputy or in the absence of both some one of the said land owners present, shall preside, and said petitioners and said owners, as well as other owners of such land, shall proceed to elect three of their number as a committee of supervisors, at least one of whom shall be chosen from those who signed said petition. The majority of said owners present and voting at such meeting shall be sufficient to such elec-

tion, and said presiding officer shall declare and certify to said board of county commissioners the names of such owners so elected as such committee of supervisors. The persons so elected shall qualify immediately by taking an oath that they are owners of lands benefited by said improvements and to be included within the local assessment district, and that they will fully, impartially, and faithfully perform their duties as supervisors to the best of their ability, which said oath may be administered by any one authorized to administer oaths, or by said county surveyor or his deputy, and are both hereby authorized to administer the same.

History: En. Sec. 4, Ch. 12 of Ch. 172, L. 1917.

1680. Duty of supervisors and county surveyor. It shall be the duty of said supervisors and county surveyor or his deputy, to forthwith proceed to view, examine and survey said road sought to be constructed or improved, that said surveyor make plans and specifications as well as possible and estimate the cost of such construction; to examine and determine the lands that will be specially benefited by such improvement or construction and should be included within the local district that is to be assessed to defray the cost and expense, and such improvements and benefits; to ascertain all if any damage or injury to the property; if any person or persons will be sustained by or in consequence of the making of such improvement or construction for the payment of which such local assessment district would be liable, and in so far as may be obtained without cost to the said assessment district the release in writing from each person or persons of their claim in such damage or injury or, in case of failure so to do, arrange in so far as may be, in such release to be given, upon the approval or consent, for such terms as to amount as may be deemed fair and reasonable, to be paid from the moneys collected upon the assessment of said district; and said surveyor shall without delay prepare such plan and specifications and an estimate of the cost of such improvement and construction enclosing therein all expenses incident thereto, and prepare a plat and description of such local assessment district and a description of several tracts or parcels of land included therein and the valuation of said lands as the same appear upon the last annual assessment-roll of the county made for the purpose of levying general taxes thereon.

History: En. Sec. 5, Ch. 12 of Ch. 172, L. 1917.

1681. Formation and boundaries of district. The local assessment district shall be constituted and the boundaries thereof fixed as follows: The lands extending from the center of the road one-half mile on each side thereof, to-wit: a distance of one mile in width shall constitute "Part One" of said local assessment district; "Part Two" of said local assessment district shall be that portion of said lands embraced within an area one mile wide on each side of part one, and "Part Three" of said local assessment district shall be all lands lying within the area one mile wide extending along part two of said district; all of said division shall extend the full length of said proposed road and one mile beyond the terminus thereof, unless said local committee of supervisors shall otherwise provide. Each separate tract or parcel of land lying and being in part one of said district shall be assessed and be subject to a charge for a proportional

part of forty-five per cent. of the whole cost of construction work or improvement payable by said district and said lands shall be subject to a lien therefor until said assessments shall be paid; each separate tract or parcel of land in said part two of said district shall be assessed and subject to a charge for a proportional part of thirty-five per cent. of said whole cost of expense of said construction work and improvements assessable against said entire district and be subject to a lien therefor until all of said assessments shall have been paid; each tract or parcel of land in said part three of said district shall be assessed and subject to a charge, a proportional part of twenty per cent. of said whole cost and expense of said construction work and improvements assessable to said district and all of said lands therein shall be subject to a lien for said assessment until all of said assessment has been paid. The charge upon the several tracts or parcels of land to each subdivision of said district shall be assessed ratable according to the front-foot plan; that is to say, one foot of longitude measured along the road constituting the center of such improvement district, and extending latitudinally across the subdivision shall be taken as the unit by which to determine the proportion of the assessment, so that a unit in each subdivision are not equal to each other the rates fixed for each subdivision will be eight hundred and eighty square feet to superficial area. If the area of said subdivision are not equal to each other the rates fixed for each subdivision shall be fixed on the basis that the benefit conferred on eight hundred and eighty square feet of land in subdivisions first, second, and third, are related to each other as are the numbers forty-five, thirty-five, and twenty, respectively.

History: En. Sec. 6, Ch. 12 of Ch. 172, L. 1917.

1682. Report of county surveyor—Order creating district. When the county surveyor shall have completed the said work of making estimates and surveying the said road, he shall at the next annual meeting of the board of county commissioners render a detailed report to the board that the maps, descriptions, plans, specifications, and details and estimates of damages, costs and expenses, and if it should appear from such report that the whole amount of the damages, costs and expenses of such construction and improvements chargeable as a lien against the property specially benefited within the improvement district, does not exceed fifty per cent. of the total assessed valuation of the lots, tracts, and parcels of land contained in such improvement districts, as the same appears upon the last annual assessment-roll of the county, the said board shall make and enter upon the reports, an order that such improvements and construction be made, thus creating such local improvement district for the payment of such damages, costs, and expenses of making such improvements and construction by special assessment of the property in such district specially benefited; to be known and designated local improvement district No. ... in ..... county, Montana, and such report shall be kept on file in the office of said board as well as in the office of the county surveyor.

History: En. Sec. 7, Ch. 12 of Ch. 172, L. 1917.

1683. Determination of amount of damages by condemnation proceedings. When the county surveyor and local supervisors are unable to agree

with the owner of any lands upon the amount of damages sustained by the taking or injuring of his property by reason of making such improvements, they shall in said report to the board set forth such fact, with the statement of their reasons therefor, and such board of county commissioners shall cause the amount thereof to be ascertained and determined by condemnation proceedings and paid, in the same manner as damages are ascertained, determined, and paid when new roads are laid out and opened by the board; and such damages and the expenses incident to ascertain same shall be advanced on the order of the board, from the funds of the county, so that the progress of such work shall not be delayed, and said general fund may be thereafter reimbursed from the money collected for the local improvement district.

History: En. Sec. 8, Ch. 12 of Ch. 172, L. 1917.

Compensation for taking of property under power of eminent domain for highway purposes, see 10 R. C. L. 124.

1684. Proportional share of costs to be stated in petition, when—Order of board concerning. When the local improvement district is being laid out and roads constructed and improved therein, the petitioners therefor, in the petition provided for in this act, shall state therein the proportional share of the costs and expenses of said work of improvements that the said local improvement district will agree to assume and pay; which said sum must not be less than thirty-five per cent. thereof and may be as much as seventy-five per cent. thereof.

Whenever an agreement has been made and entered into between the said proposed local district and the said board of county commissioners, specifying the amount that shall be paid by said local district and the amount that shall be paid from the county funds, the board shall make an order to that effect on the records of the proceedings of such county commissioners.

History: En. Sec. 9 of Ch. 12 of Ch. 172, L. 1917.

1685. Payment of county's share of expense. The board of county commissioners shall have the power and it shall be its duty to order paid from the county funds the share of the county for the construction or improvement of the main highway in said local improvement district as in this act provided, not to exceed, however, sixty-five per cent. of the cost of construction and laying out or improving of such highway and such amount so ordered shall be the proper charge against the county wherein the improvement or construction is made and the same shall be paid by the county treasurer of such county upon warrants duly drawn as ordered by the board of county commissioners.

History: En. Sec. 10, Ch. 12 of Ch. 172, L. 1917.

1686. Letting of contract—Conditions of same. After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall let the contract for furnishing the necessary materials and the performance of the work and labor necessary for the construction and completion of said road according to said plans and specifications and under the supervision of the county surveyor they shall advertise for bids for the construction, laying out or improving of

such main highway, and fix the time for opening such bids at the office of the board of county commissioners and award such contract to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than the estimate of cost of such work hereinbefore provided for. The said work may be let to one or more contractors or all of same may be left in one contract or in separate contracts in the discretion of said local supervisors. The committee of supervisors may reject any and all bids and before the execution of any contract they shall require a bond satisfactory to them that the contractor will furnish the required material and perform the required work upon the terms specified in the contract and within the time prescribed; and as a bond of indemnity against any direct or indirect damages that shall be suffered or claimed for injury of persons or property during the construction of said improvement and until the same is accepted.

Partial payments may be provided for in the contract, and paid in the manner herein provided when certified by the county surveyor and committee of supervisors to an amount not exceeding eighty per cent. of the value of the work done and the materials furnished and the said contract shall provide that at least twenty per cent. of the estimated amount shall be retained to secure the payments to laborers and material men who have furnished materials therefor or labored on said works and such laborers and material shall have thirty days after the work has been completed or materials furnished, for lien on such twenty per centum so reserved; provided, notice thereof in writing shall have been filed with the committee of supervisors within said thirty days, which lien shall be senior to all other liens, such as judgment garnishment, or judgment liens, and no improvements or construction shall be deemed to be completed until the committee of supervisors have filed with the clerk of the board of county commissioners a statement signed by a majority of them declaring same to have been completed and that all labor and material liens have been discharged. Such contract shall be executed in the name and on behalf of the county by the board of county commissioners and attested with the seal thereof, for the use and benefit of said local improvement district; but such county shall not thereby be rendered subject to any claim or liability in a greater sum than that agreed upon with said proposed assessment district as provided in the order fixing the amount chargeable to said county.

History: En. Sec. 11, Ch. 12 of Ch. 172, L. 1917.

Construction of phrase in statute for letting of municipal contracts to "lowest responsible bidder," see note in Ann. Cas. 1913A, 500.

Implied liability of municipality for letting contract without compliance with statute requiring competitive bidding, see note in Ann. Cas. 1917A, 1263.

1687. Notice for bids—Opening bids—Forfeiture of deposit. The notice for bids shall state generally the work to be done and refer to the plans and specifications and shall call for proposals for doing the same, and furnishing the materials and all bids shall be accompanied by the cash or certified check payable to the order of the board of county commissioners for a sum not less than five per cent. of the amount of the bid.

At the time and the place named, such bids shall then be opened and read and the committee of supervisors shall determine the lowest and best

bidder and may let such contract to such bidder, if within the estimate, but if in their opinion all bids are too high, they may reject all of them and readvertise for bids.

If the bidder whose contract is accepted fails to enter into such contract, according to his bid, and according to plans and specifications, within ten days from the time he is notified that he is the successful bidder and to execute and file a bond, the said cash or check for the amount thereof shall be forfeited to the county for the use and benefit of that particular local improvement district.

History: En. Sec. 12, Ch. 12 of Ch. 172, L. 1917.

Rights of parties with respect to certified check or other deposit made in bid for public contract, see note in Ann. Cas. 1916C, 427.

1688. Appointment of inspector—Compensation of inspector and supervisors—Construction by county—Lien on lands. The committee of supervisors and county surveyor together shall appoint some suitable and competent person other than such committee as an inspector of such work as it progresses, whose duty it shall be to be upon the work at all times during its progress and to inspect the performance thereof and to report to and to be under its supervision of the county surveyor and to inform said surveyor and said committee of supervisors of any departure from the plans and specifications. He shall be paid for his services as such inspector at the rate of five dollars per day for the time he is actually engaged thereon. Each member of the committee of supervisors shall be paid for his services the sum of three dollars per day for the time said committee of supervisors is actually engaged in meeting and acting with said surveyor and in transacting as a committee the business of said local improvement district until the work shall have been fully completed and accepted, and said committee shall be paid no mileage or other expense save and except the three dollars herein provided for.

That when bids for the construction and improvement of said highways are rejected by the local committee of supervisors, then it shall be lawful for the said improvement district to contract with the board of county commissioners to construct or improve said highways. The said highways in said improvement districts may be constructed and improved in the first instance at the entire expense of said county and the county may, as far as practicable, take the place of a private contractor, provided for in this act; and said county shall, when it has paid for such construction or improvements, be recompensed for same by the local improvement district to the proportional part of said costs and expenses as shall have been agreed upon before said work was performed by said county; and, in case the said instalment plan was adopted, then, and in that event, the bonds issued for said improvement district shall become the property of said county, and the lien herein provided for on the lands in said improvement district, shall be as valid and existing as if the contract had been let to a private contractor as provided in this act.

History: En. Sec. 13, Ch. 12 of Ch. 172, L. 1917.

1689. Apportionment of costs—Assessment-roll, contents, notice, and confirmation of—Correction of errors. When the final order for such improvement and construction shall have been made, the committee of supervisors, together with the county assessor, shall proceed to apportion

the estimated cost and expenses of said improvement and construction upon the land embraced in said improvement district, according to the benefit derived therefrom, and within thirty days from the letting of the contract, the said county assessor shall report to and file with the board of county commissioners and the county treasurer an assessment-roll in duplicate, which assessment-roll shall contain the description of each lot and parcel of land to be assessed, the amount to be charged, levied, or assessed against each lot, parcel, or piece of land, in proportion to the benefit to be derived from said improvement or construction, and the name of the owner of same, if known; but in no case shall a mistake in the name of the owner be fatal to the assessment when the description of the property is correct.

As soon as said assessment-roll shall have been so reported and filed, the county commissioners shall cause notice to be published for three consecutive weeks, which notice shall be published in the newspapers in which notice of invitations for bids for the contract was published, notifying all persons interested that such assessment-roll has been filed, and requiring them to appear at the office of said county commissioners at the county-seat, at a time not less than fifteen days from the date of the last issue of said publication of said notice, and make objection thereto, if any they have. At the time fixed for objections, the county commissioners, together with the assessor of the county, shall meet, and if no objections have been filed to said assessment-roll, the commissioners shall make an order confirming the same; but if any objections in writing, properly verified, have been filed by any of the landowners affected thereby, the county commissioners shall proceed to hear such objections, and for that purpose shall hear any testimony that shall be offered by any party interested.

After such hearing the board shall make such corrections and charges, if any, which to them appear just and requisite to apportion the assessment to the benefit to be received from such improvement or construction, and said board shall then make and enter an order to approve and certify such assessment-roll, and with the aid of the county assessor shall levy and assess the amount thereof against each and all of the lots and parcels of land or parts thereof, respectively, included in said roll as provided, and said assessment so made shall become a first lien on the land described in the assessment-roll.

History: En. Sec. 14, Ch. 12 of Ch. 172, L. 1917.

For full discussion of special or local assessments, see 25 R. C. L. 76.

Validity of statute assessing cost of construction or repair of rural highway on land benefited, see note in Ann. Cas. 1913D, 550.

1690. Modes of payment—Payments by instalment. There shall be two modes of making payment of such special assessment charged against the several tracts and parcels of land included in such local improvement district, namely, that of "immediate payment," and that of payments in instalments, and the mode of payment shall be that petitioned for by said landholders. The payment of instalments shall be in six equal instalments, in one, two, three, four, five, and six years, and such instalment payments shall be in the form of bonds that shall draw six per cent. interest per annum from the date until they are paid.

History: En. Sec. 15, Ch. 12 of Ch. 172, L. 1917.

Collection of assessments for local improvements must be in strict conformity to statute, see note in 133 A. S. R. 929.

1691. Immediate payment plan—Notice to landowners—Contents of notice. In case the "immediate payment" plan is adopted the county commissioners, as soon as such assessment-roll has been proved and certified, shall deliver the same to the county clerk, who shall file one of such duplicates thereof in his office, and shall immediately deliver the other of such duplicates to the county treasurer that the said treasurer may collect such assessment.

The county treasurer shall give notice by publication for two consecutive weeks in the newspapers in which the notice for bids was advertised, and shall mail copy of such notice to the owners of the property assessed, when the name of such owner and his postoffice address are known, but the failure to mail such notice shall not be fatal to such assessment when publication thereof is made in said newspapers. Said notice shall state that such assessment-roll has been certified to the treasurer for collection, and that unless payment is made within thirty days from the date of such notice, such assessment will become delinquent and shall bear interest at the rate of ten per cent. per annum, and if not paid before such assessment shall have become delinquent, a penalty of five per cent. shall be added to the sums delinquent, as well as the interest on the annual tax roll for the current year against each lot, tract, and parcel so delinquent, and that the interest and penalty collected, as other taxes are collected, together with such additional charges as are authorized to be charged and collected on other delinquent taxes, and that the same shall be sold for the amount of such special assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: En. Sec. 16, Ch. 12 of Ch. 172, L. 1917.

1692. Procedure upon adoption of instalment plan—County treasurer to collect annual instalments. In case the mode of payment by instalment be adopted, the county commissioners and the committee of supervisors shall proceed, as nearly as may be, as in case the mode of immediate payment plan was adopted, to the approval and certifying of the assessment-roll; but the county commissioners and assessor, at the time of levying said assessment, and in their order naming such levy, shall provide and declare that the sum charged thereby against each of such tracts or parcels of land may be paid in equal annual instalments, with interest upon the whole sum charged at the rate of six per cent. per annum, specifying the number of such instalments, which shall be equal to the number of years for which the bonds may run; and each year thereafter the county treasurer shall collect one of said instalments, together with the interest due thereon and the interest on the instalments thereafter to become due, in the same manner and with the same added penalty and interest in case of delinquency, and by means of the same proceedings to enforce such payment by the sale of the land as hereinbefore provided for the collection of said assessment by the method of immediate payment.

History: En. Sec. 17, Ch. 12 of Ch. 172, L. 1917.

1693. County commissioners must provide method of payment. The county commissioners may, and, in all cases where improvement is ordered upon a petition, specifying the method of payment of bonds, must provide that the payment of costs and expenses of such improvement or construc-

tion be made under the provisions of this act, by bonds as charged against the property of the local improvement district, issued to the contractors in payment of the contract price, or by the proceeds of such bonds to be issued and sold as hereinafter provided.

History: En. Sec. 18, Ch. 12 of Ch. 172, L. 1917.

1694. Order for issuance of bonds—Forms and contents. The county commissioners shall make and enter an order authorizing and directing the issuance of said bonds, and the terms may be payable on same at a date not to exceed ten years from and after the date of their issuance, and payment of which shall not be demanded by the holder thereof until said bonds become due, and they shall bear interest at the rate of six per cent. per annum, payable annually, and each bond shall have attached thereto interest coupons for each interest payment. Such bonds and coupons shall bear the date of issuance and be made payable to bearers and all shall be signed by the chairman of the board of county commissioners and attested by the county clerk and the seal of such board shall be affixed to each bond but not to the coupon. Said bonds shall be in denominations of not less than one hundred dollars nor more than one thousand dollars, and they shall refer to the improvement district for which the same shall be issued and to the order and record thereof authorizing the same and that it is payable out of the local improvement funds, created by special assessment for the payment of the costs and expenses of such improvement and construction, and not otherwise, and shall bear upon its face the designation of the local improvement district "Local Improvement District No. .... in ..... county, Montana." Said bonds shall not be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 19, Ch. 12 of Ch. 172, L. 1917.

1695. Notice in case of payment by special bonds—Contents—Payment of assessment—Redemption of land by payment of assessment. In case of payment by such special bonds, the county treasurer shall give notice by publication for two consecutive weeks, and shall mail a copy of such notice to the owner of the property assessed in the manner and with the same qualifications as to the giving of such notice provided in this act with regard to immediate payment, which notice shall state that such assessment-roll has been certified to him for collection, and that unless payment of the whole amount of such assessment is made within thirty days from the date of such notice, special bonds shall be issued against said property for the payment of said assessment, and thereafter the same will be payable in annual instalments, with interest thereon at the rate provided for in said bonds. At any time within such thirty days, any owner of lands within such local improvement district may pay the said assessment chargeable against his said lands, and release and discharge the same therefrom, and from the operation and effect of such bonds; and no bonds shall be issued until twenty days after the expiration of such thirty days, nor for any amounts of such assessment so paid in full within such thirty days. The owner of any such lands may redeem the same from all liability for such assessment at any time after said thirty days, by paying the entire instalments of said assessment remaining unpaid and charged against such lands at the time of such payment, with interest, and all

charged thereon to the date of the maturity of the instalment next falling due. In all cases where any assessment or any instalment thereof is paid as herein provided, the same shall be paid to the county treasurer, and all sums so paid shall be applied solely to the payment of the cost and expenses of such improvement, or to the redemption of such bonds issued therefor if paid after such bonds are issued.

History: En. Sec. 20, Ch. 12 of Ch. 172, L. 1917.

1696. Issuance of special bonds to contractor or sale of same. The special bonds issued under the provisions of this act, or such portion thereof as may remain unsold, if the same are ordered sold by the county commissioners, may be issued to the contractor constructing the improvement in payment therefor, or the order of the board of county commissioners directing the issuance of such bonds may provide that the same may be sold by the county treasurer, in the manner prescribed in such order, at not less than their par value and accrued interest; and the proceeds of such bonds shall be applied in payment of the cost and expenses of such improvement.

History: En. Sec. 21, Ch. 12 of Ch. 172, L. 1917.

1697. Payment of interest on bonds—Retirement of bonds. The county treasurer shall pay the interest on the bonds authorized to be issued by this act out of the funds of the local improvement district collected on assessments on account of which said bonds are issued. Whenever there shall be sufficient money in such local improvement fund against which such bonds have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more of such bonds, he shall call in and pay such bonds in their numerical order. Such call shall be made by publication in the county official newspaper on the day following the maturity date of the instalment of assessment, or as soon thereafter as practicable, and shall state that special bonds No. ..... (giving the serial number or numbers of said bonds called) of such local improvement district will be paid on the day the next interest coupons of said bonds shall become due, and interest upon said bonds thus called shall cease upon said date.

History: En. Sec. 22, Ch. 12 of Ch. 172, L. 1917.

1698. Collection of assessments by suit of owner of bonds. If the county treasurer shall fail, neglect, or refuse to pay said bonds issued under the provisions of this act, or to collect promptly any such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessments, and to foreclose the lien thereof in any court of competent jurisdiction, and shall recover, in addition to the amount of such warrants and interest thereon, five per centum, together with the costs of such suit. Any number of holders of such bonds for any single improvement district may join as plaintiffs, and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. Neither the holder nor any owner of any such bond issued under the authority of this act shall have any claim therefor against the county through the instrumentality of which the same is issued, except from the special assessment made for the improvement for

which such bond was issued, but his remedy in case of non-payment shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed, or engraved on each bond so issued.

History: En. Sec. 23, Ch. 12 of Ch. 172, L. 1917.

1699. Auditing and payment of claims and accounts. It shall be the duty of the county auditor, in counties where there are auditors. and in counties where there are no auditors, it shall be the duty of the county clerk, to audit all claims and accounts for services and every kind of expense payable from funds of the local improvement district, when the same shall have been first approved and certified by the committee of supervisors; and when so approved and audited, the county auditor, or county clerk, as the case may be, shall issue to the county treasurer an order in favor of the person to whom such claim or account is payable, to pay the same, and upon the presentation of such order by the person to whom it was issued, or his assignee, the county treasurer shall pay the same from the funds of such local improvement district provided for the payment of the cost and expenses of such improvement, and not otherwise. Estimates for work done under the contract for the construction and completion of such improvement shall be made by the county surveyor with the approval of the committee of supervisors, and the same shall be likewise audited by the county auditor in counties where there are auditors, or by the county clerk, as the case may be, and, when so made, approved, and audited, the same shall be likewise paid by the county treasurer upon the order of the county auditor, or clerk, to an amount, however, not exceeding eighty per centum of such estimate during the progress of the work. In case of said assessment being made payable by instalments, the county treasurer shall pay such order only from such assessments as shall have been collected prior to the issue of such special local improvement bonds, and from the proceeds of the sales of such bonds after the issue thereof; but in case it has been arranged with the contractor for the work, and ordered by the board of county commissioners, that such contractor shall receive such bonds to pay the contract price of the work, such order of the county auditor, or in counties where there are no auditors, such order of the county clerk upon such approved estimates shall call for such bonds instead of money, and shall be paid in such bonds by the county treasurer, with whom the same shall be deposited for that purpose, and in that case such bonds shall not be given a date prior to the time of their delivery to such contractor upon such order, which date shall be then written in such bonds by the county treasurer, and be deemed to be the date of their issue, from which interest shall begin to run and the time at or after which their payment may be demanded by the holder shall be computed. The amounts collected upon the instalment payments of such assessments shall be reserved and disbursed by said county treasurer for the payment of the principal and interest on and for the redemption of such bonds. The proceeds from the sale of such bonds shall be disbursed by such county treasurer in payment of the cost and expenses of such construction and improvement of such county road, upon the orders of such county auditor, or in counties where there are no auditors, upon the orders of the county clerk, as hereinabove provided.

History: En. Sec. 24, Ch. 12 of Ch. 172, L. 1917.

1700. Disposition of residue of funds. Any money remaining in the county treasury belonging to the funds of such local improvement district, after the payment of the whole cost and expense of such construction or improvement, in excess of the total sum required to defray all expenditures on account thereof, including the reimbursement of the county for any advancements, shall be refunded, on demand, to the amount of such overpayment; and if there shall be such an excess in the assessment of any person who shall not have paid his assessment in full, a rebate shall, on demand, be allowed to such person to the amount of such overassessment; provided, such demand hereinabove provided for be made within two years from the date upon which the assessment for such local improvement district became due. Any such funds remaining in the county treasury after the expiration of two years for which no demand has been made as herein provided, belonging to any local improvement district, after the payment of the whole cost and expense of such improvement, shall go into the general funds.

History: En. Sec. 25, Ch. 12 of Ch. 172, L. 1917.

1701. Completed road to be deemed a main highway. When a road has been completed under the provisions of this act, it shall be deemed to be a main highway, as now defined by law, and thereafter be maintained as such in the same manner as other highways are maintained.

History: En. Sec. 26, Ch. 12 of Ch. 172, L. 1917.

1702. Construction of chapter. Nothing in this act provided shall be construed as repealing or modifying any existing law for the creation, laying out, planning, construction, or improvement of any public highway, but shall be construed as an additional power and method for the improvement of county roads, and as extending to owners of rural lands an opportunity to secure better highways by charging a part of the costs thereof upon the lands especially benefited thereby, and this act shall be construed as co-operating and concurrent with the laws provided for the improvement of public highways under the laws of the state of Montana and of the United States.

History: En. Sec. 27, Ch. 12 of Ch. 172, L. 1917.

CHAPTER 130.

PUBLIC BRIDGES.

Section 1703. County to Maintain Public Bridges.
1704. Bridge Tax—Levy and Collection.
1705. Construction or Repair of Bridge Costing More Than Two Hundred Dollars.
1706. Letting of Contract.
1707. Bridges in Cities and Towns Over Streams.
1708. Suburban Railway to Pay County for Use of Bridge.
1709. Duty of City or Town With Respect to Maintenance of Bridge and Approaches.
1710. Special Tax for Construction and Maintenance.
1711. Election to Determine Question of Construction—Bonds—Special Levy.
1712. Construction of Bridges Crossing County Lines.
1713. Bridges to Be Under Control and Management of County Commissioners—Police Regulations.
1714. Construction of Act as Respects Cities and Towns.

1703. County to maintain public bridges. All public bridges are maintained by the county at large under the management and control of the board of county commissioners; the expense of construction, maintaining, and repairing the same, are provided for in this act.

History: En. Sec. 2810, Pol. Code. 1895; re-en. Sec. 75, Ch. 44, L. 1903; re-en. Sec. 1411, Rev. C. 1907; re-en. Sec. 1, Ch. 5, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 5, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2711.

For authorities relating to public bridges, see 4 R. C. L. 1262.

1704. Bridge tax—Levy and collection. The board of county commissioners may levy a special tax not to exceed two mills on the dollar of the taxable property of the county for the purpose of constructing, maintaining, and repairing free public bridges. Such tax must be levied and collected in the same manner as other taxes, and the money, when collected and paid into the county treasury, must be kept as a special bridge fund, subject to the order of the board of county commissioners, to be used in the construction, maintaining, and repairing of bridges at such places as said board directs.

History: En. Sec. 2811, Pol. C. 1895; re-en. Sec. 76, Ch. 44, L. 1903; re-en. Sec. 1412, Rev. C. 1907; amd. Sec. 2, Ch. 5, Ch. 72, L. 1913; re-en. Sec. 2, Ch. 5, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2712.

1705. Construction or repair of bridge costing more than two hundred dollars. No bridge, the cost of construction or repairs of which exceeds two hundred dollars, shall be constructed or repaired except on the order of the board of county commissioners; and when ordered to be constructed or repaired it may be done by contract; provided, that such construction shall be done according to the standard plans and specifications adopted and established by the state highway commission, and copies of which shall be on file at all times in the office of the county clerk in each county of the state; provided, however, that whenever such plans so furnished cannot be applied, the county commissioners shall have prepared such necessary plans and specifications which shall be on file in the office of the county clerk thirty days prior to the letting of any such contract.

History: Ap. p. Sec. 2812, Pol. C. 1895; amd. Sec. 77, Ch. 44, L. 1903; re-en. Sec. 1413, Rev. C. 1907; amd. Sec. 1, Ch. 9, L. 1909; amd. Sec. 3, Ch. 5, Ch. 72, L. 1913; amd. Sec. 3, Ch. 5, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2713.

1706. Letting of contract. All bids must be sealed, opened at the time specified in the notices, and a contract awarded to the lowest bidder. The board of county commissioners may, however, reject any and all bids; provided, however, that if the state highway commission shall have adopted or established a standard plan and specification, the bids must be submitted upon such standard plan so adopted and established. The contract and bond for its performance must be entered into and approved by the said board, except in cases of great emergency, and by the unanimous consent of all its members. The said board may proceed at once to construct, replace, and repair any and all structures of whatever nature without notice.

History: Ap. p. Sec. 2813, Pol. C. 1895; amd. Sec. 78, Ch. 44, L. 1903; re-en. Sec. 1415; Rev.. C. 1907; re-en. Sec. 5, Ch. 5, Ch. 72, L. 1913; re-en. Sec. 4, Ch. 5, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2713.

1707. Bridges in cities and towns over streams. Every bridge necessary to be constructed and maintained in any city or town as part of a main highway, in any county leading over a natural stream from one part to another of such county, shall be constructed and maintained by the county at large, and be under the direction and control of the board of county commissioners.

History: En. Sec. 1, Ch. 63, L. 1917.

1708. Suburban railway to pay county for use of bridge. Before any bridge referred to in the preceding section shall be used as a part of any street or suburban railway, the owner of such railway shall pay into the county treasury, for the use of the county bridge fund, such sum as the board of county commissioners shall determine, but not less than one-fourth nor more than one-half of the cost of construction of such bridge; and the owner of such railway shall also be obligated to pay such portion of the cost of maintaining such bridge, not less than one-fourth nor more than one-half, as the board of county commissioners shall determine, during such time as such bridge shall be used by said railway.

History: En. Sec. 2, Ch. 63, L. 1917.

1709. Duty of city or town with respect to maintenance of bridge and approaches. The city or town in which any bridge referred to in the two preceding sections is situated shall be obligated to pay the whole or such part, not less than one half, to be determined by the board of county commissioners, of the cost of planking, re-planking, paving, or re-paving such bridge from time to time; and such city or town shall be obligated to construct and maintain and keep in good repair the approaches to such bridge.

History: En. Sec. 3, Ch. 63, L. 1917.

1710. Special tax for construction and maintenance. The board of county commissioners may levy a special tax of not to exceed five mills on the dollar of the taxable property of the county to defray the cost of constructing and maintaining any bridge referred to in the preceding section.

History: En. Sec. 4, Ch. 63, L. 1917.

1711. Election to determine question of construction—Bonds—Special levy. Before the construction of any bridge referred to in the preceding section, the cost of which shall exceed ten thousand dollars, shall be undertaken, the board of county commissioners shall submit to the qualified electors of a county, at a general or special election, the question of whether such bridge shall be constructed, and the cost thereof paid by the county; and if the electors at such election shall vote in favor of the construction of such bridge, the board of county commissioners may, if they deem it necessary and advisable to do so, issue and sell the bonds of said county to the amount authorized for the purpose of constructing such bridge, under such regulations as other bonds of the county are issued and sold, and with such funds construct said bridge; or, if the cost of such bridge shall not exceed the amount authorized to be raised by a special levy, a special levy may be made for the purpose of raising the

moneys necessary to defray the cost of constructing such bridge, as provided in the preceding section.

History: En. Sec. 5, Ch. 63, L. 1917.

1712. Construction of bridges crossing county lines. Bridges crossing the line between counties must be constructed by the counties into which said bridges reach, and each of the counties must pay such portion of the cost as has been previously agreed upon by the board of county commissioners of the respective counties.

History: En. Sec. 2814, Pol. C. 1895; re-en. Sec. 79, Ch. 44, L. 1903; re-en. Sec. 1415, Rev. C. 1907; re-en. Sec. 5, Ch. 5, Ch. 72, L. 1913; re-en. Sec. 5, Ch. 141, L. 1915.

1713. Bridges to be under control and management of county commissioners—Police regulations. All bridges referred to in the foregoing sections shall be under the management and control of the board of county commissioners of the county in which such bridge is situated, and all repairs to and planking and re-planking, paving, and re-paving thereof shall be done as and when directed by the board of county commissioners; provided, that such bridges and all persons thereon shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 6, Ch. 63, L. 1917.

1714. Construction of act as respects cities and towns. Nothing in this act contained shall be deemed to deprive cities or towns of any of the powers conferred upon them by existing laws in respect to the construction and maintenance of bridges within their corporate limits, and any such city or town is hereby empowered to exercise such powers in aid of the construction or maintenance of any bridge referred to in this act, situated in any such city or town, to any extent the corporate authorities of such city or town may deem necessary or just.

History: En. Sec. 7, Ch. 63, L. 1917.

CHAPTER 131.

GUIDE-BOARDS.

Section 1715. Erection and Maintenance of Guide-Boards Along Highway.
1716. Size and Fastening of Guide-Board.
1717. Maliciously Removing or Injuring Guide-Boards.
1718. Erection of Sign Boards—Destruction Prohibited.
1719. Misleading Signs Forbidden—Regulation Advertising Signs.
1720. Penalty for Violation of Act.

1715. Erection and maintenance of guide-boards along highway. The several boards of county commissioners in the state of Montana shall erect, or cause to be erected, within six months after the passage of this act, and maintain at the expense of the county, suitable guide-boards at or within one hundred feet from forks of all public highways, within their respective counties. Said guide-boards shall contain a suitable inscription, indicating the way and naming the approximate or true distance to one or more of the nearest cities, towns, villages, or other known points situated on said road; provided, however, that not more than four guide-boards shall be placed within any one incorporated town or village of any county of this state. They must be of suitable size to contain the inscrip-

tion, the background of which must be white. The letters contained in the inscription thereon shall be black, at least two inches in height, and legible.

Note.—The following three sections were enacted as chapter 128, Laws of 1907; sections 1417 to 1419, Revised Codes 1907; re-enacted as chapter 7, chapter 72, Laws of 1913 and chapter 7, chapter 141, Laws of 1915.

History: En. Sec. 1, Ch. 7, Ch. 141, L. 1915.

1716. Size and fastening of guide-board. Said guide-boards shall be securely fastened to posts at least six inches in diameter at the butt, and at least eight feet in length, and planted in the ground so that said post shall be, when erected, at least six feet high above the ground.

History: En. Sec. 2, Ch. 7, Ch. 141, L. 1915. See also history of Sec. 1715.

1717. Maliciously removing or injuring guide-boards. Every person who maliciously removes or injures any guide-board, erected upon any highway, or any inscription on such, or defaces the same in writing, or in any other manner, is guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not less than ten dollars nor more than twenty-five dollars, and costs of suit. Said fine, when collected, shall be paid into the county treasury for road purposes.

History: En. Sec. 3, Ch. 7, Ch. 141, L. 1915. See also history of Sec. 1715.

1718. Erection of sign boards—Destruction prohibited. All signs and direction boards erected along the highways of this state, by organizations or associations formed for the purpose of promoting good roads for tourists' travel, or both, shall become the property of the county in which placed, and it shall be unlawful for any person or persons to alter, deface, or destroy any such signs or direction boards; provided, however, that this section shall not be construed to prevent the organizations or associations erecting such signs or boards from altering or correcting the same when deemed necessary or advisable.

History: En. Sec. 1, Ch. 142, L. 1921.

1719. Misleading signs forbidden—Regulation advertising signs. It shall be unlawful for any person, or persons, corporations, or associations to place, or cause to be placed, any misleading sign or direction board along the highways of this state, or to place any advertising sign not of value as a direction board within one hundred fifty feet of the intersection of a public highway with a railroad grade crossing without the written consent of the county commissioners of the county in which said direction or advertising board or boards is erected or to use as an advertising sign any sign similar or having the appearance of any sign or direction board provided for in the preceding section, and provided that this act shall not effect direction or advertising boards erected inside the limits of incorporated cities, towns or their environs; provided, that county commissioners have the power to remove any or all signs on county highways at their discretion.

History: En. Sec. 2, Ch. 142, L. 1921.

1720. Penalty for violation of act. Any person, or persons, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the

county jail not less than ten days nor more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 142, L. 1921.

CHAPTER 132.

CORRUGATED IRON CULVERTS.

Section 1721. Corrugated Iron Culverts—Sale to State or Municipal Corporations—Analysis.
1722. Penalty for Failure to File Analysis.
1723. Analyses to Be Kept by Secretary of State.
1724. Penalty for Delivering Inferior Corrugated Culverts.
1725. Duty of County Attorneys to Prosecute.

1721. Corrugated iron culverts—Sale to state or municipal corporations—Analysis. No bid or proposal for the sale of corrugated culverts to any county, city, town, municipal or other public corporation, or to the state of Montana, or any department, board, bureau, commission or officer thereof shall be valid, and no contract for the purchase of corrugated culverts by any county, city, town, municipal or other public corporation, or by the state of Montana, or any department, board, bureau, commission or officer thereof, shall be entered into, unless there shall have been filed by such bidder or seller with the secretary of state, prior to the making of such bid or the letting of such contract, as the case may be, an accurate and complete analysis of the metal used in the manufacture of such corrugated culverts, showing the percentage each of pure iron, copper, carbon, silicon, manganese, sulphur, phosphorus and other substances contained therein, together with the weight of galvanizing per square foot, sworn to by the manufacturer of such metal, and a copy of such affidavit, together with a specification showing gauge of the metal used in the various diameters of such culvert, the number, size and spacing of the rivets and fastenings, and the length of lap of the longitudinal and circumferential seams, and the type of connection to be furnished for connecting together the various sections of such corrugated culverts, signed by the seller thereof, or bidder, as the case may be, shall be incorporated in such bid or in such contract, as the case may be.

History: En. Sec. 1, Ch. 143, L. 1919.

1722. Penalty for failure to file analysis. The failure to file such analysis with the secretary of state, or the failure to incorporate such copy, together with such specification, shall render such bid or contract null, void, and of no effect, and no warrant or order for the payment of any public moneys for the purchase of corrugated culverts shall be valid unless the provisions of this act shall have been fully complied with.

History: En. Sec. 2, Ch. 143, L. 1919.

1723. Analyses to be kept by secretary of state. It shall be the duty of the secretary of state to file all such sworn analyses and keep a complete index thereof, and they shall thereupon become public records.

History: En. Sec. 3, Ch. 143, L. 1919.

1724. Penalty for delivering inferior corrugated culverts. Any person, firm or corporation who, as principal or agent, shall intentionally sell or deliver for sale to any county, city, town, municipal or other public corporation, or the state of Montana, or any department, board, bureau,

commission or officer thereof, any corrugated culvert which is inferior in grade, quality, weight, character, kind or brand to that specified in his bid, analysis, specification or contract, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars, or greater than one thousand dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment; and upon a second conviction for such offense he shall be punished by a fine of not less than one thousand dollars, or more than fifteen hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 143, L. 1919.

1725. Duty of county attorneys to prosecute. It shall be the duty of the county attorneys in this state to diligently prosecute any and all persons violating any of the provisions of, and otherwise to enforce, this act in their respective places (counties or districts) upon complaint of any citizen or taxpayer of any violation of this act.

History: En. Sec. 5, Ch. 143, L. 1919.

CHAPTER 133.

OBSTRUCTIONS AND ENCROACHMENTS.

Section 1726. Construction of Sidewalks—Damage to Sidewalk by Team.
1727. Fences and Buildings Encroaching Upon Highway.
1728. Notice to Remove Encroachment.
1729. Penalty for Failure to Remove Encroachment Promptly.
1730. Action to Remove or Abate—Costs and Damages.
1731. Removal of Encroachment at Expense of Owner.
1732. Liability for Permitting Water to Overflow Highway.
1733. Excavations Across Highway—Permit and Bridges.
1734. Duty of Person Finding Obstruction Upon Highway.
1735. Removal of Tree Falling Upon Highway.
1736. Posting Speed Limit Upon Bridges.
1737. Malicious Injury to Shade or Ornamental Trees.
1738. Penalty for Obstructing or Injuring Highway—Notice to County Attorney.
1739. Dumping Garbage Upon or Near Highway.
1740. Depositing Glass, Nails, or Other Dangerous Articles in Highway.
1741. Prosecution of Offenses by County Attorney.

1726. Construction of sidewalks—Damage to sidewalk by team. Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to the authority conferred by law on the board of county commissioners, and the road supervisors; and any person using said sidewalk with mule, horse, or team, without permission of the owner, is liable to such owner or occupant in the sum of five dollars for each trespass, and for all damages suffered thereby.

History: En. Sec. 2621, Pol. C. 1895; re-en. Sec. 7, Ch. 44, L. 1903; re-en. Sec. 1343, Rev. C. 1907; re-en. Sec. 1, Ch. 6, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 6, Ch. 141, L. 1915.

Note.—Sections 1726 to 1738, inclusive, were enacted as sections 2721 to 2732, inclusive, Political Code 1895; re-enacted as sections 37 to 48, inclusive, chapter 44, Laws of 1903, appearing as sections 1373 to 1384, inclusive, Revised Codes 1907; re-enacted as sections 2 to 13, chapter 6, chapter 72, Laws of 1913; re-enacted as sections 2 to 13, chapter 6, chapter 141, Laws of 1915.

1727. Fences and buildings encroaching upon highway. If any highway duly laid out or erected is encroached upon by fences, buildings, or

otherwise, the road supervisor of the district must give notices, orally or in writing, requiring the encroachment to be removed from the highway.

History: En. Sec. 2, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2731.

For discussion of law of encroachments on highways, see 13 R. C. L. 186.

1728. Notice to remove encroachment. Notice must be given to the occupant or owner of the land or person causing or owning the encroachment or left at his place of residence, if he be known to the person giving such notice and resides in the county; if not, it must be posted on the encroachment, specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same forthwith.

History: En. Sec. 3, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2732.

1729. Penalty for failure to remove encroachment promptly. If the encroachment is not removed forthwith, or commenced to be removed forthwith, and the removal is not diligently prosecuted, the one who caused, owns, or controls the encroachment forfeits ten dollars for each day the same continues unremoved. If the encroachment is such as to effectually obstruct and prevent the use of the highway for vehicles, the road supervisor must forthwith remove the same.

History: En. Sec. 4, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2733.

1730. Action to remove or abate—Costs and damages. If the encroachment is denied, and the owner, occupant, or person controlling the matter or thing charged with being an encroachment, refuses either to remove or permit the removal thereof, the road supervisor must commence in the proper court an action to abate the same as a nuisance; and if he recovers judgment, he may, in addition to having the same abated, recover ten dollars for every day such nuisance remained after such notice, and also his costs in said action. The board of county commissioners may at any time order the supervisor to forthwith remove any encroachment without commencing an action.

History: En. Sec. 5, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2734.

1731. Removal of encroachment at expense of owner. If this encroachment is not denied, but is not removed for five days after the notice is complete, the road supervisor may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, and also, for each day the same remained after notice was complete, the sum of ten dollars in an action for that purpose.

History: En. Sec. 6, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2735.

1732. Liability for permitting water to overflow highway. Any person storing or distributing water for any purpose, who permits the water to overflow any highway to the injury thereof, must, upon notification by the board of county commissioners, or the road supervisor of the district where such overflow occurred, repair the damages occasioned by overflow; and should such repairs not be made within a reasonable time by such

person, the road supervisors must make such repairs and recover the expense thereof from such person in an action at law.

History: En. Sec. 7, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2737.
Related sections: 1738, 11531.

1733. Excavations across highway—Permit and bridges. All persons contemplating the excavation of irrigating, mining, drainage, or other ditches across the public highways, are required to obtain a permit in writing from the board of county commissioners, or the supervisor of said district, before beginning such excavations, and to bridge such irrigation, mining, drainage, or other ditches at once, substantially and in accordance with the plans and specifications furnished by the board of county commissioners; and thereafter said bridges shall be maintained by the county. And on failure or neglect to bridge as in this section provided, the supervisor of the road district must immediately remove any obstruction placed there, and refill such ditch, if necessary for the convenience of the traveling public.

History: En. Sec. 8, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2737.

1734. Duty of person finding obstruction upon highway. It shall be the duty of any person finding any obstruction upon any highway of this state to forthwith notify the road supervisor of such obstruction.

History: En. Sec. 9, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726.

1735. Removal of tree falling upon highway. Whoever cuts down a tree so that it falls into any highway must forthwith remove the same, and is liable to a penalty of ten dollars for every day the same remains in such highway.

History: En. Sec. 10, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2740.

1736. Posting speed limit upon bridges. Road supervisors must, when ordered by the board of county commissioners so to do, put upon bridges under their charge notices that there is "Five Dollars Fine for Riding or Driving on This Bridge Faster than a Walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to pay five dollars fine for each offense.

History: En. Sec. 11, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2741.

1737. Malicious injury to shade or ornamental trees. Whoever digs up, cuts down, or otherwise maliciously injures or destroys any shade or ornamental tree on any highway, unless the same is deemed an obstruction by the board of county commissioners and removed under their direction, forfeits one hundred dollars for each tree.

History: En. Sec. 12, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726. Cal. Pol. C. Sec. 2742.

Power of municipality to remove shade trees from streets, see notes in 1 Ann. Cas. 785; 16 Ann. Cas. 642; Ann. Cas. 1913C, 1013.

1738. Penalty for obstructing or injuring highway—Notice to county attorney. Whoever obstructs or injures, or causes to be obstructed or injured, any highway, or diverts or causes to be diverted any watercourses thereon, or drains or causes to be drained any water from his

land upon any highway, to the injury thereof, is liable to a penalty of ten dollars for each day such obstruction or injury remains, and must be punished as provided in section 11464 of the Penal Code. It shall be the duty of the road supervisor to notify the county attorney of any and all violations of this act.

History: En. Sec. 13, Ch. 6, Ch. 141, L. 1915. See also history Sec. 1726.

Related sections: 1732, 11531.

Cited or applied as section 2726, Political Code, before amendment, in State v. Auchard, 22 Mont. 14, 55 Pac. 361.

Criminal liability for obstructing highway, see 13 R. C. L. 246.

1739. Dumping garbage upon or near highway. It shall be unlawful for any person or persons to dump or leave any garbage or dead animal in or upon any public highway, road, or alley of this state, or within two hundred yards of such public highway, road, or alley. Any person found guilty of a violation of this section shall be fined in a sum not exceeding twenty-five dollars, or imprisoned in the county jail for a period not exceeding thirty days, or be punished by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 90, Ch. 44, L. 1903; re-en. Sec. 1434, Rev. C. 1907; re-en. Sec. 14, Ch. 6, Ch. 72, L. 1913; re-en. Sec. 14, Ch. 6, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2737.

Related sections: 2484, 2649, 11235.

1740. Depositing glass, nails, or other dangerous articles in highway. It shall be unlawful for any person or persons to deposit any crockery or glass, nails, tacks, or any other article that would tend to injure horses' feet or automobile tires in or upon any highways, road, or alley in this state. Any persons guilty of a violation of this section shall be fined in a sum not exceeding fifty dollars, or be imprisoned in the county jail for a period not exceeding sixty days, or be punished by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 15, Ch. 6, Ch. 72, L. 1913; re-en. Sec. 15, Ch. 6, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2737.

1741. Prosecution of offenses by county attorney. The county attorneys, upon complaint of the road supervisor or any other person, must prosecute all actions under the provisions of this act by a suit in the name of the state, and all penalties and forfeitures must be paid into the general fund of the county.

History: En. Sec. 2734, Pol. C. 1895; re-en. Sec. 50, Ch. 44, L. 1903; re-en. Sec. 1386, Rev. C. 1907, re-en. Sec. 16, Ch. 6, Ch. 72, L. 1913; re-en. Sec. 16, Ch. 6, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2743.

CHAPTER 134.

SPEED AND TRAFFIC REGULATIONS.

Section 1742. Speed Regulations.
1743. Traffic Regulation.
1744. Rules Upon Meeting Vehicles.
1745. Drunkards Not to Be Employed as Drivers.
1746. Intoxicated Drivers to Be Discharged.
1747. Duty of Driver to Guard Against Runaways.
1748. Liability of Owner for Negligence of Driver.
1749. Moving Heavy Machines or Load Along Highways or Over Bridges.
1750. Moving Steam-Engines and the Like Along Highways.
1751. Penalty for Violation of Two Preceding Sections.
1752. Disposition of Fines.
1753. Accessories Required Upon Motor Vehicles.
1754. Penalties for Violation of Act—Reporting Convictions—Duty of Officers.

1742. Speed regulations. Every person operating or driving a vehicle of any character on a public highway of this state shall drive the same in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and so as not to unduly or unreasonably endanger the life, limb, property, or other rights of any person entitled to the use of the street or highway; provided, however, that cities and towns may, by ordinance, regulate speed and traffic upon the streets within the incorporated limits.

History: En. Sec. 7, Ch. 75, L. 1917.

A person driving an automobile on the wrong side of the road is prima facie liable for a violation of this section for failing to exercise the precaution necessary to avoid frightening animals being driven on the road, and thus imperiling the safety of the drivers of such animals. Savage v. Boyce, 53 Mont. 470, 473, 164 Pac. 887.

Constitutionality of statutes regulating speed of vehicles in streets, see notes in 3 Ann. Cas. 495; 11 Ann. Cas. 728; Ann. Cas. 1916E, 1067.

Fire apparatus as subject to highway restriction as to speed, see note in Ann. Cas. 1917D, 565.

1743. Traffic regulation. Every person operating or driving a vehicle of any character upon a public street or highway of this state must observe the following traffic regulations:

1. Traffic must everywhere and at all times keep to the right. Vehicles moving in opposite directions must pass each other by turning to the right. Vehicles moving in the same direction must pass by turning to the left on the part of the one passing, and turning to the right on the part of the one being passed. At all (turns) curves, corners, and crossings, and particularly where the view is in any manner obstructed both in cities and towns and in the country, vehicles must slow down and be under complete control and must keep to the right, so that if the width of the road permits, there is room on their left for the passing vehicle that may at any time suddenly or unexpectedly appear.

2. In cities, towns, or villages where traffic is heavy, slow moving traffic must keep as near as possible to the curb. Vehicles turning corners to the right must keep close to the right-hand curb; in turning to the left, vehicles must keep to the right and swing full around the intersection of the center lines of the street. The operator or driver of any vehicle desiring for any reason, either at or between street crossings, to turn to the left, must warn all following by extending his arm full from the shoulder for a period of not less than two seconds, and sufficiently in advance of turning to enable any one following to stop or make the necessary change in course.

3. The operator or driver of any vehicle upon a public highway, upon being overtaken by another vehicle and receiving a signal or notice from the operator or driver of the vehicle in the rear that he desires to pass, must, without unnecessary delay, make every reasonable effort to permit him to do so.

4. No motor vehicle operating upon a public street or highway of this state shall pass a street-car which has stopped to receive or discharge

passengers at a less distance than eight feet, nor at a speed greater than six miles per hour.

History: Sec. 8, Ch. 75, L. 1917. Law of the road, see 13 R. C. L. 270.

1744. Rules upon meeting vehicles. When vehicles meet, the driver of each must turn reasonably to the right of the center of the highway or road, so as to pass without interference, under the penalty of twenty-five dollars, for every neglect, to be recovered by the party injured. Where the whole breadth of the roadway is not worked, the center of the worked part is the center of the highway. In times of snow where there is a beaten track, the center of that is the center of the highway or road. But this section does not apply to vehicles meeting cars running on rails or grooved tracks.

History: En. Sec. 81, Ch. 44, L. 1903; re-en. Sec. 1420, Rev. C. 1907; re-en. Sec. 1, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 8, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2931.

Under this section, the driver of an automobile, who failed to turn to the right of the way sufficiently to permit a vehicle, coming from the opposite direction, to pass in safety, was at fault, and liable for damages for injury resulting therefrom. Savage v. Boyce, 53 Mont. 470, 473, 164 Pac. 887.

1745. Drunkards not to be employed as drivers. No person must employ to drive any vehicle for the conveyance of passengers upon any public highway or road a person addicted to drunkenness, under penalty of five dollars for every day such person is in his employ.

History: En. Sec. 82, Ch. 44, L. 1903; re-en. Sec. 1421, Rev. C. 1907; re-en. Sec. 2, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 2, Ch. 8, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2932.

1746. Intoxicated drivers to be discharged. If any person, while actually employed in driving any vehicle, is intoxicated to such a degree as to endanger the safety of his passengers, the owner, on receiving from any passenger a written notice of the fact, verified by his oath, must forthwith discharge such driver, and if he have such driver in his service within six months after such notice, he incurs a like penalty.

History: En. Sec. 83, Ch. 44, L. 1903; re-en. Sec. 1422, Rev. C. 1907; re-en. Sec. 3, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 3, Ch. 8, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2933.

1747. Duty of driver to guard against runaways. The driver of any vehicle used to convey passengers must not leave the horses attached thereto while passengers remain in the same, without first fastening the horses or placing the lines in the hands of some other person, so as to prevent their running, under a penalty of twenty dollars for each offense.

History: En. Sec. 84, Ch. 44, L. 1903; re-en. Sec. 1423, Rev. C. 1907; re-en. Sec. 4, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 4, Ch. 8, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2934.

1748. Liability of owner for negligence of driver. The owner of every vehicle running or traveling upon any highway or road for the conveyance of passengers is liable for all damage to person or property done by any person in his employment as a driver while driving such vehicle, whether done wilfully or negligently, or otherwise, in the same manner as such driver would be liable.

History: En. Sec. 5, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 5, Ch. 8, Ch. 141, L. 1915. Cal. Pol. C. Sec. 2936.

Liability of owner of automobile for acts of negligence of his chauffeur or agent, see notes in 10 Ann. Cas. 732; 12 Ann. Cas. 974; Ann. Cas. 1914C, 1087; Ann. Cas. 1915D, 476; Ann. Cas. 1916A, 659; Ann. Cas. 1917D, 1001, 1008; Ann. Cas. 1918D, 241, 1134.

1749. Moving heavy machines or load along highways or over bridges. All persons owning, controlling, operating, or managing threshing-machines, steam-engines, sawmills, or any heavy loads of whatever kind or nature, are required, in moving the same over the public highways, to lay down planks not less than one foot wide, three inches in thickness, and of sufficient length, on the floors of all bridges and culverts situated on the public highways, while crossing the same, for the wheels of said threshing-machines, sawmills, steam-engines, or other vehicles carrying heavy loads of any kind to run on; provided, that this section shall not apply to any threshing-machine, sawmill, steam-engine or other vehicle carrying heavy loads not exceeding six tons in weight.

History: En. Sec. 87, Ch. 44, L. 1903; re-en. Sec. 1426, Rev. C. 1907; re-en. Sec. 6, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 6, Ch. 8, Ch. 141, L. 1915.

1750. Moving steam-engines and the like along highways. All persons owning, controlling, operating, or managing threshing-machines, sawmills, or steam-engines of any kind, are required in moving the same along the public highways, or meeting any person or persons on horses or mules, or in vehicles drawn by horses or mules, to shut off the steam and halt until such horses or mules shall have safely passed.

History: Ap. p. Sec. 88, Ch. 44, L. 1903; re-en. Sec. 1427, Rev. C. 1907; re-en. Sec. 7, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 7, Ch. 8, Ch. 141, L. 1915.

1751. Penalty for violation of two preceding sections. Any person or persons violating the provisions of the two preceding sections shall be guilty of a misdemeanor, and shall, on conviction thereof, be fined in a sum not less than five dollars nor more than one hundred fifty dollars.

History: En. Sec. 89, Ch. 44, L. 1903; re-en. Sec. 1428, Rev. C. 1907; re-en. Sec. 8, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 8, Ch. 8, Ch. 141, L. 1915.

1752. Disposition of fines. Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915.

1753. Accessories required upon motor vehicles. Every motor vehicle operated or driven upon the public highways of this state shall be provided with the following accessories:

1. Two sets of independently operated brakes in good working order either one of which sets must be sufficient to stop the drive-wheels of the car and prevent them from turning while the car is in motion.

2. A horn or other device for signaling sufficient under all reasonable conditions to give timely warning of the approach of the motor vehicles.

3. During the period between one hour after sunset and one hour before sunrise, every motor vehicle of the three or four wheeled type shall display two white lights in front (one on each side), and one light in the rear. Every motor vehicle of the motorcycle or two-wheeled type shall display one white light in front, and one light in the rear, which said rear lights in both classes of motor vehicles shall display red rays visible

to the rear, and shall throw white light upon the number plate carried on the rear of such vehicle, and illuminate the same so that the number will be clearly visible at a distance of one hundred feet. The light of the front lamps shall be visible at least two hundred feet in the direction which the motor vehicle is proceeding. The front lights of all motor vehicles shall be equipped with some style of non-glare dimmers by which the intensity of such lights is diminished; and it shall be unlawful for the driver of any motor vehicle in the state of Montana to display on the front of such vehicle lights of such a degree of brightness as tends to confuse drivers of vehicles coming in contact with or moving in an opposite direction from such motor vehicles.

History: En. Sec. 9, Ch. 75, L. 1917; amd. Sec. 1, Ch. 110, L. 1919.

Note.—In order to arrange the laws according to their subject-matter it was necessary to detach the above section from other portions of the original act. The term "motor vehicles" as used in this section is defined by section 1763.

1754. Penalties for violation of act—Reporting convictions—Duty of officers. 1. The violation of any of the provisions of this act shall constitute a misdemeanor, punishable by a fine of not exceeding one hundred dollars. The third or subsequent conviction for violation of the provisions of this act, by a licensed and registered chauffeur, may be punishable by the suspension of the right to operate a motor vehicle as a registered and licensed chauffeur under the provisions of this act, for a period of not more than six months; and the registrar of motor vehicles, upon the recommendation of the trial court, shall forthwith revoke the license of the person convicted, and no new license shall be issued to such person for at least six months after the date of such conviction, nor thereafter, except in the discretion of the registrar of motor vehicles. Nothing herein contained shall prevent the indictment of a person so violating for an offense committed under any other law.

2. Reporting conviction to register motor vehicles. Upon the conviction of any person for a violation of any of the provisions of this act, the magistrate or other judicial officer before whom the proceedings are held, shall immediately certify the fact of the case, including the name and address of the offender, the character of the punishment and the amount of any fine imposed and paid, to the registrar of motor vehicles, who shall enter the same either in the book or index of licensed chauffeurs, as the case may be, opposite the name of the person convicted, and, in the case of any other person, in a book or index of offenders to be kept for such purposes, in alphabetical order. If any such conviction shall be so reversed upon appeal therefrom, the person whose conviction has been so reversed may serve on the registrar of motor vehicles a certified copy of the order of reversal, whereupon the registrar of motor vehicles shall enter the same in the proper book or index in connection with the record of such conviction.

3. It is hereby made mandatory upon all peace and police officers of the state, of the counties of the state and of towns, cities and villages, to carry out the provisions of this act and arrest the drivers or owners of any motor vehicle being used or driven in violation of any of the provisions of this act.

History: En. Sec. 11, Ch. 75, L. 1917.

CHAPTER 135.

REGISTRATION OF MOTOR VEHICLES—CHAUFFEUR'S LICENSE.

Section 1755. Secretary of State Shall Keep Records.
1756. Blanks to Be Provided.
1757. Number Plates.
1758. Registration—Certificate and Badge—Records.
1759. Registration and Re-registration of Motor Vehicles.
1760. Registration Fees.
1761. Chauffeur's License, Provisions Concerning.
1762. Penalties for Violation of Act—Reporting Convictions—Duty of Officers.
1763. Definitions.

1755. Secretary of state shall keep records. 1. The secretary of state be and is hereby constituted the registrar of motor vehicles, of motor dealers, and of chauffeurs, and that as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles of every kind, of all dealers in motor vehicles, and of chauffeurs, and to assign to each a distinctive serial registration number.

2. In the case of motor vehicles the record shall show the following: Name of owner, residence by county, business address, manufacturer of car, manufacturer's designation of style of car, manufacturer's serial number, year of manufacture, character of motive power, manufacturer's horsepower rating and the distinctive serial number assigned such car, also whether or not to be used exclusively for commercial purposes, and if so, manufacturer's rating of load carrying capacity, and such other information as may from time to time be found desirable.

3. In the case of dealers the record shall show the name of the applicant, his residence, and address by town and county, his business address, and the distinctive number assigned him.

History: En. Sec. 1, Ch. 75, L. 1917.

1756. Blanks to be provided. It shall be the duty of the registrar of motor vehicles to provide the following:

1. Blank application forms outlining and providing for the information needed in each class of registration required, and to furnish these upon request to applicant for registration.

2. Registration certificates in folder or pamphlet form, with cloth cover and of convenient size for the pocket. These forms to contain, in addition to the information shown upon the registration record, a copy of the speed and traffic regulations hereinafter prescribed.

3. License certificate blanks for chauffeurs similar in form to registration certificates. These forms to contain, in addition to blank space for the information shown upon the chauffeur's registration record, copies of sections 6, 7, and 9 hereof (1760, 1742, 1753), blank space for the record of conviction under any of the provisions of this article, and a space for the chauffeur's signature.

History: En. Sec. 2, Ch. 75, L. 1917.

1757. Number plates. Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle

by the registrar of motor vehicles. Such number plate shall be in four series; one series for owners of motor cars, one for owner of motor vehicles of the motor-cycle type, and one for dealers in each of the two types of vehicles above named. All number plates for motor vehicles shall be renewed annually, shall bear a distinctive marking each year, and shall be furnished by the state. In the case of motor cars, number plates shall be of metal at least five inches wide and not less than thirteen inches in length, and there shall be the abbreviation of the state—Mont.—and in the lower left-hand corner the number of the year for which the plate is issued. The background of this part of the plate shall be of a distinctive color each year, which color shall be designated by the registrar of motor vehicles. To the right of these and covering the body of the plate shall be the distinctive registration number of the motor vehicle for which the number plate is issued. The numerals shall be four inches high, and each stroke shall be at least half an inch in width. For vehicles of the motor-cycle type the number plate shall be similar in all respects to those for motor cars, except that the metal plate shall not be less than three inches wide and not less than nine inches long, and that the numerals thereon shall be two inches high, and the individual strokes thereof not less than one-half inch wide. The abbreviation—Mont.—and the number of the year shall be placed at the top of the plate. For the use of dealers the number plates shall be essentially as those for motor cars and motor-cycles, except that to the right of the serial number the plate shall contain the letter "D," such letter to be of the same height and size as the figures composing the serial number.

History: En. Sec. 3, Ch. 75, L. 1917.

1758. Registration—Certificate and badge—Records. Upon receiving by mail or otherwise an application in any one of the four classes above named, duly executed in proper form and accompanied by registration fee, such registrar of motor vehicles shall cause to be entered the information contained therein upon the corresponding record, shall assign to the applicant a registration number, and shall furnish the applicant a registration certificate corresponding to the registration number assigned him; or, if the applicant be a chauffeur subject to conditions hereinafter named, he shall furnish him a badge suitable in size and shape for regular wear, and license certificate numbered to correspond with the serial number assigned him. All of the foregoing shall be furnished to the applicant without cost or expense other than the registration fee hereinafter provided.

Records shall be open to inspection. All records provided for in the foregoing shall be open to inspection during all reasonable business hours, and the registrar of motor vehicles shall furnish the information from said record upon payment by the applicant of the cost of transcribing the information asked for.

History: En. Sec. 4, Ch. 75, L. 1917.

Failure to comply with statutory regulations as to registration, license, displaying number, etc.; as affecting rights and liabilities of owner or driver of automobile, see notes in 18 Ann. Cas. 242; Ann. Cas. 1913B, 680; Ann. Cas. 1914A, 128; Ann. Cas. 1918B, 1147; Ann. Cas. 1918D, 847.

1759. Registration and re-registration of motor vehicles. 1. Every owner of a motor vehicle operated or driven upon the public highway of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, cause to be filed by mail, or otherwise, in the office of the registrar of motor vehicles a verified application for registration on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein called for. Each application must be accompanied by the registration fee hereinafter named, registration must be renewed and fees paid annually, and application for re-registration must be filed with the registrar of motor vehicles not later than January first of each year.

2. Every dealer in motor vehicles shall cause to be filed by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for registration as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein called for. Each application must be accompanied by the registration fee hereinafter named. Dealers' registration must be renewed and paid for annually, and application for re-registration must be filed not later than January first of each year. Upon the registration of a dealer, the registrar of motor vehicles shall assign to such dealer a distinctive serial registration number as a dealer, and furnish such dealer with six (6), sets of number plates, which number plates shall be similar to number plates furnished by the registrar to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the word "Dealer" or the letter "D." Nothing contained in this paragraph shall be construed to authorize a dealer to operate or use a motor vehicle for other than demonstration purposes unless registered in accordance with the first paragraph of this section.

3. Must have number plates. No person shall operate or drive a motor vehicle upon the public highways of this state unless such vehicle shall have been properly registered, and shall have the proper number plates conspicuously displayed one on the front and one on the rear of such vehicle, each securely fastened so as to prevent the same from swinging. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this act otherwise provided.

4. Transfer of vehicle sold. Upon the sale of a motor vehicle registered in accordance with this section by other than a dealer, the vendee shall within ten days after the date of such sale notify the registrar of motor vehicles of the same, stating the name and business address of the previous owner, if known, the number under which such motor vehicle is registered, and the name, residence, and business address of such vendee. Upon filing such statement, accompanied by a filing fee of one dollar with the registrar of motor vehicles, the latter shall note upon the registration record such change of ownership.

5. Replacing number plates or certificates. In the event of loss, mutilation, or destruction of a certificate of registration or number plate, the owner of the registered motor vehicle may again register with the registrar of motor vehicles and receive a new number, upon filing in the office

of the registrar of motor vehicles a sworn declaration showing the fact and payment of a fee of one dollar for such registration. The original registration shall thereupon be canceled.

6. Exemption of non-resident owners. The provisions of the foregoing sections relative to registration and display of registration number shall not apply to a motor vehicle owned by a non-resident of this state temporarily sojourning in this state, if such motor vehicle be registered in the state in which the owner thereof resides and there be displayed thereon the proper number plate of such state.

7. Dealers and motor vehicles may be registered and re-registered and licenses and certificates issued at any time during the year but all registration, licenses and certificates shall cease to be effective after December thirty-first of the year in which the same are issued.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919.

1760. Registration fees. 1. Registration fees shall be paid to the registrar of motor vehicles upon registration or re-registration of dealers and motor vehicles in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, seventy-five dollars.

Dealers in motorcycles, twenty-two dollars and fifty cents.

Exclusive dealers in automobile accessories, ten dollars.

Motor vehicles, other than motor trucks, having a rated engine capacity not exceeding twenty-three horsepower (according to S. A. E. formula), seven dollars and fifty cents.

Motor vehicles, other than motor trucks, having a rated engine capacity exceeding twenty-three horsepower, and not more than thirty-seven horsepower (according to S. A. E. formula), fifteen dollars.

Motor vehicles, other than motor trucks, having a rated engine capacity exceeding thirty-seven horsepower (according to S. A. E. formula), twenty-two dollars and fifty cents.

Electrically driven passenger vehicles, fifteen dollars.

Trucks not over one ton capacity, ten dollars.

Trucks over one and not over two tons capacity, twenty-two dollars and fifty cents.

Trucks over two and not over three tons capacity, thirty-seven dollars and fifty cents.

Trucks over three tons capacity, sixty dollars.

Bicycle with motor attachment, one dollar and fifty cents.

The registrar of motor vehicles shall first deduct from all fees paid under the provisions of this act, the actual cost of making and mailing all licenses, certificates, license plates, and identification marks; of the remainder of the fees so paid he shall transmit fifty per cent. thereof to the county from which the registration fee came, for deposit to the credit of the general road fund of said county. The remaining fifty per cent. he shall transmit to the state treasurer, to be deposited to the credit of the state highway fund.

2. If any dealer or motor vehicle is originally registered after July thirty-first in any year, the registration fee for the balance of such year shall be one-half of the regular fee above given.

3. A dealer who shall maintain more than one place of business or

who shall maintain any branch establishment or establishments, must register and pay a registration fee for each such place of business or establishment.

4. A registered dealer who may sell and dispose of his entire business to any other person may have his certificate of registration transferred to such purchaser, upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar, the registrar of motor vehicles shall note upon the registration record such change of ownership. But no certificate of registration can be so transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchaser of such business.

5. The provisions of this act with respect to payment of registration fees shall not apply or be binding upon motor vehicles owned or controlled by the United States of America, or by any state, city, or county; but in all other respects the provisions of this act shall be applicable and binding upon cars so owned.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921.

1761. Chauffeur's license, provisions concerning. 1. Application for licenses to operate motor vehicles as a chauffeur may be made by mail, or otherwise, to the registrar of motor vehicles or his duly authorized agents, upon blanks prepared under his authority. Such application shall be verified, and shall be accompanied by a fee of two dollars. Such application shall state the age of the applicant, and whether or not such applicant has ever been convicted of a felony, and no license shall be issued to any person who has ever been convicted of a felony. To each person to whom a license is granted the registrar of motor vehicles shall furnish, without cost other than the license fee herein prescribed, a license certificate in the form prescribed in section 1756, and a suitable metal badge bearing the distinguishing number or mark assigned to him. This badge shall thereafter be worn by the chauffeur affixed to his clothing in a conspicuous place at all times while he is operating or driving a motor vehicle upon public highways. Such badge shall be valid only during the term of the license of the chauffeur to whom it was issued, as aforesaid. Every person licensed to operate vehicles as chauffeur under this article shall endorse his usual signature on the margin of the license issued to him, immediately upon the receipt of said license, and such license shall not be valid until so indorsed. All licenses issued hereunder shall expire January first of each year, and shall be renewed annually. The registrar of motor vehicles may refuse to issue or renew a license if he deem the applicant not qualified to receive such a license, but the action of the registrar of motor vehicles may be reviewed by the courts under writ of certiorari or other appropriate remedy.

2. No person shall operate or drive a motor vehicle as a chauffeur upon a public highway of this state, unless such person shall have com-

plied in all respects with the requirements of this section; provided, however, that a non-resident who has registered and is licensed under the provisions of the law of the foreign country, state, territory, or federal district of his residence shall be exempt from license under this section, on condition that he shall wear the badge assigned to him in the foreign country, state, territory, or federal district of his residence, in the manner provided in this section. The provisions of this section, however, shall be operative as to a chauffeur who is a non-resident of this state, only to the extent that under the laws of the foreign country, state, territory, or federal district of his residence, like exemptions and privileges are granted to persons duly licensed and registered as chauffeurs under the laws of this state, and who are residents of this state.

3. No chauffeur having been licensed as herein provided shall voluntarily permit any other person to possess or use his license or badge; nor shall any person operating or driving a motor vehicle use or possess any license or badge belonging to another person, or a fictitious license or badge.

4. No chauffeur or other person having the care of a motor vehicle for the owner shall receive or take, directly or indirectly, any bonus, discount, or other consideration for the purchase of supplies or parts of such motor vehicle, or for work done thereon by others; and no person furnishing such supplies or parts, work or labor, shall give or offer any such chauffeur or other person having the care of a motor vehicle for the owner thereof, either directly or indirectly, any bonus, discount, or other consideration.

5. Upon the conviction of any chauffeur of a violation of any provision of this article, it shall be the duty of the court or judge, or other judicial officer before whom such chauffeur is convicted, to indorse such conviction on such license card, with the date of the conviction and the character of the offense in the space provided for such indorsement.

6. In the event of the loss, mutilation, or destruction of a chauffeur's license card or of chauffeur's badge, such chauffeur may again register with the registrar of motor vehicles and receive a new license card or chauffeur's badge, upon filing in the office of the registrar of motor vehicles an affidavit showing the fact and the payment of a fee of one dollar. The original registration shall thereupon be canceled.

History: En. Sec. 10, Ch. 75, L. 1917.

1762. Penalties for violation of act—Reporting convictions—Duty of officers. 1. The violation of any of the provisions of this act shall constitute a misdemeanor, punishable by a fine of not exceeding one hundred dollars. The third or subsequent conviction for violation of the provisions of this act by a licensed and registered chauffeur may be punishable by the suspension of the right to operate a motor vehicle, as a registered and licensed chauffeur under the provisions of this act, for a period of not more than six months; and the registrar of motor vehicles, upon the recommendation of the trial court, shall forthwith revoke the license of the person convicted, and no new license shall be issued to such person for at least six months after the date of such conviction, nor thereafter, except in the discretion of the registrar of motor vehicles. Nothing herein contained

shall prevent the indictment of a person so violating for an offense committed under any other law.

2. Reporting conviction to registrar motor vehicles. Upon the conviction of any person for a violation of any of the provisions of this act, the magistrate or other judicial officer before whom the proceedings are held shall immediately certify the fact of the case, including the name and address of the offender, the character of the punishment, and the amount of any fine imposed and paid, to the registrar of motor vehicles, who shall enter the same either in the book or index of licensed chauffeurs, as the case may be, opposite the name of the person convicted, and in the case of any other person, in a book or index of offenders to be kept for such purposes, in alphabetical order. If any such conviction shall be so reversed upon appeal therefrom, the person whose conviction has been so reversed may serve on the registrar of motor vehicles a certified copy of the order of reversal, whereupon the registrar of motor vehicles shall enter the same in the proper book or index in connection with the record of such conviction.

3. It is hereby made mandatory upon all peace and police officers of the state, of the counties of the state, and of towns, cities, and villages, to carry out the provisions of this act, and arrest the drivers or owners of any motor vehicle being used or driven in violation of any of the provisions of this act.

History: En. Sec. 11, Ch. 75, L. 1917.

1763. Definitions. As used in this act the term "motor vehicle" shall include all vehicles propelled by any power other than muscular power, except road-rollers, traction-engines and railroad cars, and motor cars running upon stationary rails or tracks. The term "motorcycle" shall mean a motor vehicle having but two wheels in contact with the ground and a saddle on which the operator sits astride, or a platform on which he stands, and bicycles having a motor attached thereto and a driving-wheel in contact with the ground, in addition to the wheels of the vehicle itself, but a motorcycle may carry one or more attachments and a seat for the conveyance of a passenger. The term "motor truck" shall include all motor vehicles used for commercial purposes in carrying freight and merchandise. The term "owner" shall include any person, firm, association, or corporation, owning or renting a motor vehicle, or having the exclusive use thereof under a lease or otherwise, for a period greater than thirty days. The term "dealer" shall include every person who is engaged in the business of buying, selling, or exchanging motor vehicles in this state, whether at an established place of business or otherwise, but shall not include agents or salesmen of manufacturers or distributors selling motor vehicles to or establishing selling or distributing agencies therefor with dealers registered in this state, or salesmen, mechanics, or demonstrators regularly employed by registered dealers in this state. The term "chauffeur" shall mean any person operating a motor vehicle, other than his own, as a mechanic, employee, or for hire, but shall not apply to any employee of a registered dealer demonstrating or testing motor vehicles under such dealer's license, nor to an employee whose ordinary employment does not include the driving of any motor

vehicle, even though such employee should be temporarily engaged in driving a motor vehicle. The word "operator" shall mean any person who operates or drives a motor vehicle. The term "state" shall also include the territories and federal districts of the United States. The term "local authorities" shall include all officers of counties, townships, cities, towns, and villages, as well as all boards, committees, and other public officials of such counties, townships, cities, towns, and villages. The term "public highway" shall include any highway, county road, state road, public street, avenue, alley, park, parkway, or public place in any county, city, town, or village, except any speedway which may have been or may be expressly set apart by law for the exclusive use of horses and light carriages.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919.

CHAPTER 136.

GOOD ROADS DAY.

Section 1764. Proclamation by Governor.

1764. Proclamation by governor. The third Tuesday in June in each year is hereby designated "Good Roads Day," and the governor shall annually, on or before the first day of June, by public proclamation, request the people of the state to contribute labor, material, or money towards the improvement of public highways in their respective communities upon that day.

History: En. Sec. 1, Ch. 20, L. 1915.

CHAPTER 137.

PRIVATE ROADS—HOW ESTABLISHED.

Section 1765. How Established.

1765. How established. Private roads may be established in the manner provided in sections 9933 to 9958 of these codes. But in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof must be first determined by a jury, and such amount, together with the expenses of the proceeding, must be paid by the person to be benefited.

History: En. Sec. 2780, Pol. C. 1895; re-en. Sec. 1435, Rev. C. 1907. Cal. Pol. C. Sec. 2692.

CHAPTER 138.

FERRIES.

Section 1766. Ferries Between Counties.
1767. Notice of Application.
1768. Application for Leave and Notice.
1769. The Hearing.
1770. Duty of Board of Commissioners.
1771. Report of Owner or Keeper of Ferry.
1772. Power and Duty of Commissioners in Regard to Ferry.
1773. All Passengers Must Be Accommodated.
1774. Penalties Recovered, How Disposed of.
1775. Bond to Be Given.
1776. License Tax of Ferry Connecting Two Counties, How Paid.
1777. Interested Commissioner Must Not Act.
1778. Ferry Within One Mile of Another, When.
1779. Owner of Land Preferred.
1780. How Lands Acquired for Use of Ferry.
1781. Must Post Rates of Toll.
1782. Keep Banks in Repair.

1766. Ferries between counties. When authority to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of that county situated on the left bank descending such river, creek, or slough.

History: En. Sec. 2820, Pol. C. 1895; re-en. Sec. 1457, Rev. C. 1907. Cal. Pol. C. Sec. 2843.

For authorities on establishment and regulation of ferries, see 11 R. C. L. 912.

1767. Notice of application. The board of commissioners must not grant authority to erect a toll ferry until the notice of such intended application has been given as required in this article.

History: En. Sec. 2821, Pol. C. 1895; re-en. Sec. 1458, Rev. C. 1907. Cal. Pol. C. Sec. 2844.

1768. Application for leave and notice. Every applicant for authority to erect and take tolls on a public ferry must publish notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county, and by posting three notices in three public places in the township for four successive weeks, specifying the location and the time and place when and where the application will be made. After notice is given application must be made in writing, under oath, to the board of commissioners of the proper county, the landings of the proposed ferry must be described, and the names of the owners thereof given, if known; and if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application.

History: En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459; Rev. C. 1907. Cal. Pol. C. Sec. 2892.

1769. The hearing. At the hearing, proof of giving the notice, required by the preceding section, must be made, and any person may appear and contest the application. If the board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, and by reason of the ownership of the landing, or failure of the owner thereof to apply is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of ten years.

History: En. Sec. 2823, Pol. C. 1895; re-en. Sec. 1460, Rev. C. 1907. Cal. Pol. C. Sec. 2893.

1770. Duty of board of commissioners. The board of commissioners granting authority to keep a public ferry must at the same time:

1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county, and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof.

2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three dollars nor over one hundred dollars per month, payable annually.

3. Fix the rate of tolls which may be collected for crossing the ferry.

4. Make all necessary orders relative to the construction, erection, and business of ferries which they have by law the power to make. The

board of commissioners may, at any time they see fit, authorize and maintain fords across any water within any distance of any ferry.

History: En. Sec. 2824, Pol. C. 1895; re-en. Sec. 1461, Rev. C. 1907. Cal. Pol. C. Sec. 2845.

1771. Report of owner or keeper of ferry. Every owner or keeper of a ferry must report annually to the board of commissioners from which his license is obtained, under oath, the following facts:

1. The actual cost of the construction or erection and equipment of the ferry.
2. The repairs made during the preceding year, and the actual cost thereof.
3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of his business.
4. The amount of tolls collected; and
5. The estimated actual cash value of the ferry, exclusive of the franchise.

History: En. Sec. 2825, Pol. C. 1895; re-en. Sec. 1462, Rev. C. 1907. Cal. Pol. C. Sec. 2847.

1772. Power and duty of commissioners in regard to ferry. The board of commissioners may make all needful rules and regulations for the government of ferries and ferry-keepers, prescribing:

1. How many boats must be kept, their character, and how propelled.
2. The number of hands, boatmen, or ferrymen to be employed, and rules for their government.
3. When and under what circumstances to make trips in the nighttime.
4. Who may be ferried free of toll.
5. In what cases of danger or peril not to cross.
6. Penalties for violation of regulations.
7. In case of steamboats, the rate of speed.
8. The method of and preference in loading and crossing; and
9. How and by whom action must be brought to recover penalties.

History: En. Sec. 2826, Pol. C. 1895; re-en. Sec. 1463, Rev. C. 1907. Cal. Pol. C. Sec. 2894.

1773. All passengers must be accommodated. Subject to the foregoing regulations, ferry-keepers must make trips to accommodate all passengers who desire to cross, and any failure so to do subjects the franchise to forfeiture, by a proper proceeding for that purpose.

History: En. Sec. 2827, Pol. C. 1895; re-en. Sec. 1464, Rev. C. 1907.

1774. Penalties recovered, how disposed of. Penalties recovered under this chapter must be paid to the county treasury for the use of the general road fund of the county.

History: En. Sec. 2828, Pol. C. 1895; re-en. Sec. 1465, Rev. C. 1907. Cal. Pol. C. Sec. 2895.

1775. Bond to be given. The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of commissioners, with one or more sureties, and conditioned that the ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the

laws of the state and all legal orders of the board of commissioners regulating the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be approved by the board of commissioners.

History: En. Sec. 2829, Pol. C. 1895; re-en. Sec. 1466, Rev. C. 1907. Cal. Pol. C. Sec. 2850.

1776. License tax of ferry connecting two counties, how paid. The license tax for a ferry connecting two counties must be paid to the treasurer of the county granting it, and the license issued, but the treasurer of such county must pay to the treasury of the county in which the other end or landing of the ferry is located one-half of the sum so received annually.

History: En. Sec. 2830, Pol. C. 1895; re-en. Sec. 1467, Rev. C. 1907. Cal. Pol. C. Sec. 2851.

1777. Interested commissioner must not act. When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, he must not act in any such matters.

History: En. Sec. 2831, Pol. C. 1895; re-en. Sec. 1468, Rev. C. 1907. Cal. Pol. C. Sec. 2852.

1778. Ferry within one mile of another, when. No toll-ferry must be established within one mile immediately above or below a regularly established ferry, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice hereinafter required, notice of intention to apply for authority to erect a toll-ferry, as in this section provided, must be served upon the proprietor of the ferry already established, at least ten days prior thereto, giving the time and place and grounds of such application.

History: En. Sec. 2832, Pol. C. 1895; re-en. Sec. 1469, Rev. C. 1907. Cal. Pol. C. Sec. 2853.

1779. Owner of land preferred. The owner of the land on either of the waters to be crossed, and the owner of the land on the left bank descending, over the owner of the land on the right bank, is entitled to preference in procuring authority to construct a ferry; but where such owner fails or neglects to apply for such authority within a reasonable time after the necessity therefor arises, the board of commissioners may grant such authority to another.

History: En. Sec. 2833, Pol. C. 1895; re-en. Sec. 1470, Rev. C. 1907. Cal. Pol. C. Sec. 2854.

1780. How land acquired for use of ferry. When there are lands necessary for the construction, erection, or use of such ferry which cannot be procured by agreement between the owner and the landowner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

History: En. Sec. 2834, Pol. C. 1895; re-en. Sec. 1471, Rev. C. 1907. Cal. Pol. C. Sec. 2855.

1781. Must post rates of toll. The owner of every ferry must have the rates of toll as fixed by the board of commissioners printed or written, and posted up in some conspicuous place on or near the ferry.

History: En. Sec. 2835, Pol. C. 1895; re-en. Sec. 1472, Rev. C. 1907. Cal. Pol. C. Sec. 2856.

1782. Keep banks in repair. All ferry-keepers must keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the road fund of the county.

History: En. Sec. 2836, Pol. C. 1895; re-en. Sec. 1473, Rev. C. 1907. Cal. Pol. C. Sec. 2858.

CHAPTER 139.

STATE HIGHWAY COMMISSION.

Section 1783. State Highway Commission and Commissioner—Creation, Salary, Bond and Term.
1784. Appointment of Members—Meetings—Engineer, Duties and Bond.
1785. Duties of Commissioner—Reports.
1786. Compilation of Statistics—Investigation and Consultation.
1787. County Commissioners to Furnish Information.
1788. Commissioner to Prescribe Certain Rules—Designation of State Highways.
1789. Office and Field Help.
1790. Contracts, How Awarded.
1791. Assent to Federal Aid Road Act.
1792. Division of Maintenance and Control.
1793. Standard Guide Signs to Be Erected—Road Association Signs.
1794. Penalty for Defacing Standard Guides.
1795. County Commissioners May Convey Right of Way.
1796. Preparation of Official Road Map.
1797. Rights of Way, How Procured.
1798. Prosecution for Violation of Highway Law.
1799. State Highway Fund and Trust Fund.
1800. Presentation and Payment of Claims.
1801. Existing Contracts Not Invalidated.
1802. Transfer of Property to Commission.

1783. State highway commission and commissioner—Creation, salary, bond and term. There is hereby created a commission to be known as the state highway commission, to consist of three members, one member to be known as the state highway commissioner, and the other members to be known as assistant highway commissioners, and each of said members shall be a citizen of the United States.

The state highway commissioner shall be the executive head of the commission, and shall hold office for the term of four years, and until his successor is appointed and qualified, shall make his headquarters at the city of Helena, shall devote his time exclusively to the business of his office, and shall receive as compensation, to be paid out of the state highway fund the sum of six thousand dollars per annum, together with his traveling expenses, while actually engaged about the duties of his office outside the city of Helena. The assistant highway commissioners shall each hold office for the term of three years, and until his successor is appointed and qualified, except as herein provided and shall receive as compensation, to be paid out of said fund, the sum of ten dollars, per

diem, for each day actually engaged in the duties of his office, including his time of travel between his home and the place of employment of such duties, together with his traveling expenses while away from his home in the performance of the duties of his office.

The highway commissioner shall give bond conditioned for the faithful performance of his duties in the sum of twenty-five thousand dollars, and the assistant highway commissioners shall give a like bond in the sum of ten thousand dollars each.

History: En. Sec. 1, Ch. 10, Ex. L. 1921. Laws of 1917, and chapter 207, Laws of 1921.
Note.—Earlier acts were chapter 170,

1784. Appointment of members—Meetings—Engineer, duties and bond. The members of the state highway commission shall be appointed by the governor and may be removed by him at any time for cause. Said commission shall meet at least once each month for the purpose of transacting its business, including the consideration of claims and the letting of contracts; two members of commission shall constitute a quorum for the transaction of business. The state highway commissioner shall appoint an engineer whose salary shall be fixed by the state highway commission. Said engineer shall perform any acts or duties relating to the office of the highway commission, which said commission may impose upon him; such engineer shall take and file the constitutional oath of office before entering the performance of his duties; he shall give a bond in such sum as the commission may determine and may be removed by the commissioner at any time for cause.

History: En. Sec. 2, Ch. 10, Ex. L. 1921.

1785. Duties of commissioner—Reports. The state highway commissioner shall be furnished with a suitable office in the capitol, where his records shall be preserved, and said office shall be kept open at such times as the business of the commission shall require. He shall file and safely keep a record of all proceedings and orders pertaining to the matters under his direction and copies of all plans, specifications, contracts, estimates and official acts. The commissioner shall prepare and submit to the governor on or before the fifteenth day of each month a report of the work constructed, under construction, and proposed for construction and the progress made during the preceding month, and shall make recommendations as to the needed improvements and their estimated cost.

History: En. Sec. 3, Ch. 10, Ex. L. 1921.

1786. Compilation of statistics—Investigation and consultation. In addition to his other powers and duties, the state highway commissioner shall compile statistics relative to public highways throughout the state, and shall collect all information in regard thereto deemed expedient. He shall investigate and determine upon various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of roads, bridges, road markers and shall investigate and determine upon such other information relating thereto as he shall deem appropriate and necessary. He may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise such officers relative to the construc-

tion, repair, altering or maintenance of the same, and shall furnish such other information and advice as may be requested by persons interested in the construction, maintenance and marking of public highways, and shall at all times lend his aid in promoting highway improvement throughout the state.

History: En. Sec. 4, Ch. 10, Ex. L. 1921.

1787. County commissioners to furnish information. The county commissioners and road supervisors of any county, and all other officers who now have or may hereafter have by law the care and supervision of the public highways and bridges, shall, from time to time, upon the written request of the state highway commissioner, furnish him with all available information in connection with the building and maintenance of the state highways and bridges in their respective districts or counties.

History: En. Sec. 5, Ch. 10, Ex. L. 1921.

1788. Commissioner to prescribe certain rules—Designation of state highways. The state highway commissioner shall have power, and it shall be his duty, to formulate all rules and regulations necessary for the government of the state highway commission and it is hereby authorized to make all rules necessary to comply with the provisions of the federal aid road act of congress, approved July 11, 1916, and all other acts granting aid for public highways, and to obtain for the state of Montana the full benefit of such act. The state highway commission is hereby authorized to, and shall, in conjunction with the board of county commissioners of the several counties in the state, designate such public roads in the state as shall be classed as state highways and subject to improvements under the provisions of said federal aid road act of congress, and the state highway commission in conjunction with the board of county commissioners shall also formulate necessary rules and regulations for the construction, repair, maintenance and marking of state highways and bridges, and may provide for local supervision in such cases.

History: En. Sec. 6, Ch. 10, Ex. L. 1921.

1789. Office and field help. The highway commission shall employ office and field help as it shall deem necessary and the compensation for all such employees shall be determined by the state highway commission and paid out of the state highway fund in the same manner as other state employees are paid.

History: En. Sec. 7, Ch. 10, Ex. L. 1921.

1790. Contracts how awarded. All contracts for work on state highways shall be let by the state highway commission. When the estimated cost of any piece of work shall exceed one thousand dollars, it shall be the duty of the state highway commission to let such contract by competitive bidding, upon such notice and upon such terms as the commission by its rules and regulations prescribe; provided that if the commission shall find such work may be done and performed by force account or by day's labor in a more efficient manner, it may so conduct the work, and provided further that the commission may use convict labor as, in its judgment, is deemed proper. A contractor upon being awarded a contract for construction, improvement, maintenance or marking upon a state

highway, and before entering upon such work shall execute to the state of Montana a bond to be approved by the commission, and to be conditioned for the faithful discharge of its duties under such contract.

History: En. Sec. 8, Ch. 10, Ex. L. 1921.

1791. Assent to federal aid road act. For and on behalf of the state of Montana, and in conformity with the requirement of section 1 of said act, the provisions of that certain act of congress approved July 11, 1916, known as the federal aid road act and entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," is hereby assented to. The state highway commission is hereby authorized to, for and on behalf of the state of Montana, enter into all contracts and agreements with the United States government or any officer, department or bureau thereof, relative to the construction or maintenance of highways in the state of Montana; and the state highway commission for and on behalf of the state of Montana is hereby authorized to do all other things necessary or required to carry out fully the co-operation contemplated by the said act of congress as hereby assented to, relative to the construction and maintenance of roads and highways in the state of Montana.

History: En. Sec. 9, Ch. 10, Ex. L. 1921.

1792. Division of maintenance and control. The state highway commission shall have authority to organize and operate a division of maintenance and control, and by co-operation with the board of county commissioners in the several counties of the state, if necessary, to maintain state highways constructed by the state and such additional mileage as the commission may deem necessary.

History: En. Sec. 10, Ch. 10, Ex. L. 1921.

1793. Standard guide signs to be erected—Road association signs. The state highway commission shall cause to be erected and maintained such standard guides and warning signs as it may deem necessary on and along state highways. Such signs shall be of uniform design and size throughout the state and such uniform design shall be approved by the highway commission. It shall be unlawful to erect or display any other guides or warning signs on or along state highways except in case of emergency and except that trail or road associations having distinctive emblems or signs for their trails or roads may, at their own expense submit and furnish such emblems or signs for the approval of the state highway commission. Such trail or road association emblems or signs, if approved by the state highway commission, may be used by said trail or road association on such roads and trails as they may have assumed jurisdiction over, and on no other. The state highway commission shall have full control and authority over all advertising, guide, warning and other signs now constructed or placed upon or to be constructed or placed upon state highways, and shall cause to be removed any such signs conflicting with the provisions of this act, or the policies, rules and regulations now existing or to be created and adopted by the state highway commission. It shall be the duty of the state highway commission to cause to be removed any unlawful advertising, guide, warning or other sign.

History: En. Sec. 11, Ch. 10, Ex. L. 1921.

1794. Penalty for defacing standard guides. After the marking of the state highway, or any section thereof, it shall be unlawful for any person, corporation, or association to deface, damage, or injure any state highway guide, warning or other signs, or any advertising signs erected or placed on the state highway with the approval and sanction of the state highway commission. Any person, corporation or association found guilty of defacing, damaging or injuring said signs shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than ten dollars nor more than one hundred dollars for each offense.

History: En. Sec. 12, Ch. 10, Ex. L. 1921.

1795. County commissioners may convey right of way. It shall be lawful for boards of county commissioners to transfer and convey to the state of Montana rights of way over and along county roads for state road purposes, and it is hereby made their duty to make such transfer or conveyance upon receiving notice from the state highway commission that a state road has been established and definitely located over a county road and that said road will be improved and maintained by the state, and that funds are available for the immediate construction of such road.

History: En. Sec. 13, Ch. 10, Ex. L. 1921.

1796. Preparation of official road map. Upon the selection and approval by the commission of the system of state highways, the commission shall cause to be prepared an official road map of the state of Montana showing outlined thereon the exact location of said state highways prior to October 1, 1921, if possible; a copy of such map shall be filed with each county clerk and after such selection and filing no changes except the necessary re-locations and alterations in portions of the state highway system for purposes of construction shall be made by said commission until further investigation or hearings are held in the county or counties in which such change or changes are proposed. If, after investigation or hearing, any alteration or additions shall be deemed expedient by the commission, the change shall be entered in writing upon the records and maps of the commission and each county clerk shall be immediately notified to alter the official map on file with him in accordance therewith.

History: En. Sec. 14, Ch. 10, Ex. L. 1921.

1797. Rights of way, how procured. The state highway commission shall have the power and authority to acquire by purchase or otherwise necessary rights of way for state highways and to lay out, alter, construct, improve and maintain highways in the state of Montana, and to acquire by purchase or otherwise, deposits of road-building materials, and the state highway commission shall have the authority to exercise the power of eminent domain in the name of the state for any of the above mentioned purposes.

Whenever it shall be deemed necessary by the commission to secure the rights of way as herein provided, or to acquire deposits of road-building materials, and the same cannot be acquired by purchase, the commission may direct the attorney-general or any county attorney in any county in the state to procure the rights of way or deposits of road-building materials by proceedings to be instituted in the manner as pro-

vided in sections 9933 to 9958 of the Code of Civil Procedure against all non-accepting landholders and when thereunder the right of way is procured, the road must be declared public highway and open in the manner provided by law.

History: En. Sec. 15, Ch. 10, Ex. L. 1921.

1798. Prosecution for violation of highway law. The state highway commission shall have power, and it shall be its duty, to prosecute all persons guilty of any violation of "The General Highway Law."

History: En. Sec. 16, Ch. 10, Ex. L. 1921.

1799. State highway fund and trust fund. For the purpose of carrying out the provisions of this act, there is hereby created a state highway fund and a state highway trust fund. The state highway fund shall be credited with all moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other sources except as herein provided. The state highway trust fund shall be credited with all moneys received from the counties, and from the federal government or other agencies for expenditure by the commission in connection with the actual construction of specific projects. All moneys in the hands of any state officer on the first day of April, 1921, shall be segregated by such state officer and credited to the respective fund to which it properly belongs as above defined. Hereafter all moneys collected for the state highway fund or the state highway trust fund as authorized by law shall be credited to such fund or funds by the state treasurer; provided, however, that nothing herein contained shall prevent the state highway commission from recovering from the state highway trust fund moneys deposited or paid into such trust fund by counties and the federal government or other agencies, to defray the cost of engineering incident to the construction, supervision and inspection of projects carried on under the direction of the commission.

History: En. Sec. 17, Ch. 10, Ex. L. 1921.

1800. Presentation and payment of claims. All accounts and expenditures shall be certified by the highway commissioner, approved by the state board of examiners, and paid by the state treasurer upon warrants drawn by the state auditor out of the proper funds created by this act. In submitting claims for payment as herein provided, the state highway commissioner shall certify whether the warrant is to be drawn against the state highway fund or the state highway trust fund, and if the claim is against the state highway trust fund, he shall state the particular project to which the payment will apply. The state treasurer is hereby authorized to receive all warrants drawn by the United States government in accordance with the provisions of any act of congress, and to credit the same to the state highway trust fund.

The state highway commission shall provide a system of accounting for each project considered which shall show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith. Such system shall be approved by the state board of examiners.

History: En. Sec. 18, Ch. 10, Ex. L. 1921.

1801. Existing contracts not invalidated. Nothing contained in this act shall be so construed as to invalidate any contracts or agreements made by the present state highway commission previous to the passage of this act.

History: En. Sec. 19, Ch. 10, Ex. L. 1921.

1802. Transfer of property to commission. It shall be the duty of the present state highway commission to turn over to the state highway commission provided for in this act, all books, records, maps, papers, moneys and all property of every kind belonging to the commission and used by it in connection with the work of the office and road construction.

History: En. Sec. 20, Ch. 10, Ex. L. 1921.

CHAPTER 140.

CONSTRUCTION OF BRIDGE ACROSS KOOTENAI RIVER.

Section 1803. Appropriation.
1804. Construction of Wagon Bridge Across Kootenai River.

1803. Appropriation. There is hereby appropriated ten thousand dollars, or so much thereof as may be necessary, out of the general fund of the state of Montana, for the construction of a wagon bridge across the Kootenai river, on the boundary line of the state of Montana and the state of Idaho.

History: En. Sec. 1, Ch. 82, L. 1919.

1804. Construction of wagon bridge across Kootenai river. The state highway commission of Montana is hereby authorized and empowered to enter into negotiations with the duly and legally constituted authorities of the state of Idaho, or of the county of boundary in the state of Idaho, and with the board of commissioners of Lincoln county, Montana, or any or all of them, for the purpose of preparing the necessary plans and specifications for the construction of a wagon bridge across the Kootenai river on the boundary line of Montana and Idaho, and said commission is hereby authorized and empowered to enter into such joint and several contract or contracts as may be necessary and proper for the construction of such bridge; provided, that the appropriation herein made shall not become available until such time as the duly and legally constituted authorities of the state of Idaho, said county of boundary of the state of Idaho and the board of commissioners of Lincoln county, Montana, or any or all of them, shall have made an appropriation or appropriations which, with the appropriation hereby made, shall amount to the sum of thirty-five thousand dollars, for the purpose of preparing plans and specifications and for the construction of such bridge, and no contract shall be entered into for the construction of such bridge unless the state of Idaho, said county of boundary and said county of Lincoln, or any or all of them, is or are obligated to pay the difference between the cost of construction and said sum of ten thousand dollars, and said contract shall cover the cost of construction of the necessary approaches, rights of way and all things necessary to complete the work herein provided for.

History: En. Sec. 2, Ch. 82, L. 1919.

PUBLIC LANDS OF THE STATE. CHAPTERS 141 TO 156.

Chapter 141. State Board of Land Commissioners—Definition of State Lands.
142. Register and Deputy Register of State Lands.
143. State Land Agent.
144. State Forester and Fire Wardens.
145. Contest Board.
146. Forestry Board.
147. Classification and Sale of State Lands and Easements Therein.
148. Sale of Timber—Log Marks.
149. Leases and Rentals of State Lands.
150. Location of Mining Claims on State Lands.
151. Lieu Timber Lands.
152. Finance—General Provisions Regarding.
153. Penalty for Violation of Act by State Officers.
154. Investment of School Funds—Farm Loans.
155. Carey Land Act Board—State Engineer.
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CHAPTER 141.

STATE BOARD OF LAND COMMISSIONERS—DEFINITION OF STATE LANDS.

Section 1805. Definition.
1806. Preamble.
1807. Acceptance of Act of Congress Relative to Crow Indian Reservation.
1808. Same—Children Permitted to Attend Public Schools.
1809. State Board of Land Commissioners.
1810. President and Meetings.
1811. Minutes of Board.
1812. Records Public.
1813. School Lands Within Forest Reserve—Power of Board to Relinquish to United States.
1814. Removal of Stone, Dirt, etc., From Public Lands for Construction of Highways.
1815. To Correct Errors.
1816. Gifts or Devises to State.
1817. Bonds.

1805. Definition. The words "state lands" and "public lands of the state" mean all lands granted to the state by the United States for the support of common schools, including sections 16 and 36, and other lands granted in lieu thereof, and all lands granted for educational and reformation institutions, and for public buildings at the seat of government of the state, and such other lands as may belong to, or be hereafter granted to, the state by the United States, or by any person, and all lands of which the state may become the owner by operation of law.

History: En. Sec. 3519, Pol. C. 1895; re-en. Sec. 2210, Rev. C. 1907; amd. Sec. 97, Ch. 147, L. 1909. California statutes relative to public lands are, Secs. 3395-3574, Pol. C.

Note.—The state land laws given in this code, comprise chapter 147, Laws of 1919, and subsequent acts and amendments. For earlier acts see sections 3470-3595 Political Code 1895, and sections 2152-2237 Revised Codes 1907.

Grants of public lands to states, see 22 R. C. L. 332.

1806. Preamble. Whereas, the act of the 66th congress, No. 239, entitled: "An act to provide for the allotment of lands of the Crow tribe, for the distribution of tribal funds, and for other purposes," provides in section sixteen thereof, among other things, as follows:

"That there is hereby granted to the state of Montana for common-school purposes sections sixteen and thirty-six, within the territory described herein, or such parts of said sections as may be non-mineral or non-timbered, and for which the said state has not heretofore received indemnity lands under existing laws; and in case either of said sections or parts thereof is lost to the state by reason of allotment or otherwise, the governor of said state, with the approval of the secretary of the interior, is hereby authorized to select other unoccupied, unreserved, non-mineral, non-timbered lands within said reservation, not exceeding two sections in any one township. The United States shall pay the Indians for the lands so granted five dollars per acre, and sufficient money is hereby appropriated out of the treasury of the United States not otherwise appropriated to pay for said school lands granted to the said state; provided, that the mineral rights in said school lands are hereby reserved for the benefit of the Crow tribe of Indians as herein authorized; provided, further, that the Crow Indian children shall be permitted to attend the public schools of said state on the same condition as the children of white citizens of said state."

History: En. preamble to Sec. 1, Ch. 119, L. 1921.

1807. Acceptance of act of congress relative to Crow Indian reservation. For the purpose of enabling the state of Montana to take advantage of the grant made by the aforesaid public act No. 239 of the 66th congress, the state of Montana hereby accepts said grant for common-school purposes of sections sixteen and thirty-six, within the Crow Indian reservation, or such parts of said sections as may be non-mineral or non-timbered, and for which the said state has not heretofore received indemnity lands under existing laws; and in case either of said sections or parts thereof is lost to the state by reason of allotment or otherwise, the governor of Montana, with the approval of the secretary of the interior, is hereby authorized to select other unoccupied, unreserved, non-mineral, non-timbered lands within said reservation, not exceeding two sections in any one township.

History: En. Sec. 1, Ch. 119, L. 1921.

1808. Same—Children permitted to attend public schools. The Crow Indian children residing in the state of Montana shall be hereafter permitted to attend the public schools of the state of Montana on the same conditions as the children of white citizens of the said state.

History: En. Sec. 2, Ch. 119, L. 1921.

1809. State board of land commissioners. The governor, superintendent of public instruction, secretary of state, and attorney-general, being constituted a state board of land commissioners by the constitution of this state, as such board shall have direction and control of all lands belonging to the state, to manage the same as the best interests of the state shall require, not inconsistent with the provisions of this act and

the constitution of this state. A majority of the board shall constitute a quorum for the transaction of business.

History: En. Sec. 5, p. 174, L. 1891; re-en. Sec. 3470, Pol. C. 1895; re-en. Sec. 2152, Rev. C. 1907; amd. Sec. 1, Ch. 147, L. 1909.

The grant of lands for school purposes to this state by the federal government constitutes a trust, and the state board of land commissioners, in administering that trust, is bound to so administer it as to secure the largest measure of legitimate advantage to the State. State ex rel. Gravely v. Stewart, 48 Mont. 347, 349, 137 Pac. 854.

Sections 1809 et seq., relating to the management and disposition of state lands, was intended, not as a mere supplement to the law on the subject as then existing, but as in itself a complete code of laws on the subject, revising the whole subject-matter of the earlier statutes and repealing all acts and parts of acts in conflict with it; it superseded all prior and existing statutes which had to do with the same subject. State ex rel. Danaher v. Miller, 52 Mont. 562, 567, 160 Pac. 513.

Cited or applied as section 3470, Political Code, before amendment, in State ex rel. Koch v. Barret, 26 Mont. 62, 65, 66 Pac. 504; State ex rel. Haire v. Rice, 33 Mont. 365, 393, 83 Pac. 874; as chapter 147, section 1, Laws of 1909, in State ex rel. Danaher v. Ray, 47 Mont. 570, 572, 133 Pac. 961, Ann. Cas. 1915C, 130; State ex rel. Lyman v. Stewart, 58 Mont. 1, 7, 190 Pac. 129.

1810. President and meetings. The governor shall be president of the board, but in his absence from any meeting the board may elect any of its members president pro tempore, who shall preside at such meetings. The board shall hold regular quarterly meetings in the state land office on the second Wednesday of March, June, September, and December of each year, and may hold such other meetings as the board may direct; and may meet at any time on call of the president or of a majority of the board. The meetings of the board shall be regulated by such rules as the board may adopt.

History: Ap. p. Sec. 7 and 10, p. 174, L. 1891; amd. Sec. 3472, Pol. C. 1895; re-en. Sec. 2154, Rev. C. 1907; amd. Sec. 2, Ch. 147, L. 1909.

Cited or applied as section 2, Laws of 1909, chapter 147, in State ex rel. Danaher v. Ray, 47 Mont. 570, 572, 133 Pac. 961, Ann. Cas. 1915C, 130.

1811. Minutes of board. The state board of land commissioners shall cause a complete record of its proceedings to be kept in a suitable book, and shall preserve all important documents and papers pertaining to state lands.

History: En. Sec. 3, Ch. 147, L. 1909.

1812. Records public. All documents and records in the state land office shall be subject to inspection by any person, in the presence of the register or his deputy; and certified copies thereof, signed by the register, with the seal of the board of land commissioners attached, shall be deemed presumptive evidences of the facts to which they relate, and on request they shall be furnishable by the register.

History: En. Sec. 98, Ch. 147, L. 1909.

1813. School lands within forest reserve—Power of board to relinquish to United States. The state board of land commissioners of the state of Montana be and are hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof having jurisdiction, waiving, and relinquishing to the United States any and all rights of the state of Montana in and to sections sixteen and thirty-six of each township, when said sections are situated within a federal forest

reserve, and are, at the date of such contract or agreement, unsurveyed; provided, that the state of Montana shall, in lieu of the rights so waived and relinquished, receive from the United States other lands equal in acre or value, and all contracts or agreements heretofore entered into between the state board of land commissioners of the state of Montana and the United States, or any department thereof, relative to the waiving by the state of Montana of its rights to sections sixteen and thirty-six in any township in said state, and the selection of lieu lands therefor by said state, either according to area or value, be and the same are hereby ratified, confirmed, and validated.

History: En. Sec. 1, Ch. 81, L. 1915.

Relinquishment of school lands within national forest reserves, see 22 R. C. L., 337.

1814. Removal of stone, dirt, etc., from public lands for construction of highways. The state board of land commissioners of the state of Montana is hereby authorized and directed, in its discretion, to permit any counties, or subdivisions thereof, road districts, or other persons desiring to construct public roads or highways, to remove and use, if desired, from the public lands owned, controlled, or held by the state, without payment or charge, all timber, stone, dirt, and gravel necessary for the construction or maintenance of any public highways within the state.

History: En. Sec. 1, Ch. 66, L. 1915.

1815. To correct errors. The state board of land commissioners is hereby authorized, empowered, and directed to correct, and cause to be corrected, any and all errors, mistakes, and misdescriptions in any and all deeds and conveyances of property to the state of Montana; and in order to carry into effect the provisions hereof, all deeds or such other conveyances as may be necessary shall be made and executed in the manner provided for the execution of patents by the state. And said board has power to correct any error made in the sale or leasing of state lands by the board, or any officer acting under its control, upon satisfactory proof, by hearing before the contest board, if necessary, that an error or mistake has been made and should be corrected.

History: En. Sec. 102, Ch. 147, L. 1909.

1816. Gifts or devises to state. The state board of land commissioners is hereby empowered to accept, in the name of the state of Montana, by gift or by operation of law, any lands of whatsoever nature; and said lands shall be appraised, managed, leased, or sold in the same manner as is prescribed herein for lands granted by the United States; and the proceeds of the leases and sales of all such lands shall be applied to such specific purpose or purposes as may be designated by the grantor or testator, or by the laws under which the same are acquired by the state.

History: En. Sec. 101, Ch. 147, L. 1909.

1817. Bonds. The state board of land commissioners may require any clerk or employee in the state land office to give bond in such sum as may be deemed advisable. All bonds required under the provisions of this act may be surety company bonds. The cost of all bonds

required of any officer, clerk or employee under the provisions of this act, shall be paid out of the income funds provided for in this act.

History: En. Sec. 96, Ch. 147, L. 1909.

CHAPTER 142.

REGISTER AND DEPUTY REGISTER OF STATE LANDS.

Section 1818. Register and His Duties.
1819. Deputy Register.
1820. Clerk.
1821. Salary of Register, State Land Agent, and Deputy Register.
1822. Salaries, How Paid.
1823. Fees.

1818. Register and his duties. The governor, by and with the advice and consent of the senate, shall appoint a register of state lands, who is not a member of the said board, whose term of office shall be four years, or until his successor is appointed and qualified, and whose salary shall be thirty-six hundred dollars per annum and actual necessary expenses while engaged in outside work connected with his office. It shall be the duty of the register to keep the records of the state board of land commissioners; to make and sign all leases of state lands issued by him, and to make out and countersign all patents issued by the said board to the purchasers of state lands, and keep a suitable record of the same; to file and preserve bonds of lessees and those given by the purchasers of state lands to secure deferred payments; to make and deliver to purchasers of state lands suitable certificates of purchase; to have the custody of the seal of the state board of land commissioners; to be the secretary of, and to keep the minutes of said board; to receive all moneys payable to the state on account of state lands leased or sold, and all moneys payable under the provisions of this act, and to pay them over to the state treasurer on the first and fifteenth days of each month; and shall perform such other duties, concerning the land affairs of the state, as the said board may direct. The register shall be provided with a suitable office, office furniture, stationery, and postage by the secretary of state. On or before the first day of December in each year, he shall make a report of the business of his office, the transactions of the state board of land commissioners, and the land affairs of the state, showing by tablets the lands belonging to the several funds of the state, the quantity sold, the quantity leased, and the receipts of his office from all sources; and said report shall contain any such other items or information concerning state lands as the state board of land commissioners or said register may deem worthy of publication. Before assuming the duties of his office, the said register shall give bond in the sum of twenty-five thousand dollars, conditioned for the faithful discharge of his duties, and said bond shall be approved by the said board of land commissioners, and filed with the secretary of state; and the cost of said bond shall be paid by the state out of the land grant income funds.

History: Ap. p. Secs. 3590 to 3592, Pol. C. 1895; re-en. Sec. 2225 to 2227, Rev. C. 1907; amd. Sec. 4, Ch. 147, L. 1909.

Note.—Salary is given as fixed by chapter 120, Laws of 1919, and bond as fixed by section 464 of this code.

Cited or applied as section 3590, Political Code, before amendment, in State ex rel. Koch v. Barret, 26 Mont. 62, 65, 66 Pac. 504.

1819. Deputy register. The governor, by and with the advice and consent of the senate, shall appoint a deputy register at a salary of twenty-four hundred dollars per annum and actual necessary expenses when engaged in outside work, whose duties shall be those of assistant register, and who shall perform all of the duties of register during the absence or disability of that officer. The deputy register shall give a good and sufficient bond, to be approved by the state board of land commissioners, conditioned for the faithful performance of the duties of his office, the amount of said bond to be fixed by the said board and filed with the secretary of state. The deputy register shall perform such other duties as may be prescribed by the state board of land commissioners.

History: En. Sec. 1, p. 85, L. 1899; re-en. Sec. 2232, Rev. C. 1907; amd. Sec. 5, Ch. 147, L. 1909.

Note.—Salary is given as fixed by chapter 120, Laws of 1919.

1820. Clerk. The register of state lands shall have power to appoint one clerk whose salary shall be such sum as the board may fix and allow, not exceeding the sum of fifteen hundred dollars per annum, who shall give a bond to the state in such sum as the board of land commissioners may designate, and said clerk shall act as clerk of the register, of the state land agent, and of the state forester, without extra compensation; and the said register of state lands may employ all such other office force, when authorized by the said board so to do, as may be necessary to carry out the provisions of this act, and may designate one of said office force as cashier or receiving clerk, and may require such cashier or receiving clerk to give such bond as the board may order.

History: En. Sec. 3, p. 92, L. 1897; re-en. Sec. 2229, Rev. C. 1907; amd. Sec. 22, Ch. 147, L. 1909; amd. Sec. 3, Ch. 118, L. 1911; amd. Sec. 1, Ch. 11, L. 1917.

1821. Salary of register, state land agent, and deputy register. The annual salary allowed to the register of state lands shall be thirty-six hundred dollars, payable monthly. The annual salary allowed to the state land agent shall be thirty-two hundred and fifty dollars, payable monthly. The annual salary allowed to the deputy register of state lands shall be twenty-four hundred dollars, payable monthly.

History: En. Sec. 1, Ch. 120, L. 1919.

1822. Salaries, how paid. The salary of the register of state lands and his deputy, of the state land agent and his assistants, the state forester and his assistant, the clerk of the state board of land commissioners, together with the pay of all the assistants and clerks in the state land office, shall be paid out of the moneys in the several land grant income funds, and shall be apportioned among the several funds in proportion to the amount of land in each of the land grants from which the several funds are derived. All such salaries shall be paid monthly out of the land grant income funds, and apportioned in December of each year among the several funds by an order of the state board of land commissioners, directed to the state auditor and to the state treasurer.

History: En. Sec. 23, p. 93, L. 1897; re-en. Sec. 2230, Rev. C. 1907; amd. Sec. 23, Ch. 147, L. 1909.

1823. Fees. The register of state lands is hereby authorized and empowered, and it is hereby made his duty to collect the fees herein fixed for work done in his office, whether by himself or any member of his official force, to-wit:

Filing application to lease, fifty cents.

Filing application to purchase, fifty cents.

Accepting and approving bond, one dollar.

Issuing lease, one dollar.

Issuing permit to cut live timber, one dollar.

Issuing each patent of certificate of purchase, two dollars.

Approving and recording assignment of lease or certificate of sale, one dollar.

Patent for town lot, two dollars.

Deed for right of way, easement, etc., three dollars.

Certified copy of certificate of purchase, lease, or patent, two dollars.

Certified copy of any other instrument, or of the records of his office, shall be furnished at the rate of twenty cents per folio, and one dollar for the certificate.

All the aforesaid fees shall be paid in advance to the register of state lands.

In case any appplication to lease or to purchase is rejected, the fee paid for filing such application shall be returned to the applicant.

History: En. Sec. 6, Ch. 147, L. 1909.

CHAPTER 143.

STATE LAND AGENT.

Section 1824. State Land Agent.
1825. Appointment of Assistants to State Land Agent.
1826. Penalty for False Appraisements.
1827. Salary of Assistant State Land Agents.
1828. Duties of State Land Agent.
1829. Location of Water Rights, etc., for State.

1824. State land agent. The governor, by and with the advice and consent of the senate, shall appoint a state land agent, whose salary shall be thirty-two hundred and fifty dollars per annum and actual necessary expenses while engaged in outside work connected with his office, and whose term of office shall be four years, or until his successor shall be appointed and qualified; and he shall give a bond to the state in the sum of ten thousand dollars, to be approved by the board and filed with the secretary of state.

History: En. Sec. 1, p. 177, L. 1891; amd. Sec. 470, Pol. C. 1895; amd. Sec. 1, p. 104, L. 1897; re-en. Sec. 201, Rev. C. 1907; amd. Sec. 7, Ch. 147, L. 1909.

Note.—Salary is given as fixed by chapter 120, Laws of 1919.

Cited or applied as section 470, Political Code, before amendment, in State ex rel. Neill v. Page, 20 Mont. 238, 242, 50 Pac. 719.

1825. Appointment of assistants to state land agent. The state land agent is hereby authorized to appoint such competent persons, at such time or times as may be deemed necessary by the state board of land commissioners, to assist the state land agent in selecting, appraising,

and reappraising the state lands, and they shall draw pay only when engaged in field work, and their pay shall not exceed one hundred and seventy-five dollars per month, together with actual necessary expenses.

History: Ap. p. Sec. 2235 to 2237, Rev. C. 1907; amd. Sec. 24, Ch. 147, L. 1909; amd. Sec. 7, Ch. 64, L. 1917.

Note.—Salary is given as fixed by section 1, chapter 18, Ex. Laws of 1919.

1826. Penalty for false appraisements. Every person appointed or selected to appraise any of the state lands, or the timber thereon, who wilfully and knowingly makes a false return of any survey or any classification or appraisal of the value of the land, or of the timber thereon, at variance from the true classification or value thereof, or without having personally examined and surveyed the same, is punishable as provided in section 10878 of the Penal Code.

History: En. Sec. 3515, Pol. C. 1895; re-en. Sec. 2206, Rev. C. 1907; amd. Sec. 94, Ch. 147, L. 1909.

1827. Salary of assistant state land agents. The salary allowed to assistant state land agents shall be not to exceed one hundred and seventy-five dollars per month, together with actual necessary traveling expenses.

History: En. Sec. 1, Ch. 18, Ex. L. 1919.

1828. Duties of state land agent. The state land agent shall, under the direction and control of the state board of land commissioners, do all acts required of him to be performed by the said board, and he shall do and perform all of the field work in the selection, examination, appraisement, and the reappraisement of state lands, except timber lands and other outside work required to be done under the provisions of this act, and not herein otherwise provided for, under the direction of the register of state lands. He shall, under the direction of the state board of land commissioners, select and locate all lands except timber lands, which are now or may hereafter be granted to this state by the general government for any purpose whatever, and he shall select lands in lieu of those sold or otherwise disposed of by the United States in sections 16 and 36, and said lieu lands shall be selected in legal subdivisions. Upon making such selection, the state land agent shall report to the state board of land commissioners fully in regard to the location and character of the lands selected; and he shall certify all such selections to the state board of land commissioners. And the register of state lands shall take such necessary steps to secure the approval of such selections by the proper officers of the general government.

History: Ap. p. Sec. 1, p. 177, L. 1891; amd. Sec. 471, Pol. C. 1895; re-en. Sec. 203, Rev. C. 1907; amd. Sec. 8, Ch. 147, L. 1909; amd. Sec. 1, Ch. 118, L. 1911.

1829. Location of water rights, etc., for state. It shall be the duty of the state land agent, under the direction of the state board of land commissioners, wherever it may be deemed desirable, to locate water rights for the irrigation of any state lands in the vicinity, and also, to locate reservoir sites, wherever the same may be desirable, for irrigation purposes in connection with state lands.

History: En. Sec. 36, Ch. 147, L. 1909.

CHAPTER 144.

STATE FORESTER AND FIRE WARDENS.

Section 1830. State Forestry.
1831. Duties of State Forester.
1832. Appointment, Salary, and Bond of Assistant State Forester.
1833. Fire-wardens.
1834. Powers of Fire Wardens.
1835. Additional Powers of Fire Wardens.
1836. Duties of Fire Wardens.
1837. Expenses of State Forester.
1838. Penalty for Destroying Notices.
1839. Prosecutions.

1830. State forestry. The governor, by and with the advice and consent of the senate, shall appoint a state forester, who shall be skilled in the science of forestry, whose salary shall be twenty-five hundred dollars per annum and actual necessary expenses while engaged in outside work connected with his office, and whose term of office shall be four years, or until his successor shall be appointed and qualified, and he shall give a bond to the state in the sum of ten thousand dollars, to be approved by the board and filed with the secretary of state; and he shall be a civil executive officer.

History: En. Sec. 9, Ch. 147, L. 1909.

1831. Duties of state forester. The state forester shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timber lands, whether now belonging to the state or hereafter granted to the state; he shall do all acts required of him to be performed by the said board, and under the direction of said board shall have general charge of the timber lands of the state. He shall act as secretary of the forestry board. He shall, under the supervision of the state board of land commissioners, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all fire wardens of the state, and direct and aid them in their duties; direct the protection and improvement of state parks and forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brush-covered lands, and prosecute for any violation of such laws. He shall deliver a course of at least six lectures on practical forestry to the students attending the state university, the state agricultural college, and the state normal school, during each school year. He shall prepare annually a report to the governor on the progress and condition of the state forest park, and recommend therein plans for improving the state system of forest protection, management, and replacement. He shall furnish notices, printed in large letters, on cloth, calling attention to the danger from forest fires, and to the forest fire and trespass laws and their penalties. Such notices shall be posted by the fire warden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping-sites, and in every post-office in the forested region.

History: En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911.

1832. Appointment, salary, and bond of assistant state forester. The state forester is hereby authorized to appoint one assistant forester, with like qualifications as the state forester, at such time or times as may be deemed necessary, to assist the state forester in any of the duties of his office; and he shall draw pay only when actually engaged in the performance of such work, and shall hold office at the pleasure of the state forester, and his pay shall be not to exceed one hundred and fifty dollars per month, together with actual necessary expenses while engaged in outside work connected with the office. He shall give such bond for the faithful performance of his duties as the state board of land commissioners may require; provided, that the said state forester may pay such salaries to timber cruisers or estimators as may be necessary to secure the most efficient service.

History: En. Sec. 25, Ch. 147, L. 1909; amd. Sec. 2, Ch. 64, L. 1917.

1833. Fire wardens. The state forester shall appoint in such number and localities as he deems wise, public-spirited citizens to act as volunteer fire wardens. Every sheriff, under-sheriff, deputy sheriff, game warden, and deputy game warden shall be ex-officio a fire-warden, but shall not receive any additional compensation by reason of the duties hereby imposed, and they shall be deemed paid fire wardens under the terms of this act. The supervisors and rangers of the federal forest reserves within this state, whenever they formally accept the duties and responsibilities of fire wardens, may be appointed volunteer fire wardens, and shall have all the powers given to fire wardens by this act. The fire wardens shall promptly report all fires to the state board of forestry, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909.

1834. Powers of fire wardens. The state forester and all fire wardens shall have the power of peace officers to make arrests without warrants for violations, in their presence, of any state or federal forest laws, and no fire warden shall be liable for civil action for trespass committed in the discharge of his duties. Any fire warden who has information which shows, with reasonable certainty, that any person has violated any provision of such forest laws, shall immediately take action against the offender, by making complaint before the proper magistrate, or by information to the proper county attorney, and shall obtain all possible evidence pertaining thereto. Failure on the part of any paid fire warden to comply with the duties prescribed in this act shall be a misdemeanor, and punishable by a fine of not less than twenty dollars nor more than one thousand dollars, or imprisonment in the county jail for not less than ten days nor more than twelve months, or by both such fine and imprisonment; and upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909. For authorities relating to prevention of forest fires, see 11 R. C. L. 951.

1835. Additional powers of fire wardens. All fire wardens shall have authority to call upon any able-bodied citizen between the ages of eighteen

and fifty years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than fifteen nor more than fifty dollars, or imprisonment in the county jail not less than one nor more than thirty days, or both such fine and imprisonment; provided, that no citizen shall be called upon to fight fire a total of more than five days in one year.

History: En. Sec. 13, Ch. 147, L. 1909.

1836. Duties of fire wardens. The state forester, assistant forester, and all fire wardens (except volunteer wardens), under such rules and regulations as the state board of land commissioners may provide, shall protect the timber of the state, and especially the timber owned by the state, from destruction by fire, and for such purpose, in emergencies, may employ men and incur other expenses, when necessary; provided, that no fire warden shall incur any expense in excess of fifty dollars, without express authority of the state board of land commissioners.

History: En. Sec. 14, Ch. 147, L. 1909.

1837. Expenses of state forester. The actual expenses and expenditures of the state forester, assistant forester, and fire wardens, necessarily incurred under this act, shall be paid in the same manner as are other expenses incurred in managing the state lands.

History: En. Sec. 15, Ch. 147, L. 1909.

1838. Penalty for destroying notices. Any person who shall destroy, deface, remove, or disfigure any sign, post, or warning notice posted under the provisions of this act, shall be guilty of a misdemeanor, and punishable upon conviction, by a fine of not less than fifteen dollars and not more than two hundred and fifty dollars, or imprisonment in the county jail for a period of not less than ten days nor more than three months, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 147, L. 1909.

1839. Prosecutions. Whenever an arrest shall be made for any violation of the provisions of this act, or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this act was committed must prosecute the offender or offenders, if in his judgment the facts warrant the same. If any county attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars; and upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the attorney-general in the name of the state. The penalties of this section shall also apply to any magistrate, with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons, when a complaint under oath of a violation of any of the provisions of this act has been lodged with him.

History: En. Sec. 17, Ch. 147, L. 1909.

CHAPTER 145.

CONTEST BOARD.

Section 1840. Contest Board.

1840. Contest board. The register of state lands, together with the state land agent and the state engineer, shall constitute a contest board, of which the register of state lands shall be chairman. A majority of said board shall constitute a quorum for the transaction of business, and for rendering any decision. It shall be the duty of the register in any and all contest cases, when hearings are necessary and witnesses may be required to be examined, to set a date for hearing such cases. He shall duly advise the contestants, or their authorized attorneys, of the date set for such hearings, and any member of said board is hereby empowered to administer oaths, and said board may hear and receive evidence, after the manner and procedure established by the United States, in the district land offices, or in accordance with the rules that are or may be adopted by the board governing such cases. All evidence given and provided in such cases before the contest board shall be fully transcribed and arranged at the cost of the parties to the contest, which cost shall be taxed by the contest board in such a manner as they may deem equitable, and such testimony shall form a part of the records of the office of the state board of land commissioners. Whenever said contest board shall deem it advisable, they may initiate contests on behalf of the state, and may order hearings in any matter to protect the interest of the state; and shall hear all controversies between different persons, or between the state and any person, respecting state lands, except as otherwise herein provided, and all such matters shall be heard and determined as other contest cases. As soon as convenient after such hearings, the said contest board shall present a full transcript of the proceedings, together with their decision upon the merits of the case, to the state board of land commissioners, but such decision shall not be final until approved by the state board of land commissioners. Any party to an action or proceeding before said contest board, who is dissatisfied with the decision of the contest board, within thirty days after notice of such decision, and under such rules as the state board of land commissioners may adopt, may appeal from said decision to the state board of land commissioners; provided, that if any member of the said contest board is disqualified in any case, by reason of being a witness or by being instrumental in the bringing of the case, the governor, as president of the state board of land commissioners, shall designate some other state officer or officers to act on the contest board in place of such disqualified member or members.

History: En. Sec. 19, Ch. 147, L. 1909.

This section creates a contest board, of which the register is made the chief officer. State ex rel. Danaher v. Ray, 47 Mont. 570, 572, 133 Pac. 961, Ann. Cas. 1915C, 130.

CHAPTER 146.

FORESTRY BOARD.

Section 1841. Forestry Board.
1842. Duties of Forestry Board.

1841. Forestry board. The register of state lands, together with the state land agent and the state forester, shall constitute a forestry board,

of which the register of state lands shall be chairman. A majority of said board shall constitute a quorum for the transaction of business.

History: En. Sec. 20, Ch. 147, L. 1909.

1842. Duties of forestry board. It shall be the duty of the forestry board to ascertain the methods of reforesting the denuded forest lands of the state, to prevent forestry waste and the destruction of forests by fire, to manage the forests of the state on forestry principles, to encourage private owners in preserving and growing timber, and to conserve forest tracts around the head waters and on the watersheds of the watercourses of the state; it shall make reports of its doings and recommendations to each session of the legislature, and, from time to time, with approval of the state board of land commissioners, published, for popular distribution, such of its conclusions and recommendations as may be of public interest and concern.

The state board of forestry may reforest the watersheds of the state, and expend such sums of money therefor as may be appropriated for that purpose by the legislative assembly.

History: En. Sec. 21, Ch. 147, L. 1909.

Validity and construction of forestry legislation, see notes in Ann. Cas. 1917A, 5, 38, 40, 46; Ann. Cas. 1918E, 709.

CHAPTER 147.

CLASSIFICATION AND SALE OF STATE LANDS AND EASEMENTS THEREIN.

Section 1843. Classification of Lands.
1844. Classification of Public Lands to Be Conclusive as Against State, When.
1845. Records of Timber.
1846. Coal Lands, What Deemed, and Selection.
1847. Sale of State Lands.
1848. Reappraisement of Lots.
1849. Grant to United States.
1850. Right of Way for Highway.
1851. Right of Way for Public Use.
1852. Board May Sell Lands.
1853. Lands Between Low and High-water Mark.
1854. Sales for Irrigation.
1855. Sale or Lease of Lands.
1856. Public Auction.
1857. Place of Sales and Notice.
1858. Confirmation of Sales.
1859. Default in Payment of Purchase Price.
1860. Purchase Price, How Paid.
1861. Certificate of Purchase.
1862. Report on Value of Land and Improvements—Payment.
1863. When Purchaser Entitled to Patent.
1864. Patents, How Executed.
1865. Limitation for Cancellation of Patent.
1866. Certificates May Be Assigned.
1867. Lost Certificate of Purchase.
1868. Lands Subject to Taxation.
1869. Interest of Purchaser Subject to Lien.
1870. If Lands Revert.
1871. Timber Not to Be Cut.

1843. Classification of lands. The state board of land commissioners must provide as complete a set of plats and tract books as may be necessary of the surveyed lands of the state; must ascertain what part of the unappropriated government lands in the state are capable of irrigation, and the source and reliability of the water supply for the same,

and must select such lands as may be suitable under the various grants made by the United States to the state, and must classify the lands upon the maps and plats so prepared according to the classification made by the constitution of the state of Montana, to-wit:

1. Grazing lands. 2. Timber lands. 3. Agricultural lands. 4. Lands lying within the limits of any town or city, or within three miles of said limits.

Subdivision 3 of such classification shall be subclassified into (a) agricultural lands susceptible of irrigation; and (b) agricultural lands not susceptible of irrigation; and subdivision 4 of such classification shall be subclassified into (a) lands within the limits of any incorporated city, and (b) lands not within the limits of any incorporated city.

The state board of land commissioners shall, as often as they deem it necessary, reclassify and reappraise the lands of the state, so that at no time must any of the lands be sold under a different classification from that to which they actually belong.

The maps, plats, and tract books prepared by the board, as herein provided, shall also contain a classification of the lands according to the respective funds or state institutions to which said lands belong, and the register must mark upon the maps and plats the name of the grant to which each tract belongs.

History: En. Sec. 15, p. 174, Ex. L. 1891; 2155, Rev. C. 1907; amd. Sec. 26, Ch. 147, amd. Sec. 3473, Pol. C. 1895; re-en. Sec. L. 1909.

1844. Classification of public lands to be conclusive as against state, when. Where any tract or parcel of the public lands of the state has been classified, or shall hereafter be classified by the state board of land commissioners, as required by section 1 of article XVII of the constitution of the state of Montana, and a contract for the sale thereof has been regularly made and entered into, and a certificate of purchase covering such land has been regularly issued to the purchaser of such tract or parcel, by and on behalf of the state, and the purchaser has paid any portion of the purchase price, and is not in default in accordance with the terms of the said contract of sale, the said classification by the state board of land commissioners shall be final and conclusive as against the state, and shall not be questioned in any action or proceeding by or on behalf of the state or against the said state board of land commissioners, so long as the said purchaser complies with the terms of the said contract.

History: En. Sec. 1, Ch. 78, L. 1919.

1845. Records of timber. The state board of land commissioners shall cause to be kept accurate records showing the location, extent, and character of all forest lands, and the kind and character of timber growing thereon, and also an account of all timber sold, the person or persons to whom sold, the amount of money received therefor, and the disposition of the moneys so received.

History: En. Sec. 27, Ch. 147, L. 1909.

1846. Coal lands, what deemed, and selection. All coal areas in the state which after final examination are defined by the United States geological survey, or other authority under the government of the United

States, shall be recognized by the authorities of this state as coal lands, until otherwise determined; and no such lands shall be sold, but such lands may be leased by the state to any person or persons, company, or corporation, but only on a royalty basis as herein provided; provided, however, that the surface rights of such lands may be sold or may be leased for either agricultural or grazing purposes, but any other state lands may be designated as coal lands by the state board of land commissioners, and withdrawn from sale when, in the opinion of the board, such lands contain coal.

History: En. Sec. 28, Ch. 147, L. 1909.

1847. Sale of state lands. Any state lands, or any part thereof, situated in or adjacent to a city or town may be, at such time as the board may deem to be for the best interest of the state, surveyed and laid off in lots, blocks, streets, alleys, avenues, highways, public squares, market-places, and parks, in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with the ordinances of such city or town regarding the platting of additions thereto; and the state board of land commissioners must cause correct maps and plats of such lands to be made and recorded when so surveyed, and not otherwise. No fee shall be charged by the county recorder, or by any city officer, for filing or recording such maps or plats, when recorded on behalf of the state.

The board may, in its discretion, sell the same, or any part thereof, at public auction to the highest bidder. Each block or lot, as numbered and platted upon the maps or plats, must be sold separately, but not until they have been appraised and notice of the sale given in the same manner, and upon the same terms and conditions as is herein provided for the sale of other state lands. It shall be optional with the board as to whether or not state lands, or any part thereof, situated in or adjacent to cities and towns, shall be surveyed and platted as hereinabove provided, in part or in whole; if such lands, or any part of them, are not surveyed and platted into blocks, lots, streets, and alleys, they and the parts not so platted, as well as any other lands described under the fourth subdivision of the classification of state lands in section 1 of article XVII of the constitution of Montana, may be subdivided into lots or tracts of five acres each or less, and sold in the manner prescribed for the sale of other state lands, provided that each lot or tract may be offered for sale and sold separately.

If, at any such sale, any purchaser or bidder shall purchase or bid in more than one of such lots or tracts, the board may, at the option of such purchaser, include in the certificate of purchase, or deed, all of the lots or tracts purchased at said sale by such purchaser.

History: En. Sec. 29, Ch. 147, L. 1909; amd. Sec. 1, Ch. 163, L. 1917; amd. Sec. 1, Ch. 57, L. 1919.

1848. Reappraisement of lots. All lots leased within the boundaries of any incorporated town or city shall be reappraised at least every five years, and the lessee of all such lands shall pay a rental based upon such reappraisement, or forfeit the land so held; provided, said reappraisement shall not be less than the appraisement at which the same is under

lease, except by order of the state board of land commissioners; and, provided, that said board may, in its discretion, offer said lots or lot for sale at any of the public sales held by said board, in the county where the said lots are located, upon the application of the lessee, but not otherwise, during the term of said lease, upon the same terms and in the same manner as though said lease had not been executed.

History: En. Sec. 30, Ch. 147, L. 1909.

1849. Grant to United States. Any land now or hereafter owned by the state of Montana, and needed by the United States in its irrigation and reclamation work, shall, upon application made therefor to the state board of land commissioners, be conveyed to the United States at the minimum price of ten dollars per acre; and there is hereby granted to the United States over all the lands now owned or hereafter acquired by the state of Montana, a right of way for ditches, canals, tunnels, telephone and telegraph lines, now constructed, or to be constructed by the United States government, in furtherance of the reclamation of the arid lands, and that all conveyances of state lands shall contain a reservation of such right of way.

History: En. Sec. 2, Ch. 53, L. 1905; re-en. Sec. 2212, Rev. C. 1907; amd. Sec. 31, Ch. 147, L. 1909.

1850. Right of way for highway. Right of way shall be granted by the state board of land commissioners, over any of the lands of the state, to any county or city desiring to construct a public highway across the same; provided, that the right of way must always follow sectional or subdivisional lines, if physically practicable; provided, that a duly attested and sworn copy of the official plat, in duplicate, made by the official county or city surveyor or engineer, shall first be filed with the board, together with a petition from the county or city officials setting forth the necessity of the same; and the aforesaid plat, when approved by said board, shall be and form the official plat of said highway; and the said plat shall show the amount of land taken by the proposed highway, and shall show the remainder of the land in each portion of each legal subdivision crossed by said proposed highway. One copy of said plat shall be retained by the state land office, and the other returned to the county or city from which it was received.

History: En. Sec. 3507, p. 93, L. 1899; re-en. Sec. 2194, Rev. C. 1907; amd. Sec. 32, Ch. 147, L. 1909.

1851. Right of way for public use. The state board of land commissioners may grant the right of way across or upon any portion of state lands, upon such terms as may be agreed upon, for any ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use, as defined in the Code of Civil Procedure; provided, that this section shall not be construed to grant authority to convey any such land, except for the purposes above set forth; and provided further, that whenever lands granted for any of the purposes mentioned in this section shall cease to be used for such purposes, said lands shall revert to the state, upon notice to that effect to the person to whom such grant was made, served at his last known postoffice address.

History: En. Sec. 33, Ch. 147, L. 1909.

1852. Board may sell lands. The state board of land commissioners may direct the sale of any state lands, except as provided in this act, in such parcels, to actual settlers only, or to persons who shall improve the same, as they shall deem for the best interests of the state and the promotion of the settlement thereof; but no such sale shall be made, except at public sale and as herein provided; provided, that no lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States, shall hereafter be sold, except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder, concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands, within the limits of such withdrawal, shall be accepted, except upon the conditions prescribed in this section; and, provided, that sales of state lands shall be made only to citizens of the United States, or to those who have declared their intention to become such, or to corporations organized under the laws of this state; provided, that the state board of land commissioners may sell to the United States, at the minimum price of ten dollars per acre, any state lands within the limits of a withdrawal of lands by the United States for reclamation purposes; or may exchange the same for other lands of the United States, upon such terms as it may deem for the best interests of the state; and provided, that whenever the soil on any timber land is of such character that when cleared it would make good agricultural land, the land may be sold with the timber thereon as timber lands; and provided further, that all leases and conveyances of state lands by the state board of land commissioners shall contain a reservation to the state of all coal, oil, and gas contained therein.

History: En. Sec. 34, Ch. 147, L. 1909.

Note.—Prior acts, section 3478, Political Code 1895; same, p. 88, Laws of 1899; section 2161, Revised Codes 1907.

Cited or applied as section 2161, Revised Codes, before amendment, in State ex rel. Gibson v. Stewart, 50 Mont. 404, 406, 147 Pac. 276.

Sale and grant of state lands generally, see 22 R. C. L. 338.

1853. Lands between low and high-water mark. None of the lands lying between low-water mark and high-water mark of any navigable lake within the state of Montana shall ever be sold or leased by the state of Montana, or the state board of land commissioners, or any officer or board of said state; provided, however, that where the state owns land bordering on any navigable lake, the ownership of the state and its power to sell or lease such land shall be the same as that exercised by individual owners of like land.

History: En. Sec. 1, Ch. 124, L. 1911.

1854. Sales for irrigation. For the purpose of furnishing irrigation for state lands, the state board of land commissioners is hereby authorized when, in their judgment, the interests of the state would be subserved thereby, to sell, at public sale, at not less than the appraised value thereof

(which in no case shall be less than the minimum price of ten dollars per acre), any tract of arid land belonging to the state; provided, that no less than one-half of any section shall be sold, and only in alternate half-sections, to any responsible person or persons, on condition that such person or persons construct an irrigation ditch in such locality, and to and upon said land, and of sufficient capacity to furnish water for the entire tract, and so located that said tract may be irrigated therefrom; provided, that before any state lands shall be offered for sale under this section, the person desiring to purchase said land and construct said ditch, shall enter into a contract with the board, guaranteeing to bid at least the minimum price per acre for said land, and to complete such ditch within the agreed time, which time shall be fixed by the board in contract. The contract shall further provide that such ditch shall furnish sufficient water for the remaining one-half of the state lands, at such reasonable rates as the board and the party constructing such ditch or canal may agree upon. Such contract shall be drawn by the attorney-general and signed by the governor and register of state lands, and by the party desiring to construct said ditch; and provided further, that if any person other than the person making application for the purchase of said lands, shall be the highest bidder at the public sale thereof, such bidder shall immediately enter into a bond, or give the state other sufficient surety, conditioned that he will, within such reasonable time as the board may fix, enter into a contract and bond as required by the provisions of this act, for the construction of said ditch and for the furnishing of water therefrom; and in the event of his failure to furnish a satisfactory bond and enter into the said contract within the time fixed, then such bid shall be disregarded, and said public sale shall be void and of no effect. The sale shall be made upon like conditions as other state lands are sold, and the board shall require a good and sufficient bond from the party desiring to construct such ditch, conditioned for the faithful performance of the contract and the conditions of the sale; and in no case shall the title of any of said lands pass from the state until the ditch shall have been completed and accepted by the board.

History: En. Sec. 35, Ch. 147, L. 1909.

Cited or applied as section 35, Laws of 1909, chapter 147, in State ex rel. Gravely v. Stewart, 48 Mont. 347, 350, 137 Pac. 854.

1855. Sale or lease of lands. All sales and leasings of state lands shall be conducted by the register of state lands. Each quarter-section, or such portion thereof as belongs to the state, shall be offered for sale separately; smaller lots only may be sold when it is impossible to sell as above described, or when thereby a larger price may be obtained, but not more than one hundred and sixty acres of agricultural land susceptible of irrigation, and not more than three hundred and twenty acres of agricultural land not susceptible of irrigation, and not more than six hundred and forty acres of grazing land or lands which, by reason of altitude, are valuable only as hay land, shall be sold to one person, or company or corporation; and no land shall be sold for less than the minimum price of ten dollars per acre, nor for less than its appraised value, and the amount of the purchase money to be paid at the time of

the sale shall not be less than fifteen per cent. of the whole purchase price.

History: En. Sec. 37, Ch. 147, L. 1909; prior acts, Secs. 3479, p. 88, L. 1899; appearing as Sec. 2162, Rev. C. 1907.

Cited as section 37, Laws of 1909, chapter 147, in State ex rel. Gravely v. Stewart, 48 Mont. 347, 350, 137 Pac. 854, as section 2162, Revised Codes, before amendment, in State ex rel. Gibson v. Stewart, 50 Mont. 404, 406, 147 Pac. 276.

Lease of state lands as subject to collateral attack, see note in Ann. Cas. 1912B, 91.

1856. Public auction. All sales of state lands shall be at public auction only. The state board of land commissioners shall hold a public sale of state lands at the county seat in each county in the state at least once every two years, and may hold other public sales of such lands in any county of the state at any time they may deem it necessary, at which sales any and all of the state lands subject to sale, situated in said county, may be offered for sale and sold. All sales shall be held at the courthouse in the county in which the same is held.

History: En. Sec. 38, Ch. 147, L. 1909.

The provision of this section, that "all sales of state lands shall be at public auction," means a sale to the highest and best bidder, with absolute freedom from competitive bidding. Any agreement, therefore, to stifle competition or chill the bidding is a fraud upon the principle upon which the sale is founded. State ex rel. Danaher v. Miller, 52 Mont. 562, 568, 160 Pac. 513.

For authorities on puffing bidding at auction sales and the validity thereof, see 2 R. C. L. 1128.

1857. Place of sales and notice. All sales under this act shall be advertised once in each week for four consecutive weeks, in some paper printed and published in the county in which such land is situated, if there be such paper; if not, then in some paper published in an adjoining county. The advertisement shall state the time, place, and terms of sale, and a description of the state lands in the county to be offered.

History: Ap. p. Sec. 3481, p. 89, L. 1899; re-en. Sec. 2164, Rev. C. 1907; amd. Sec. 39, Ch. 147, L. 1909.

1858. Confirmation of sales. All sales of state lands, and all sales of timber on state lands, shall be subject to the approval and confirmation by the state board of land commissioners, and no sale shall be deemed completed until after such approval and confirmation.

History: En. Sec. 40, Ch. 147, L. 1909.

The state board of land commissioners, in proceeding under this section to determine whether it shall or shall not confirm a sale of school lands, acts quasi-judicially, and may not, in the absence of abuse of its discretion, be compelled by mandamus to confirm a sale by the register at a price which it deems inadequate. Bidders at sales of school lands are bound to know that no sale by the register is complete without the approval and confirmation of the board, and that the board, in confirming or rejecting a sale by the register, will be governed by the interests of the trust which it is charged to administer. State ex rel. Gravely v. Stewart, 48 Mont. 347, 350, 351, 137 Pac. 854.

1859. Default in payment of purchase price. Whenever any purchaser of state lands, or his assigns, shall default, for a period of thirty days, in any of the payments of either principal or interest due upon the certificate of purchase issued to him, or his assignor, said certificate may be forfeited, and the lands shall revert to the state of Montana, upon a notice to that effect mailed to the last known address of said purchaser, or his assigns, which notice shall allow him thirty days additional within which to make such payment; provided, that like notice shall be mailed

to the bondsmen, if any, of such person or assigns, who, in case of the final default of said purchaser, shall be entitled to redeem said land at any time within thirty days after such final default. If payment be not made as is in this section provided, the state board of land commissioners may sell the said lands, or any part thereof, and all payments made by the previous purchaser shall be forfeited to the state.

History: En. Sec. 41, Ch. 147, L. 1909; prior acts Sec. 3485, p. 90, L. 1899; Sec. 2168, Rev. C. 1907.

A purchaser is not required to give a bond to secure deferred payments. State ex rel. Danaher v. Miller, 52 Mont. 562, 567, 160 Pac. 513.

1860. Purchase price, how paid. State lands shall be paid for as follows: Fifteen per cent. of the purchase price in cash on the day of the sale, and the balance in twenty equal annual payments, drawing interest at the rate of five per cent. per annum, payable annually; but a purchaser may make payment of one or more annual instalments at any time, by paying the principal, together with accrued interest, if paid on the date when one of the annual payments is due; if not, then to the date of the next annual payment.

History: En. Sec. 42, Ch. 147, L. 1909; prior law Sec. 2163, Rev. C. 1907.

1861. Certificate of purchase. Whenever any purchaser of the state lands has paid fifteen per cent. of the purchase price of the land bought, and delivered to the register of state lands the bond herein required to be given, the register shall make out a certificate of purchase and deliver the same to the purchaser, which certificate shall contain a description of the land purchased, the sum paid, the amount remaining due, the date at which each of the deferred payments falls due, and the amount of each, and shall be signed by the governor, as the president of the state board of land commissioners, and by the register, and a record of the same shall be kept in a suitable book.

History: En. Sec. 43, Ch. 147, L. 1909.

While this section enjoins upon the register of state lands the duty to issue a certificate of purchase, it must be signed by the governor as president of the board of land commissioners. If it does not bear the signature of this officer it is not complete, nor is it effective for any purpose. Neither can act effectively without the other. In the absence of a demand upon the governor, therefore, the issuance of a writ of mandate to compel the register to issue a certificate of purchase would not afford the relator any effective relief, for though the register were compelled to perform the duty enjoined upon him so far as he might, the governor would be under no compulsion to act with him, and would be free to refuse to add his signature. State ex rel. Danaher v. Ray, 47 Mont. 570, 572, 133 Pac. 961, Ann. Cas. 1915C, 130.

In signing a certificate of purchase, the governor performs a mere ministerial duty, and if he fails or refuses to perform such duty when he should perform it, mandamus will lie to compel performance. State ex rel. Danaher v. Miller, 52 Mont. 562, 567, 160 Pac. 513.

1862. Report on value of land and improvements—Payment. When an application to purchase any state lands shall be filed in the office of the register, the state board of land commissioners may refer the same to the state land agent, who shall visit the land proposed to be purchased and shall report in writing to the state board of land commissioners, giving the value of said land and the value of all improvements which have been placed thereon, together with any other facts which may have a bearing in determining the value thereof. If any of the improve-

ments consists of cultivation done thereon by a prior lessee, and the land shall be purchased by any other person than such lessee, the full value of such cultivation shall be paid to the person making same, and the other improvements shall be disposed of as herein otherwise provided.

History: En. Sec. 44, Ch. 147, L. 1909; amd. Sec. 1, Ch. 137, L. 1921.

1863. When purchaser entitled to patent. Whenever a purchaser of state lands, or his assigns, shall have paid one-half of the amount of money payable to the state of Montana upon his certificate of purchase, he shall be entitled to have his bond, given to secure such payment, canceled, unless the state board of land commissioners shall order that the same continue in force for a longer period; and when he shall have paid the whole of the said purchase money, he shall be entitled to letters patent for the land sold to him, or his assignor.

History: En. Sec. 45, Ch. 147, L. 1909.

Cited or applied as section 45, Laws of 1909, chapter 147, in State ex rel. Danaher v. Miller, 52 Mont. 562, 567, 160 Pac. 513.

1864. Patents, how executed. The governor, and in case of his absence or inability, the lieutenant-governor, shall be and is hereby authorized to execute deeds or patents of conveyance, transferring, without covenants, any and all lands sold by the state board of land commissioners under the laws of this state. Such deed or patent shall be attested by the secretary of state, countersigned by the register, and have the great seal of the state and the seal of the state board of land commissioners thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be receivable in evidence in all courts of record of this state, the same as the original.

History: En. Sec. 46, Ch. 147, L. 1909.

1865. Limitation for cancellation of patent. No action shall be brought to vacate or cancel any patent issued by the state, after the expiration of two years from the date of such patent, except upon the ground of fraud.

History: En. Sec. 47, Ch. 147, L. 1909.

1866. Certificates may be assigned. Certificates of purchase shall be assignable, but all such assignments shall be in writing, and be acknowledged as other conveyances of real estate, and shall be filed for record in the office of the register of state lands; provided, however, that the state board of land commissioners may cancel any certificate of purchase upon the ground of fraud, within three years from the date of its issue, upon giving to the person named in the certificate of purchase, at his last known place of address, thirty days' notice that the same is held for cancellation; and, if the same is registered, hearing shall be had before the board of contest, as in other contested cases provided; provided, that such hearing may be had upon testimony taken before some officer authorized to administer oaths, in the county in which the land involved is situated.

History: Ap. p. Sec. 3484, p. 89, L. 1899; re-en. Sec. 2167, Rev. C. 1907; amd. Sec. 48, Ch. 147, L. 1909.

The formal approval of a sale of land by the state board of land commissioners did not preclude the district court

from investigating the question of fraud claimed to have entered into the sale, in a proceeding to compel the issuance of a certificate of purchase, since it is manifest from the provisions of this section that the board may cancel a certificate for fraud at any time within three years from its date of issue. State ex rel. Danaher v. Miller, 52 Mont. 562, 567, 160 Pac. 513.

Where two tracts of land were sold to the same person at the same sale, but separately as required by law, the entrance of fraud into the sale of one tract did not invalidate the sale of the second, which was free from fraud, nor rob the buyer of his right to a certificate of purchase therefor. State ex rel. Danaher v. Miller, 52 Mont. 562, 569, 160 Pac. 513.

1867. Lost certificate of purchase. Whenever any certificate of purchase shall be lost, or wrongfully withheld by any person from the owner thereof, the contest board may receive evidence of such loss or wrongful withholding, and report their findings as in other contested cases; and the state board of land commissioners may, in proper cases, cause a new certificate of purchase, or a patent, as the case may be, to issue to such person as shall appear to them to be entitled thereto.

History: En. Sec. 49, Ch. 147, L. 1909.

1868. Lands subject to taxation. All lands sold under the provisions of this act, or any interest therein, shall be subject to taxation; and the register of state lands shall furnish to the county assessors of each county, on or before the fifteenth day of March of each year, a list of all lands sold during the year ending on the first Monday of March, to whom sold, the purchase price, and the amount actually paid; provided, that no purchaser of state lands shall be taxed for a greater percentage of the value of the land than the ratio which the amount actually paid on the purchase price bears to the total purchase price; and provided further, that in case of a sale for taxes, the interest only of said purchaser shall be sold.

History: Ap. p. Sec. 3487, p. 90, L. 1899; re-en. Sec. 2170, Rev. C. 1907; amd. Sec. 50, Ch. 147, L. 1909.

Under former statutes, it was held that a purchaser, after he had paid a part of the purchase price, contracted to pay the balance, and taken possession, is the owner for the purpose of taxation, although the state retains the legal title as security for deferred payments. Courtney v. Missoula County, 21 Mont. 591, 593, 55 Pac. 359.

Taxation of state lands held under contract of sale, see Ann. Cas. 1917C, 129.

1869. Interest of purchaser subject to lien. The interest of any purchaser of state lands in the land so purchased shall be subject to the same liens as other real estate; provided, that in case of sale, only the interest of the purchaser shall be sold. In case of any sale under the provisions of this section, or of a sale for taxes, the person purchasing under such provisions shall be substituted for the judgment debtor, and a new certificate of purchase shall be issued to him upon satisfactory proof to the state board of land commissioners that he is entitled thereto.

History: En. Sec. 51, Ch. 147, L. 1909.

1870. If lands revert. In case any lands sold under the provisions of this act shall revert to the state, for any cause whatsoever, the register of state lands shall at once notify the assessor and the county treasurer of the county in which the land is situated, and upon the receipt of such notice, it shall be the duty of the assessor to cancel any assessment of said land for that year, and of the county treasurer to rebate all taxes

that have been charged against said land for that year; provided, that the state shall pay to the county in which said land is situated its proportion of any taxes that may have been levied upon said land for a year in which the state has collected an instalment of purchase money upon said land, said payment to be made out of such instalment.

History: En. Sec. 52, Ch. 147, L. 1909.

1871. Timber not to be cut. If any purchaser of state land, before receiving his title therefor, cuts or destroys any timber on said land, more than shall be necessary in the building and repairing of fences and houses and other necessary buildings thereon, and for fuel for the family of the occupant, he shall be liable in damages for all such excess, the amount of such damage to be recovered in an action in the name of the state, to be instituted by the attorney-general, in the county in which the land is situated.

History: En. Sec. 3517, Pol. C. 1895; re-en. Sec. 2208, Rev. C. 1907; amd. Sec. 95, Ch. 147, L. 1909.

CHAPTER 148.

SALE OF TIMBER—LOG-MARKS.

Section 1872. Sale of Timber.
1873. Permits for Cutting Timber.
1874. Permits.
1875. Permits to Cut and Remove Timber From State Lands.
1876. Log-Mark.
1877. Payment for Timber.
1878. Penalty for False Marks on Timber.
1879. Additional Penalty.
1880. Board to Defend Suits.
1881. State Brand—Penalty for Violation.

1872. Sale of timber. The state board of land commissioners shall have power to sell timber on state lands, at such price per thousand feet as in its judgment shall be for the best interest of the state, but not otherwise; but no such sale of live timber shall be made at a less price than three dollars per thousand feet, except lodge-pole pine, which may be sold at the discretion of the board. But no live timber less than eight inches in diameter, twenty feet from the ground, except lodge-pole pine and cedar poles, shall be sold or permitted to be cut from state lands. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the state board of land commissioners shall prescribe; in all cases the board must require the person cutting the timber to pile the brush and slashings and dispose of the same in such manner as to prevent forest fires. Before any permit shall be granted, except for cutting of lodge-pole pines and cedar poles, the timber shall be estimated and appraised under the direction of the state forester, upon the request and subject to the approval of the state board of land commissioners, which estimates and appraisals shall show as nearly as may be the amount and value per thousand feet of all timber measuring not less than eight inches in diameter, twenty feet from the ground, and also all

other timber measuring below this standard on each tract or lot, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream, or railroad, and its value and position as a protection to a watershed.

History: Ap. p. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919.

1873. Permits for cutting timber. No permit for cutting live timber shall be granted except to the highest bidder at a public sale held at the state capitol, except as provided in the following sections, notice of which sale shall be published as provided by law for the sale of state lands, but no sale shall be made at a less price than the appraised value of the timber as fixed by the state board of land commissioners; and no timber shall be sold after the passage of this act until the same has been reappraised and estimated since March 19, 1909. Every person purchasing timber at such sale, before the execution of the permit to cut the same, shall execute a bond to the state of Montana, in double the amount of the estimated value of the timber permitted to be cut, with sufficient sureties, to be approved by the board, conditioned upon the payment to the register of state lands of the amount that may be found due under the terms of such permit, and according to the provisions of law; and further conditioned upon the cutting of such timber in compliance with such rules and regulations as may be prescribed by the state board of land commissioners.

History: Ap. p. Sec. 3561, p. 194, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 54, Ch. 147, L. 1909; amd. Sec. 5, Ch. 118, L. 1911; amd. Sec. 2, Ch. 26, L. 1919.

1874. Permits. All permits to cut live timber under the provisions of this act shall be made according to a form prescribed by the attorney-general, and shall be signed by the party applying for the same, and by the president and secretary of the state board of land commissioners.

Said permits shall contain a description of the land to be cut upon, the estimated amount of timber upon the same, the amount of large timber required to be left standing, the time within which said timber shall be removed, the price per thousand feet, or the entire value of the timber, if the right to clear the land has been sold, for which the same was bid in, the stipulated log-mark, and such other terms and conditions as may be necessary to make all logs cut under its provisions the absolute property of the state, until the same are paid for. Such permits, when properly executed, shall be recorded in the office of the register of the state board of land commissioners, and the log-mark described therein shall vest the ownership of all logs bearing the same in the state; provided, however, that the state board of land commissioners may authorize the state forester to issue permits without notice to citizens of Montana, to cut and take away dead standing timber under such rules and regulations as to price and quality as may be prescribed by the board; and provided further, that the state forester shall issue permits without notice to citizens of Montana, to cut and take away down timber, without price, under such rules and regulations as may be prescribed by the board; and provided further, that the state board of land commissioners may authorize the state forester to sell live timber in quantities not exceeding one hundred

thousand feet in the aggregate, in each forest reserve in any one year, without publishing or giving notice.

History: En. Sec. 3, p. 47, L. 1893; re-en. Sec. 3562, Pol. C. 1895; re-en. Sec. 2215, Rev. C. 1907; amd. Sec. 55, Ch. 147, L. 1909; amd. Sec. 6, Ch. 118, L. 1911; amd. Sec. 3, Ch. 26, L. 1919.

1875. Permits to cut and remove timber from state lands. The state board of land commissioners are hereby empowered to authorize the state land agent or the state forester to issue permits without notice to bona fide citizens of the state of Montana, authorizing such citizens to cut and take away from the timber lands of the state timber in small quantities, to be used by such citizens for domestic, building, and fuel purposes only, under such rules and regulations as to price and quantity as may be prescribed by the said board.

History: En. Sec. 1, Ch. 119, L. 1911.

1876. Log-mark. The state forester shall select and designate a log-mark for each person granted a permit to cut logs upon state lands, which log-mark, when so selected and designated, shall be filed in the office of the register of state lands, and shall be distinctly different from any other log-mark selected and designated by him. The state forester shall cause all logs so cut to be scaled, and make a detailed report of the same to the state board of land commissioners, on or before the first day of every month, showing the name of the party cutting, the description of the land cut upon, the number of logs cut and marked, the mark placed thereon, the total number of feet, and the value thereof per thousand, as shown by the records of this office, stating whether such cutting has been according to the terms of the permit, and, if not properly cut, the consequent damage to the state; and such timber or logs shall not be sold, transferred or manufactured into lumber until the amount due the state, according to the report of said forester, shall have been paid in full; and it shall be the duty of the state forester to report to the state board of land commissioners all trespass which has been, or which may hereafter be, made upon the state timber lands, and all logs cut by trespassers shall be disposed of as hereinafter provided.

History: En. Sec. 3563, Pol. C. 1895; re-en. Sec. 2216, Rev. C. 1907; amd. Sec. 56, Ch. 147, L. 1909; amd. Sec. 7, Ch. 118, L. 1911.

1877. Payment for timber. Upon receipt of such report from the state forester, the register of state lands shall draw a draft for the amount upon the party from whom the stumpage is due. If said party shall immediately make payment of the required amount, the register shall execute a release of the logs, and transfer of the mark thereon; but in no case shall such release or transfer be made until the lien of the state has been fully satisfied. If such purchaser shall not pay the amount of such draft within ten days after receipt of same, it shall be the duty of the state board of land commissioners to take possession of the logs in question, and sell the same at public auction to satisfy the claim of the state, paying the overplus, if any, after defraying the cost and expenses of such sale, to the party entitled thereto; provided, that if the proceeds of such sale are insufficient to pay the amount due upon the purchase price, together with the cost and expenses of the sale, the amount of such deficiency

shall be certified to the attorney-general by the state board of land commissioners, and he shall immediately proceed to collect such deficiency from the purchaser or his bondsman; and provided, that in lieu of taking possession of the logs upon which stumpage is due, the state board of land commissioners may turn the account over to the attorney-general, who shall immediately proceed to collect the same upon the bond hereinbefore provided for; but in no case shall the logs be released until the account is paid. The proceedings upon the bond shall not prevent the state board of land commissioners from seizing the logs at any time before the claim of the state is satisfied.

History: En. Sec. 3564, Pol. C. 1895; re-en. Sec. 2217, Rev. C. 1907; amd. Sec. 57, Ch. 147, L. 1909; amd. Sec. 8, Ch. 118, L. 1911.

1878. Penalty for false marks on timber. If any person, or any officer or employee of a corporation, having a contract to cut timber under the provisions of this act, with intent to defraud the state, place any other log mark upon logs cut by him, or if under such contract than the one mentioned therein, he shall be deemed guilty of felony, and when upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the state prison for not less than one year nor more than three years, or both; and all logs upon which such false mark has been placed shall be forfeited to the state.

History: En. Sec. 6, p. 48, L. 1893; re-en. Sec. 3565, Pol. C. 1895; re-en. Sec. 2218, Rev. C. 1907; amd. Sec. 58, Ch. 147, L. 1909.

1879. Additional penalty. In addition to the penalties provided for in this title against those committing trespass upon any of the lands owned or held in trust, or otherwise, by the state, the state board of land commissioners is hereby authorized and empowered, without legal process, to seize and take, or cause to be seized and taken, any and all lumber, wood, grass, or other property unlawfully severed from the said lands, whether the same has been removed from said lands or not, and may dispose of the same at either public or private sale, in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong.

History: En. Sec. 7, p. 49, L. 1893; re-en. Sec. 3566, Pol. C. 1895; re-en. Sec. 2219, Rev. C. 1907; amd. Sec. 59, Ch. 147, L. 1909.

1880. Board to defend suits. For the purpose of determining the title to any property seized and taken under the provisions of this act, the state board of land commissioners is hereby authorized and empowered to defend, in the name of the state, any and all actions that may be brought for that purpose, and to do and perform all things necessary to protect the interests of the state.

History: En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909.

1881. State brand—Penalty for violation. The state forester, under the direction of the state board of land commissioners, shall select and designate a brand, which he shall place, or cause to be placed, upon

all timber, logs, boards, or planks that may be seized, as provided for in this act. Any person or persons, or any officer or employee of any company, association, or corporation, who shall remove, sell, or dispose of any property mentioned in this act, after the same has been seized or marked with the state brand, or who shall erase, deface, cut, or destroy any mark upon any such property, shall, upon conviction, be imprisoned in the state prison for a term of not less than one year nor more than three years, and be subject to a fine of not less than five hundred dollars nor more than five thousand dollars.

History: En. Sec. 9, p. 49, L. 1893; re-en. Sec. 3568, Pol. C. 1895; re-en. Sec. 2221, Rev. C. 1907; amd. Sec. 61, Ch. 147, L. 1909; amd. Sec. 9, Ch. 118, L. 1911.

CHAPTER 149.

LEASES AND RENTALS OF STATE LANDS.

Section 1882. Board May Lease.
1883. Lands, How Leased.
1884. Bond and First Payment of Rental.
1885. Penalty for Failure to Make First Payment.
1886. Leases Conditioned on Payment of Rental in Advance.
1887. Term of Lease.
1888. Renewal of Lease, How Made.
1889. Payment for Improvements of Former Lessee.
1890. Rental of Coal Lands.
1891. Lands Valuable for Stone.
1892. Leases and Receipts.
1893. Register Receipts.
1894. Leasehold Subject to Execution.
1895. Record of Leases and Certificates.
1896. Lands Not Sold May Be Leased.
1897. Purchase of Water Right by Lessee.
1898. Removal of Improvements.
1899. Improvements of Prior Lessee.
1900. Who May Not Buy or Lease State Lands.
1901. Cancel Fraudulent Lease.
1902. Disposition of Rentals.
1903. Money Paid by Mistake Refunded.
1904. Holding Over and Trespass.

1882. Board may lease. The state board of land commissioners may lease any portion of the land of the state at a rental to be determined after the examination of the land by an appraiser, except as herein provided. The lessee shall pay the annual rental in advance to the register of state lands, who shall receipt for the same. If stone, coal, coal-oil, gas, or other mineral not mentioned herein, be found upon the state land, such land must be leased only for the purpose of obtaining therefrom the stone, coal, coal-oil, gas, or other mineral, for such length of time, and conditional upon the payment to the register of such royalty upon the product as the state board of land commissioners may determine.

History: En. Sec. 62, Ch. 147, L. 1909.

Note.—Prior to the enactment of chapter 147, Laws of 1909, the laws with reference to leasing of state land were not as complete as those in the later act and were often combined with statutes regulating the sale of state land. These acts are found in house bill No. 45, pp. 87 to 92, amending sections of Political Code 1895; which acts were carried forward as sections 2161 to 2180, Revised Codes 1907; chapter 147, Laws of 1909, was held by the supreme court to be a complete code of law on the subject dealt with and to entirely supersede the corresponding provisions of Revised Codes 1907.

1883. Lands, how leased. At every public sale of state lands, each tract of land, except timber lands, for which no bid for its purchase has been received, shall be immediately offered for lease to the highest bidder, as follows: By quarter-sections, or so much thereof as belongs to the state, in the case of lands classified as agricultural (a); by half-sections, in the case of lands classified as agricultural (b); and by sections in the case of lands classified as grazing; and smaller tracts shall not be leased, unless it is deemed impossible to lease as above described, or unless a larger price may be obtained thereby; and no land shall be leased for a longer period than five years, nor for a less rental than the minimum rental fixed by the board, which shall not be less than five per centum per annum of the appraised value of such lands.

History: En. Sec. 63, Ch. 147, L. 1909.

Under former statutes, all agricultural and grazing lands, in default of sale, may be leased under the direction of the state land commission for terms not exceeding five years, and the revenue therefrom to be paid to the state treasurer. State ex rel. Koch v. Barret, 26 Mont. 62, 65, 66 Pac. 506.

Under section 2162 of the Revised Codes of 1907, similar to the above, it was held that the question whether state lands lying within three miles of the limits of a city or town shall be leased or sold, being one addressed to the sound discretion of the state board of land commissioners, mandamus does not lie to compel such board to entertain an application to lease. State ex rel. Gibson v. Stewart, 50 Mont. 404, 406, 147 Pac. 276.

1884. Bond and first payment of rental. Each lessee, within twenty-four hours after leasing any land, shall pay to the register the first year's rental, and shall deliver to him a good and sufficient bond, executed by the said lessee and two sureties and approved by the treasurer of the county in which the land is situated; the condition of such bond being that such lessee will keep and perform all the covenants and agreements contained in the lease; and the register shall, upon such payment, and the delivery of such bond, execute and deliver to such lessee a lease of such lands, and shall enter the same in a suitable book to be kept for that purpose.

History: En. Sec. 64, Ch. 147, L. 1909.

1885. Penalty for failure to make first payment. If any successful bidder at a public leasing or public sale refuses or neglects to make payment, or deliver his bond as herein provided, he shall forfeit to the state the sum of two hundred dollars, with costs; and the attorney-general shall institute a suit for the recovery thereof in the name of the state of Montana.

History: En. Sec. 65, Ch. 147, L. 1909; amd. Sec. 1, Ch. 87, L. 1919.

1886. Leases conditioned on payment of rental in advance. All leases of state or school land shall be conditioned upon the payment of rent annually in advance, and the violation of this condition shall work a forfeiture of the lease at the option of the state board of land commissioners, after thirty days' notice to the lessee, such notice being sent to his last known postoffice address, as given by himself to the register of the state board, and to the sureties upon his bond; provided, that after the expiration of the said thirty days' notice, the sureties upon the bond of the lessee, or any creditor of the lessee, may pay the said rental and take an assignment of said lease, or have such rights transferred to them

or him, as the case may be; provided, that such sureties shall have the preference.

History: En. Sec. 66, Ch. 147, L. 1909.

1887. Term of lease. No state land shall be leased to any person for a longer period than five years. Lots within an incorporated town or city may be leased for a period of five years, with covenants for the renewal of said lease to the lessee, or his assigns, for nine more rental periods of five years each, making a total of not to exceed fifty years, at such rental as may be fixed at the beginning of each five-year term.

History: En. Sec. 67, Ch. 147, L. 1909.

1888. Renewal of lease, how made. When any lease expires by limitation, the holder thereof may renew the same as follows: At any time within thirty days before the date of such expiration, the lessee, or his assigns, shall notify the register of his desire to renew said lease; if the lessee and the register agree as to the valuation of the land, a new lease may be issued, bearing even date with the expiration of the old lease, and upon like conditions; provided, however, that the former valuation shall not be decreased without the consent of the state board of land commissioners; and provided further, that the state board may, in its discretion, offer said land for sale at any of the regular public sales of state lands held in the county where the land is situated, upon the same terms, and in the same manner as though said lease had not been executed.

History: En. Sec. 68, Ch. 147, L. 1909.

1889. Payment for improvements of former lessee. Should any person apply to lease any of the lands belonging to the state, upon which there are improvements placed there by a former lessee, before a lease shall issue, said applicant shall file in the office of the register, a receipt showing that the price of said improvements, as agreed upon by the parties, or fixed by the state land agent, or one of his assistants, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of such improvements so agreed upon or fixed; or proof that the owner of said improvements elects to remove them. In case the parties do not agree upon the value of the improvements, the state land agent, in determining the same, shall consider orchards, buildings, fencing, wells, except wells in prospect for oil, reservoir and irrigation ditches, and the cultivation of the land and the clearing the same from rock or stone, where it is used for agricultural purposes, and any other improvements, which, in the judgment of the state land agent, have added value to the land.

History: En. Sec. 69, Ch. 147, L. 1909; amd. Sec. 1, Ch. 136, L. 1921.

1890. Rental of coal lands. Any person, association, copartnership, or corporation, leasing and operating coal lands under the provisions of this act, shall pay to the state the minimum price of not less than ten cents per ton for each and every ton of merchantable coal so mined from said land, to be paid monthly on or before the twenty-fifth day of each month, for the coal mined during the preceding calendar month. Should the lessee of such coal land fail to mine during any one year the minimum

amount that may be provided for in the term of the lease, he shall notwithstanding such failure, pay to the state the minimum rental provided for in said lease. Should any person apply to lease any of the coal lands belonging to the state, upon which there are surface or underground improvements placed or made by a former lessee, before a lease shall issue, said applicant shall file in the office of the register a receipt showing that the price of said improvements, as agreed upon by the parties or fixed by the state land agent, or one of his assistants, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of such surface or underground improvements so agreed upon or fixed; or proof that the owner of such improvements elects to remove them.

History: En. Sec. 70, Ch. 147, L. 1909.

1891. Lands valuable for stone. Whenever it shall appear to the state board of land commissioners that there is a deposit of stone valuable for building, mining, or other commercial purposes upon any section or subdivision of state land, the board shall not lease the same for any purpose except for the extraction and working of the stone, and then upon a royalty basis only, upon such terms as the board shall prescribe. The board may lease the remainder of the section or subdivision for agriculture, grazing, or other purposes, as may appear for the best interests of the state, as other state lands are leased; but shall provide in all such cases for a right of way across said state land or any adjoining state land, for all purposes connected with the working and disposition of the stone.

History: En. Sec. 73, Ch. 147, L. 1909.

1892. Leases and receipts. All leases shall be in duplicate, both to be signed by the lessee and by the register of state lands, with the seal of the board affixed thereto, one copy to be delivered to the lessee and the other to be retained in the state land office.

History: En. Sec. 74, Ch. 147, L. 1909.

1893. Register receipts. The register shall issue receipts in triplicate for all moneys received by him from any source, of which one copy shall be delivered to the person making the payment, one copy to be delivered to the state auditor, and the other copy to be retained in the state land office. All receipts issued shall be numbered consecutively.

History: En. Sec. 75, Ch. 147, L. 1909.

1894. Leasehold subject to execution. The leasehold interest of any lessee shall be subject to levy and sale under attachment and execution as other property.

History: En. Sec. 76, Ch. 147, L. 1909.

1895. Record of leases and certificates. The register shall keep a full and complete record of all leases and certificates of purchase issued by him, and of all payments made thereon, and shall, on or before the twentieth day of every month, notify all persons having amounts becoming due during the following month, of such amounts. He shall also notify, at such time, all persons who may be delinquent for thirty days or more,

of such delinquencies. In case any lessee becomes delinquent for more than sixty days after notice, the register shall forthwith, unless an extension has been granted, declare a forfeiture of the lease, and may eject the lessee from the land; but such forfeiture and ejectment shall in no way release the bond heretofore provided for, but the sureties thereon, upon the forfeiture of such lease, and upon the payment by them of the amount due, if paid without suit, may have the lease transferred to them, or either of them by consent of the other, for their own use and benefit, and be substituted to all the rights of the lessee. In case of a disagreement between the sureties, the land shall be divided between them by the state land agent.

History: En. Sec. 77, Ch. 147, L. 1909.

1896. Lands not sold may be leased. Whenever any state lands have been exposed for sale and lease at public sale, any lots or tracts remaining unsold or unleased may be leased to any person thereafter making application therefor, subject to the same terms and conditons as though the applicants were the successful bidder at a public sale.

History: En. Sec. 78, Ch. 147, L. 1909.

1897. Purchase of water right by lessee. At any time during the existence of a lease, the lessee, with the consent of the board of land commissioners first obtained, may, by written application showing the cost and benefits to be derived therefrom, purchase or acquire a water right, in order to irrigate the land leased by him, and if such water right shall become a valuable and permanent improvement, then, in case of the sale or lease of the said lands to other parties, the old lessee shall be entitled to receive the value thereof, as in the case of other improvements which he may have placed upon said lands.

History: En. Sec. 79, Ch. 147, L. 1909.

1898. Removal of improvements. All lessees having improvements on state lands, and who do not wish to re-lease the same, may dispose of or remove such improvements as are capable of removal without damage to the land, at any time within ninety days from the expiration of such lease, after which period all such improvements that have not been removed shall become the property of the state, unless such period be extended by the register for good cause shown.

History: En. Sec. 80, Ch. 147, L. 1909.

1899. Improvements of prior lessee. When any person has heretofore, or shall hereafter settle upon or improve any of the lands of the state, held by him under lease from the state, and a sale of such lands is made by the state, subsequent to such settlement or improvement, and the lessee shall not become the purchaser, the person becoming the purchaser of such lands shall pay to such lessee the reasonable value of the improvement thereon. Whenever the parties cannot agree as to the reasonable value of such improvements, the value thereof shall be decided by the state land agent or one of his assistants, but nothing herein contained shall be construed to interfere with the right of the purchaser of any such lands to the immediate possession thereof, upon the issuance to

him of the certificate of purchase; provided, such original lessee may elect to remove said improvements, as herein provided.

History: En. Sec. 81, Ch. 147, L. 1909.

1900. Who may not buy or lease state lands. It shall be unlawful for any member of the state board of land commissioners, or any person or persons appraising lands, or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands, or the timber thereon, or of any person connected with the state land office as an officer or employee, to purchase or lease, directly or indirectly, any of the lands of the state, or any timber thereon.

History: En. Sec. 82, Ch. 147, L. 1909.

1901. Cancel fraudulent lease. If through any fraud, deceit, or misrepresentation, any person or persons, corporation, or company shall procure the issuing of any lease for state lands, the state board of land commissioners shall have authority to cancel the same, after thirty days' notice to the lessee, which notice shall state the grounds of the charge, after which a hearing may be had before the contest board as in other contested cases.

History: En. Sec. 83, Ch. 147, L. 1909.

1902. Disposition of rentals. All moneys arising from the leasing of state lands shall be held for the benefit of the respective funds, known as income funds, for which said lands were granted, and may be used for any of the purposes contemplated in this act.

History: En. Sec. 84, Ch. 147, L. 1909.

1903. Money paid by mistake refunded. If by any mistake or error, any money has been or shall hereafter be paid on account of any sale or lease of state lands, it shall be the duty of the state board of land commissioners to draw a voucher in favor of the party paying said money, and on presentation of such voucher, the auditor shall draw his warrant for the amount, and the treasurer shall pay the same out of the fund into which such money was deposited or placed.

History: En. Sec. 85, Ch. 147, L. 1909.

1904. Holding over and trespass. All corporations, companies, or persons who shall use or occupy state lands for more than thirty days after the cancellation or expiration of a lease, except by authority of the board, and any corporation, company, or person who shall construct a reservoir, ditch, railroad, public highway, private road, telegraph or telephone line, or in any manner occupy or enter upon lands belonging to the state, without first having secured the authority and permission of the state board of land commissioners to so occupy said land, for such purposes, shall be regarded as a trespasser, and, upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars and not more than one hundred dollars for each offense, and each day shall constitute a separate offense, and in addition to the foregoing penalty, the state shall be allowed to collect, as rental for the use of said lands, a sum equal to the appraised value thereof for rental purposes, as fixed by

an appraiser from the state board of land commissioners, and which value shall not be less than ten cents per acre per annum.

History: En. Sec. 103, Ch. 147, L. 1909.

CHAPTER 150.

LOCATION OF MINING CLAIMS ON STATE LANDS.

Section 1905. Location of Mining Claims on State Lands.
1906. Proof of Mineral Character of Land.

1905. Location of mining claims on state lands. Locations of mining claims not exceeding six hundred feet in width and fifteen hundred feet in length, each, may be made upon lands belonging to the state as follows: The discoverer of a body of mineral in either a vein, lode, or ledge, or mineral in a placer deposit, shall immediately post conspicuously a notice that he has made such a discovery, on the date stated in such notice, and shall complete such location in all respects as prescribed by the laws of this state for the location of mining claims upon the public lands of the United States, except that no notice of such location need be recorded in the office of the county clerk, but such notice shall be filed with the register of state lands. Such procedure shall empower the locator to retain possession of and operate said claim for the period of one year, at the end of which time, he shall be required to purchase said claim for ten dollars per acre, or take a lease thereof at such price, or upon such terms as may be agreed upon between him and the state board of land commissioners.

History: En. Sec. 71, Ch. 147, L. 1909.

Discovery of minerals sufficient to support location of mining claim, see note in 15 Ann. Cas. 628.

1906. Proof of mineral character of land. Before the locator will be allowed to purchase the claim located by him, satisfactory proof at a hearing, if deemed necessary, must be submitted to the state board of land commissioners that such claim is more valuable for mineral purposes than for any other purpose, and that the same contains a body of mineral in place, or a placer deposit, of sufficient value to justify the operation of the same as a present fact; provided, that no mining claim shall be located upon any coal or oil lands; and provided further, that all hearings under the provisions of this section shall be had before the contest board, with like procedure as other contested cases; and provided further, that no lands classified under subdivision 4 of the classification in the constitution shall be sold as mineral lands, but the mineral therein may be sold separately from the surface.

History: En. Sec. 72, Ch. 147, L. 1909.

Determination of mineral or non-mineral character of public lands, see note in Ann. Cas. 1912A, 1302.

CHAPTER 151.

LIEU TIMBER LANDS.

Section 1907. School Lands Within the Boundaries of National Forests Ceded to United States, When.
1908. Selection of Lieu Timber Lands.

1907. School lands within the boundaries of national forests ceded to United States, when. All sections of lands numbered sixteen and thirty-

six in surveyed townships, and all unsurveyed sections which, when surveyed, will be sections sixteen and thirty-six, within the boundaries of the national forests within this state, shall be deemed and held ceded to the United States as soon as an act shall be passed by the congress and approved by the president ceding to the state of Montana an equivalent number of sections of land situated in forest reserves and principally valuable for the timber which is growing thereon, which lands shall be known as lieu timber lands, and which lieu timber lands shall be selected as other state lands are selected from the public domain.

History: En. Sec. 1, Ch. 78, L. 1911.

1908. Selection of lieu timber lands. In selecting the lieu timber lands the state board of land commissioners shall select the same as nearly as practicable in one compact body, or, if that be not practicable, then in one or more compact bodies, to the end that the same may be managed and controlled as a state forest, and the selections may be made from land in any county or counties of the state.

History: En. Sec. 2, Ch. 78, L. 1911.

CHAPTER 152.

FINANCE—GENERAL PROVISIONS REGARDING.

Section 1909. Money, Where Payable.
1910. Moneys From Sales Go Into Permanent Funds.
1910a. Investment of Moneys in Permanent Funds.
1910b. Investment of Income From Common School Fund.
1911. Purchase of Bonds.
1912. Treasurer Purchases Warrants.
1913. Notice of Land Board of Bond Sales.
1914. Waiver of Notice.
1915. Penalty.
1916. Redemption of Bonds Before Maturity.
1917. Payment of Interest.
1918. Expenses, How Paid.
1919. Disposal of Fines.
1920. Land Office Expense Fund Abolished.
1921. Suits, Where Triable.
1922. Monthly Deposit of Moneys Received From Permanent Funds of State Educational Institutions.
1923. Disbursement of Said Funds.
1924. Income and Interest Fund to Be First Exhausted in Payment of Claims.
1925. Quarterly Statement of Expenses Incurred and Disbursements Made on Account of Federal Funds.
1926. Biennial Statement of Receipts and Expenditures of State Educational Institutions.

1909. Money, where payable. All moneys due the state under any of the provisions of this act shall be due and payable at the office of the register of state lands, at the state capitol in the city of Helena.

History: En. Sec. 99, Ch. 147, L. 1909.

1910. Moneys from sales go into permanent funds. All moneys arising from the sale of any state lands shall be held intact for the benefit of the funds for which such lands were granted, and shall be permanent funds, the interest of which only shall be expended for the purposes for which the said lands were granted.

History: En. Sec. 86, Ch. 147, L. 1909.

1910a. Investment of moneys in permanent funds. All moneys derived from the sale of state lands and belonging to the permanent land grant funds shall be invested as follows:

1. In bonds of the state of Montana, or of the United States.
2. In interest-bearing warrants upon the general fund of the state.
3. In bonds of the several counties and cities of the state.
4. In bonds of school districts within the state of Montana; provided,

that before any moneys are so invested, the attorney-general shall furnish the board an opinion as to the legality of the bond, and the board must be satisfied that such bonds are in all respects legal and a safe investment.

History: En. Sec. 87, Ch. 147, L. 1909.

1910b. Investment of income from common school funds. The state land board is hereby authorized and empowered to invest the income derived from the common school fund in interest-bearing warrants upon the general fund of the state; provided such warrants are issued to be redeemed on or before the first day of February of the year succeeding their issue.

History: En. Sec. 1, Ch. 103, L. 1915.

1911. Purchase of bonds. Whenever the state board of land commissioners has purchased any bonds, and the same are duly executed and delivered to the president of the state board of land commissioners, the board shall deliver the same to the state treasurer, and shall direct the state auditor to draw his warrant upon the state treasurer for the amount thereof, specifying the fund upon which and the person in whose favor the said warrant shall be drawn, whereupon the state auditor shall draw a warrant upon the state treasurer accordingly, which warrant shall be delivered to the person in whose favor the same is drawn, and shall be paid by the state treasurer.

History: En. Sec. 2, Ch. 12, L. 1903; re-en. Sec. 2198, Rev. C. 1907; amd. Sec. 88, Ch. 147, L. 1909.

1912. Treasurer purchases warrants. The state treasurer shall purchase interest-bearing warrants issued against the general fund of the state whenever ordered so to do by the state board of land commissioners; and the state treasurer is hereby required to render a statement to the state board of land commissioners of the amount of interest-bearing warrants in each fund at any time said board may request such information.

History: En. Sec. 89, Ch. 147, L. 1909.

1913. Notice of land board of bond sales. All officers in charge of county, city, school districts and irrigation district bond sales shall, at least twenty days prior to the date of such sales, furnish to the state board of land commissioners a copy of the advertisement of such bond sale, and shall thereafter furnish any further information concerning said sale which may be requested by said board.

History: En. Sec. 1, Ch. 78, L. 1921.

Note.—Prior acts were section 2199, Revised Codes 1907. Repealed, by implication, by chapter 147, Laws of 1909, the attempted amendment by chapter 25, Laws of 1913, being therefore void.

1914. Waiver of notice. In lieu of compliance with the provisions of section 1913 of this code the officers therein named may, at any time prior to the date of any such bond sale, obtain from the state board of land commissioners a written waiver of compliance with the provisions of said section.

History: En. Sec. 2, Ch. 78, L. 1921.

1915. Penalty. A failure to comply with the provisions of this act by any officers charged with said duties shall constitute a misdemeanor and be punishable as such.

History: En. Sec. 3, Ch. 78, L. 1921.

1916. Redemption of bonds before maturity. The state board of land commissioners shall permit any county, school district, city, or town to redeem one or more of its bonds at the expiration of any interest period, before the maturity of such bonds, upon giving to the state board of land commissioners thirty days' notice of its intention to redeem and pay such bonds, and upon payment thereof as herein provided, such bonds shall be delivered to such county, school district, city, or town for cancellation.

History: En. Sec. 2, Ch. 33, L. 1907; Sec. 2202, Rev. C. 1907; amd. Sec. 91, Ch. 147, L. 1909.

1917. Payment of interest. The interest on all land grant warrants shall be payable on the first day of July next succeeding the date of issue, and annually thereafter. Whenever there is sufficient money in any of the land grant funds to pay outstanding warrants, or interest thereon, the treasurer shall cause to be published a brief notice that said warrants, or the interest on particular warrants on which interest would be payable on July first, describing them by numbers and names of funds, will be forthwith payable; and on the presentation of any such warrants, on, or at any time after July first, the treasurer shall pay the interest thereon, indorsing the date of payment and amount paid of each warrant, returning the same to the holder; and he shall keep a register showing the dates and amounts of each interest payment on each warrant, in each fund; and if any warrants are called for payment, interest thereon shall cease on the date fixed in said notice.

History: En. Sec. 3512, Pol. C. 1895; re-en. Sec. 2204, Rev. C. 1907; amd. Sec. 92, Ch. 147, L. 1909.

1918. Expenses, how paid. The expenses of collecting, platting, leasing, and selling of all state lands, and all expenses connected with the preservation or sale of timber thereon, shall be paid by the treasurer on warrants issued by the auditor, on vouchers certified by the state board of examiners that the said expenses were necessary and actually incurred in the selection, location, appraising, classifying, platting, leasing, or selling of state lands, or in the preservation or sale of timber thereon, and shall be paid out of the money in the several income funds, and the state board of examiners, in approving the same, shall designate the particular fund out of which said expense shall be paid; provided, that no money shall be expended for the benefit of any lands other than those in the land grant from which the particular income fund has been derived.

History: En. Sec. 3514, Pol. C. 1895; re-en. Sec. 2205, Rev. C. 1907; amd. Sec. 93, Ch. 147, L. 1909.

1919. Disposal of fines. All moneys received as fines, fees, and forfeitures under this act, or as penalties for the violation of any of the land laws of this state, or as fees, fines or forfeitures under any amendments of this act, shall be paid to the state treasurer, and by him deposited to the credit of the general fund.

History: En. Sec. 104, Ch. 147, L. 1909; amd. Sec. 1, Ch. 99, L. 1917; amd. Sec. 1, Ch. 171, L. 1919; amd. Sec. 1, Ch. 103, L. 1921.

1920. Land office expense fund abolished. The fund heretofore created and known as the land office expense fund is hereby abolished, and all moneys now in said fund or heretofore accruing thereto are hereby transferred to the general fund, and the state treasurer and the state auditor are hereby directed to make such entries upon their books of account as will fully effect such transfer.

History: En. Sec. 2, Ch. 103, L. 1921.

1921. Suits, where triable. All actions for the recovery of money due under this act, or for the cancellation of leases, or for the cancellation of certificates of purchase or patents, or for the recovery of state lands,

actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands, shall be controlled, as to venue, by the provisions of the code of civil procedure relating to the place of trial of civil actions; and shall be conducted by the attorney-general.

History: En. Sec. 100, Ch. 147, L. 1909.

1922. Monthly deposit of moneys received from permanent funds of state educational institutions. All moneys received from the investment of the permanent funds of the University of Montana, the agricultural college of Montana, school of mines of Montana, state normal school of Montana, state reform school of Montana, and deaf and dumb school of Montana, and all money received from the leasing of lands granted to said institutions, shall, at the close of each calendar month, be deposited with the state treasurer of Montana for each of such institutions, to the credit of what shall be known and designated as the "interest and income fund" of each of said institutions.

History: En. Sec. 1, Ch. 120, L. 1909.

1923. Disbursement of said funds. The money received by the state treasurer under the provisions of the preceding section shall be paid out by him only on warrant issued by the state auditor in payment of claims for expenses actually incurred for the support and maintenance of the institution filing the same, and the state auditor shall not draw warrants on said interest and income funds for any such claims until after the claim has been duly filed with and audited and approved by the state board of examiners.

History: En. Sec. 2, Ch. 120, L. 1909.

1924. Income and interest fund to be first exhausted in payment of claims. In the payment of claims presented by any of the institutions named in section 1922, the interest and income funds mentioned in said section, so far as available for the payment of the items set out in said claim, shall be exhausted before any warrants shall be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim.

History: En. Sec. 3, Ch. 120, L. 1909.

1925. Quarterly statement of expenses incurred and disbursements made on account of federal funds. On the first of March, first of June, first of September, and first of December of each year, the executive board of each of the institutions named in section 1922 shall prepare or cause to be prepared a detailed statement, showing all the expenses incurred and all disbursements made by such institution during the preceding quarter, and the purposes for which the same were made, out of funds, if any, appropriated by the United States government for the maintenance and support of any such institutions. Such report shall be signed and verified under oath by the president of the executive board and treasurer of the institution making the same, and shall be filed with the state board of examiners.

History: En. Sec. 4, Ch. 120, L. 1909.

1926. Biennial statement of receipts and expenditures of state educational institutions. The executive board of each of the institutions named

in section 1922 shall, at the end of November of each even-numbered year, beginning with November 30, 1910, prepare or cause to be prepared a full detailed statement, showing all moneys, if any, received by such institution from the United States government, and of the moneys received from the investment of the permanent school funds of the institutions, and of moneys received from the leasing of lands granted to such institutions, and all money appropriated by the state of Montana out of the general fund for such institution, and all money received from tuitions or any other sources whatever during the two years preceding the thirtieth day of November.

Such report shall also show all disbursements made out of the funds received from each of the sources mentioned above in this section, and the purposes for which each disbursement was made during such two years. Said reports shall also contain a statement showing the amount of money, if any, that will be received from the United States government for the maintenance and support of the institution for the next ensuing two years, and also an estimate of the amounts of money that will be received for the maintenance of institution from the investment of the permanent fund thereof, and from the leasing of lands granted to the institution for the next ensuing two years. Said reports shall be signed and verified under oath by the president of the executive board and treasurer of the institution, and filed with the governor of the state of Montana within ten days from and after November thirtieth of each even-numbered year.

History: En. Sec. 5, Ch. 120, L. 1909.

CHAPTER 153.

PENALTY FOR VIOLATION OF ACT BY STATE OFFICERS.

Section 1927. Violation of Act a Felony—Penalty.

1927. Violation of act a felony—Penalty. Any officer or employee of the state of Montana guilty of a violation of any of the provisions of this act and not herein otherwise provided for is hereby declared guilty of a felony, and shall be punished by imprisonment in the state prison for a term not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both fine and imprisonment.

History: En. Sec. 106, Ch. 147, L. 1909.

CHAPTER 154.

INVESTMENT OF SCHOOL FUNDS—FARM LOANS.

Section 1928. Investment of Common School and Other Permanent State Educational Funds.
1929. Estimate of Funds and Statement of Investments.
1930. Application for Farm Mortgage Loans—Form of, and to Whom Made.
1931. Amount of Loan, and How Secured.
1932. Mortgages to Be in the Name of the State as Mortgagee—Period of the Mortgage—Payment.
1933. Appraisal of Lands—Reports.
1934. Abstract of Title to Be Furnished by Applicant, When—Other Expenses to Be Borne by State.
1935. Approval of Abstract and Legality of Bonds by Attorney-General.
1936. Mortgage to Be Recorded Before Payment of Money.
1937. Satisfaction of Mortgage and Cancellation of Notes and Obligations.

1938. Foreclosure of Mortgage—Purchase and Sale of Land by State—Disposition of Proceeds.
1939. No Fees to Be Charged for Certain Instruments and Services Required Under Act.
1940. Sale and Assignment of Mortgages and Securities by State—Exemption of State From Liability—Appointment of Register as Agent of Purchaser.
1941. Same—Execution and Forms.
1942. Disposition of Proceeds of Sale.
1943. Chief Examiner—Appointment—Term of Office—Duties—Compensation.
1944. Rules and Regulations for Execution of Act.
1945. Preparation of Forms.
1946. Rules and Regulations Concerning Applications for Farm Loans Upon Improved Lands.
1947. Application for Loan Upon and Investigation of Unimproved Lands—Issuance of Certificate to Owner.
1948. Interpretation of Act.

1928. Investment of common school and other permanent state educational funds. All moneys belonging to the permanent common school and all other permanent state educational, charitable, and penal institution funds must be invested by the state board of land commissioners in bonds of school districts within the state of Montana; in bonds of the state of Montana or of the United States; in interest-bearing warrants upon the general funds of the state; in any state capitol building bonds of the state of Montana, now issued, or which may be hereafter issued; in bonds of irrigation districts within the state of Montana; in first mortgages on good, improved farm land in the state of Montana; any bonds issued by federal farm loan banks; in bonds of the several counties and cities of the state of Montana, in the manner herein provided.

Note.—At the general election of 1914 a farm loan law was enacted by the people, Laws of 1915, p. 486 et seq. This act having been held unconstitutional in part in State ex rel. Evans v. Stewart, 53 Mont. 18, and being deficient in its working details was superseded by chapter 124, Laws of 1917, which is here given as amended. Reference to chapter 28, Laws of 1915, is omitted from the above section, same having been repealed.

History: En. Sec. 1, Ch. 124, L. 1917.

Legislative control of the investment of school funds, see 24 R. C. L. 592.

1929. Estimate of funds and statement of investments. On or before the 25th days of May and November in each year, the state board of land commissioners shall cause to be made an estimate of the amount of permanent school and other permanent state educational, charitable, and penal institution funds, which shall be on hand uninvested by the first day of July and January next ensuing; and the state board of land commissioners shall also, on the first day of each and every month, cause to be prepared a statement, showing in detail the amount of such funds invested during the preceding month, the number of investments made, the kind and character of the securities in which such funds were invested, and the amount of such funds remaining on hand uninvested, which estimates and statements shall be filed in the office of the commissioner of the department of agriculture and publicity of the state of Montana, and copies of such estimates and statements shall be, by such commissioner of the department of agriculture and publicity, furnished to the representatives of the press and to all other persons requesting the same.

History: En. Sec. 2, Ch. 124, L. 1917.
Note.—The department of agriculture and publicity was abolished by chapter 216, Laws of 1921.

1930. Application for farm mortgage loans—Form of, and to whom made. All applications for loans of permanent common school or other permanent state educational, charitable, or penal institution funds, to be secured by mortgage on farm lands, shall be made to the register of state lands as secretary of the state board of land commissioners, and shall be made on forms approved by the attorney-general, and it shall be the duty of the state board of land commissioners to fill such applications for loans on farm lands as rapidly as such funds are available, and in the order in which the abstracts of title submitted in connection with such applications are finally completed and approved by the attorney-general.

History: En. Sec. 3, Ch. 124, L. 1917; amd. Sec. 1, Ch. 174, L. 1919.

1931. Amount of loan, and how secured. The amount of each loan made on farm lands shall not exceed two-fifths of the actual cash value of the lands, and shall be secured by a first mortgage thereon, and such lands shall be free and clear of all other prior incumbrances or liens of every nature and kind.

History: En. Sec. 4, Ch. 124, L. 1917.

1932. Mortgages to be in the name of the state as mortgagee—Period of the mortgage—Payment. All mortgages given to secure loans of such funds on farm lands shall be made in the name of state as mortgagee, and all such mortgages shall run for a period of not less than three years nor more than ten years, and the funds so invested shall bear interest at the rate of six per centum per annum, payable annually to the register of state lands of the state of Montana; provided, however, that when any mortgage has been given for a period of ten years, the mortgagor shall have the privilege and option, after three annual interest payments have been made, of paying, at any interest-bearing date, in addition to the interest, ten per centum, or any multiple thereof, of the principal secured by such mortgage; provided, further, that the state board of land commissioners may, in its discretion, permit the full payment of any mortgage given to secure a loan actually held by the state at any time prior to the maturity thereof.

History: En. Sec. 5, Ch. 124, L. 1917; amd. Sec. 1, Ch. 22, Ex. L. 1919.

1933. Appraisal of lands—Reports. Whenever an application is made for a loan of such funds to be secured by mortgage on farm lands, the board of land commissioners shall direct the state land agent or any assistant state land agent, to examine and appraise said lands, and report the result of such examination and appraisement to the board of land commissioners. All such examination and appraisement reports shall be made on the forms approved by the state board of land commissioners and the attorney-general.

History: En. Sec. 6, Ch. 124, L. 1917.

1934. Abstract of title to be furnished by applicant, when—Other expenses to be borne by state. Every applicant for a loan of any such funds to be secured by mortgage on farm lands shall, upon being directed so to do by the board of land commissioners, furnish to the board of land commissioners, at the applicant's expense, an abstract of title of the lands

on which the mortgage to secure the loan is to be given, but the applicant shall not be required to pay any other of the expenses whatever in connection with the examination and appraisement of said lands, or the making of said loan, but all of the expenses incurred in the examination and appraisement of said lands, and in connection with making said loan, shall be paid by the state treasurer on warrants issued by the auditor on vouchers certified by the state board of examiners that the expenses were necessary and actually incurred in examining and appraising said land and in making said loan, and shall be paid out of the several income funds, and the state board of examiners, in approving the same, shall designate the particular income funds out of which said expense shall be paid; provided, however, that any and all expenses necessary to perfect the title to said lands shall be borne and paid by the applicant for such loan.

History: En. Sec. 7, Ch. 124, L. 1917.

1935. Approval of abstract and legality of bonds by attorney-general. No loan of any of such funds to be secured by mortgage on farm lands shall be made unless the abstract of title of such lands be first approved by the attorney-general, and none of such funds shall be invested in any school district, state, United States, state capitol building, irrigation district, farm loan savings, county, or city bonds, unless the attorney-general shall furnish to the state board of land commissioners an opinion as to the legality of the bonds, and the board must be satisfied that such bonds are, in all respects, legal and safe investment.

History: En. Sec. 8, Ch. 124, L. 1917.

1936. Mortgage to be recorded before payment of money. Upon the execution and delivery to the state board of land commissioners of a mortgage given to secure a loan of any of such funds, the state board of land commissioners shall, before paying over to the mortgagor the funds so loaned, cause said mortgage to be recorded in the office of the county recorder of the county in which the lands described in said mortgage are situated, and the abstract of title to be continued so as to show such mortgage.

History: En. Sec. 9, Ch. 124, L. 1917.

1937. Satisfaction of mortgage and cancellation of notes and obligations. Upon full payment of any mortgage given to secure a loan of any of such funds, it shall be the duty of the register of state lands to cancel said mortgage and the notes or obligations secured thereby, and deliver them to the person paying the same, and he shall also deliver to the person paying the same, a full release and satisfaction of said mortgage, executed by said register of state lands in the name of the state of Montana, which said release and satisfaction shall be recorded in the office of the county recorder of the county wherein said lands are situated.

History: En. Sec. 10, Ch. 124, L. 1917.

1938. Foreclosure of mortgage—Purchase and sale of land by state—Disposition of proceeds. In case of default in any of the conditions of any mortgage taken as security for any loan made from any of such

funds, by reason of which the right to foreclose the same shall accrue to the state, the state board of land commissioners shall notify the attorney-general of such default, and the attorney-general shall, in the name of and in behalf of the state, foreclose such mortgage by action in the manner provided by law for the foreclosure of mortgages upon real estate. If no other person shall bid the full amount due upon said mortgage, upon such foreclosure sale, with the costs and expenses of foreclosure and sale, together with interest thereon from the date of sale, the register of state lands shall bid in the property in the name of the state for the amount due, and all costs and expense incurred, and if the same is not redeemed, as provided by law, the sheriff's deed shall be made to the state of Montana and said lands thereafter be subject to sale and disposal in the same manner as other state lands; provided, however, that said lands shall not be sold for a less sum than the state was compelled to bid for the same on such foreclosure sale; and provided, further, that all money received from the sale of said lands shall be deposited in the office of the state treasurer, and by him credited to the particular fund from which the loan on said lands was originally made.

History: En. Sec. 11, Ch. 124, L. 1917.

1939. No fees to be charged for certain instruments and services required under act. No fees of any kind shall be charged or collected by any county recorder for recording mortgages given to secure loans of such funds, or for recording releases and satisfactions of such mortgages, and no fees of any kind shall be charged or collected by clerks of district courts or by sheriffs for the institution of actions to foreclose such mortgages, or upon sales of lands under such foreclosure proceedings.

History: En. Sec. 12, Ch. 124, L. 1917.

1940. Sale and assignment of mortgages and securities by state—Exemption of state from liability—Appointment of register as agent of purchaser. Whenever there are applications on file with the board of land commissioners for loans of such funds, to be secured by mortgages on farm lands, in excess of the funds on hand for investment, it shall be the duty of said board, and said board is hereby authorized to sell and assign any or all mortgages on farm lands, and the notes and obligations which said mortgages are given to secure, and to sell and assign any and all bonds, warrants, and other securities in which such funds may be invested, at either private or public sale, after notice given in such manner as the board of land commissioners may prescribe; provided, however, that none of such mortgages, nor the notes or obligations secured thereby, and no such bonds, warrants, or other securities shall be sold for a less amount than the unpaid principal thereof and the unpaid interest accruing thereon up to the date of sale; and provided, further, that the state of Montana shall never be liable for the payment of any portion of the principal of such mortgages, notes, obligations, bonds, warrants, or other securities so sold, or the interest thereon, but the purchasers thereof shall look to the property on which said mortgages are given and to the makers of such notes, obligations, bonds, warrants, and other securities, for the payment of all such principal and interest; and provided, further, that

whenever any mortgage on farm lands, together with the notes or obligations secured thereby, shall be sold by the state board of land commissioners, the purchaser or purchasers thereof may, in writing, appoint the register of state lands as the agent and attorney in fact of such purchaser or purchasers, to collect and receive the interest becoming due thereon, and the principal thereof when the same becomes due, and to satisfy and release such mortgage when the note or obligation secured thereby is fully paid and discharged, and it shall be the duty of the register of state lands, when so appointed such agent and attorney in fact, to receive payment of such interest and principal, and to pay the same over to the owner or owners of such mortgage, note, or obligation, and to release, satisfy, and discharge such mortgage of record when the note or obligation secured thereby with the interest thereon shall be fully paid.

History: En. Sec. 13, Chap. 124, L. 1917; amd. Sec. 2, Ch. 174, L. 1919.

1941. Same—Execution and forms. Assignments of such mortgages and notes, sold by the state board of land commissioners under the authority granted by this act, shall be executed by the register of state lands in the name of the state of Montana, and such assignments shall be on forms therefor approved by the attorney-general.

History: En. Sec. 14, Ch. 124, L. 1917.

1942. Disposition of proceeds of sale. All moneys received from the sale of such mortgages and notes shall be deposited in the state treasury, and credited to the particular fund or funds from which such investments and loans were originally made, and shall thereafter be again invested in the manner provided in this act.

History: En. Sec. 15, Ch. 124, L. 1917.

1943. Chief examiner—Appointment, term of office, duties, and compensation. On May 1, 1918, the state board of land commissioners may appoint some proper and competent person as chief examiner, to hold office during the pleasure of the board, whose duty it shall be to examine once in each year each and every tract of land upon which a mortgage has been given to secure the loan of such funds, and report to the board the condition of such lands and the manner in which the same are being farmed and cared for. The compensation of such chief examiner shall be twenty-five hundred dollars per annum. In addition, actual traveling expenses shall be allowed and shall be paid in the same manner as provided in section 1934.

History: En. Sec. 16, Ch. 124, L. 1917.

1944. Rules and regulations for execution of act. It shall be the duty of the state board of land commissioners to adopt and promulgate all such rules and regulations, not inconsistent with the provisions of this act, as may be necessary to fully carry out the provisions of this act.

History: En. Sec. 17, Ch. 124, L. 1917.

1945. Preparation of forms. It shall be the duty of the state board of land commissioners and the attorney-general to prepare all forms necessary and required under the provisions of this act.

History: En. Sec. 18, Ch. 124, L. 1917.

1946. Rules and regulations concerning applications for farm loans upon improved lands. It shall be the duty of the state board of land commissioners, in the discharge of the duties imposed upon them in connection with the investment of state permanent common school funds and all other state educational, charitable, and penal institution funds, in first mortgages on good improved farm land in the state, to provide by rules and regulations for the applications for farm loans upon improved farm lands, pending the final breaking, clearing, or improving of such lands.

History: En. Sec. 1, Ch. 146, L. 1917.

1947. Application for loan upon and investigation of unimproved lands—Issuance of certificate to owner. Upon an application being made for a loan upon lands not yet improved as contemplated, the board shall cause an investigation to be made of said lands, similar in character to an investigation of improved farm lands, with such additional information as they may require, and when such application, together with the investigation thereof, shall have been considered by the state board of land commissioners, if it shall be acted upon favorably, the said board shall issue a certificate to such applicant in such form as their rules and regulations may prescribe, which certificate shall operate to entitle the owner of the land to the loan applied for, when such land shall have been finally broken, cleared, or improved in such manner as to bring the same within that character of lands upon which farm loans of the state funds are authorized.

History: En. Sec. 2, Ch. 146, L. 1917.

1948. Interpretation of act. Nothing herein shall be construed as authorizing the loaning of such funds on other than improved farm lands, or otherwise than as a first lien upon such lands.

History: En. Sec. 3, Ch. 146, L. 1917.

CHAPTER 155.

CAREY LAND ACT BOARD—STATE ENGINEER.

Section 1949. Creation of Board.
1950. Successors to State Arid Land Commission.
1951. Membership of Board.
1952. Expenses of Officers.
1953. Governor as Chairman of Board—Meeting.
1954. State Engineer.
1955. Duties of State Engineer—Reports.
1956. Duties of State Engineer.
1957. Same—Bond and Oath.
1958. Salary and Report of State Engineer to Board.
1959. Office at State Capitol.
1960. Assistant Secretary.
1961. Salary of Assistant Secretary.
1962. State Not Liable—Eight Hours Labor.
1963. Carey Land Act Fund.
1964. Authority of Carey Land Act Board to Cancel Outstanding Bonds.
1965. Appropriation of Water by State.

1949. Creation of board. For the purpose of enabling the state to accept the offer of the United States, made by act of Congress, approved August 18, 1894, entitled, "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30,

1895, and for other purposes," and as amended by an act of congress, approved March 3, 1901, for the purpose of reclaiming the lands therein mentioned, in accordance with the terms of said acts, so that the state can obtain title thereto, a board shall be and is hereby created under the name of the Carey land act board, which shall consist of three members, and they and their successors shall remain and continue to be such for all the purposes hereinafter provided.

History: En. Sec. 2238, Rev. C. 1907.

Note.—Sections 1949 to 1963 were enacted as sections 1 to 14, chapter 114, Laws of 1903, appearing as sections 2238 to 2251, Revised Codes 1907.

1950. Successors to state arid land commission. The Carey land act board shall be successor of the state arid land grant commission, which is hereby abolished, and as such successor shall perform the same duties pertaining to unfinished contracts of said commission as were imposed upon said commission under the law creating said commission, and defining its powers and duties, so far as the same may be necessary to complete such contracts or protect the state's interest.

Note.—The state arid land grant commission was created by act of March 18, 1895, sections 3530 to 3547, Political Code 1895. Act amended by senate bill No. 95, pp. 181 to 193, Laws of 1897.

History: Sec. 2238, Rev. C. 1907. See also history of Sec. 1949.

1951. Membership of board. Said Carey land act board shall consist of the governor, secretary of state, and attorney-general, none of whom shall receive additional compensation for services on said board.

History: En. Sec. 2240, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1911. See also history of Sec. 1949.

1952. Expenses of officers. The traveling expenses necessarily incurred in the performance of his duties as a member of the board, by any member of the board, or by the secretary or assistant secretary of the board, and the necessary office expenses of the board shall be paid by the state, on sworn statements of account approved by the state board of examiners.

History: En. Sec. 2241, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1911. See also history of Sec. 1949.

1953. Governor as chairman of board—Meeting. The governor shall be chairman of the Carey land act board, and shall sign all contracts made by it. Said board shall meet at the office of said board at the state capitol building, at such times as the governor may designate, or when called by him.

History: En. Sec. 2242, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1911. See also history of Sec. 1949.

1954. State engineer. There shall be a state engineer, who shall be appointed by the governor of the state, and confirmed by the senate; he shall hold his office for the term of four years, or until his successor shall have been appointed and shall have qualified; no person shall be appointed to this position who has not such theoretical knowledge and such practical experience and skill as shall fit him for the position.

History: En. Sec. 2243, Rev. C. 1907. See also history of Sec. 1949.

1955. Duties of state engineer—Reports. The state engineer shall:

1. Act as secretary of the Carey land act board, and perform such duties as are imposed upon him by law governing that board, giving special attention to the projects already commenced by the state arid land grant commission.

2. With the approval of the state board of land commissioners, he shall examine, or cause to be examined, tracts of land belonging to the state or to state institutions, and ascertain how much of same it is practicable to irrigate, and report to said land commissioners detailed description of any such lands as can be irrigated, and the probable cost of an irrigation system for same; and, when directed so to do by said commissioners, shall prepare plans and specifications for any such irrigation system.

3. The state engineer shall become conversant with the waterways of the state and the needs of the state as to irrigation matters, shall make, or cause to be made, measurements and calculations of the ordinary and flood discharge of streams, co-operating in this work as much as possible with the United States geological survey and the Montana experiment station; such measurements to be made on streams in order of their importance; provided, that measurements already made, if deemed reliable, may be adopted.

4. The state engineer shall keep in his office full and proper records of his work, observations, and calculations, all of which shall be property of the state.

5. The state engineer shall prepare and render to the governor, biennially, and oftener if required, full and true reports of his work, and such suggestions as to laws and amendments as he deems best.

History: En. Sec. 2244, Rev. C. 1907; amd Sec. 1, Ch. 43, L. 1909; amd. Sec. 1, Ch. 128, L. 1911. See also history of Sec. 1949.

1956. Duties of state engineer. It shall be the duty of the state engineer, among other things, to examine all mineral and coal lands, and, under direction of the state board of land commissioners, to make settlement with the lessees of coal lands, and to make examination of any of the lands of the state, when directed by the state board of land commissioners, or by the register of state lands, for the purpose of ascertaining whether the same contain coal or other minerals.

History: En. Sec. 18, Ch. 147, L. 1909.

1957. Same—Bond and oath. Before entering upon the duties of his office, the state engineer shall take the oath of office, and shall give a bond to the state of Montana in the penal sum of five thousand dollars, conditioned upon the faithful discharge of the duties of his office, and for the delivery to his successor, or other officer appointed by the governor to receive the same, of all moneys, books, and other property belonging to the state, then in his hands or under his control, or with which he may be legally chargeable as such officer.

History: En. Sec. 2245, Rev. C. 1907. See also history of Sec. 1949.

1958. Salary and report of state engineer to board. The state engineer shall receive a salary of three thousand dollars per annum, payable

monthly. He shall report to the Carey land act board at the end of each fiscal year the time he has spent in connection with Carey land work, and the said board shall reimburse the general fund out of any money available in the Carey fund for the salary of the state engineer for such time as he has spent on Carey land work.

History: En. Sec. 2246, Rev. C. 1907; amd. Sec. 1, Ch. 118, L. 1913. See also history of Sec. 1949.

1959. Office at state capitol. The state engineer shall keep his office at the state capital, in the capitol building.

History: En. Sec. 2247, Rev. C. 1907. See also history of Sec. 1949.

1960. Assistant secretary. Said Carey land act board may, if in its judgment necessary, have and appoint an assistant secretary, who shall keep a proper record of its transactions, keep its accounts, have charge of funds paid to it, of its correspondence and documents, countersign papers and instruments, and perform such duties as the board may require. He shall have authority to administer oaths whenever necessary in the performance of his duties as assistant secretary. He shall give a bond for the faithful performance of his duties in an amount to be fixed by the board.

History: En. Sec. 2248, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1911. See also history of Sec. 1949.

1961. Salary of assistant secretary. The assistant secretary's salary shall be fixed by the board in proportion to services performed, provided the sum shall not exceed one hundred and fifty dollars per month.

History: En. Sec. 2249, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1911. See also history of Sec. 1949.

Note.—Salary fixed at eighteen hundred dollars by chapter 40, Laws of 1915.

1962. State not liable—Eight hours labor. Nothing in this act shall be construed as authorizing the board to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. In all contracts let under this act, eight hours shall constitute a day's work, and no Mongolian shall be employed thereon.

History: Sec. 2250, Rev. C. 1907. See also history of Sec. 1949.

1963. Carey land act fund. As provided in the act of congress, all moneys received by the board from the sale or lease of land selected under the provisions of this act shall be deposited with the state treasurer to the credit of the Carey land act fund.

History: Sec. 2251, Rev. C. 1907. See also history of Sec. 1949.

1964. Authority of Carey land act board to cancel outstanding bonds. The Carey land act board is hereby authorized and empowered to take all steps necessary to secure cancelation of bonds issued for the reclamation of arid lands under the act of congress known as the Carey act, and under any acts of the legislative assembly of the state of Montana; to accept bonds in payment for canals, water rights, lands and appurte-

nances, and execute deeds therefor; to compromise claims, and to make contracts for the reclamation and settlement of said arid lands.

History: En. Sec. 1, Ch. 117, L. 1907; re-en. Sec. 2252, Rev. C. 1907.

1965. Appropriation of water by state. The state board of land commissioners is hereby authorized, through the state engineer as its agent, or otherwise, at its discretion, to appropriate any available waters for use upon state lands, and to authorize the construction of irrigation work for said lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals, and said water-right laws are hereby made available and may be applied by said board or its agent.

History: En. Sec. 2, Ch. 85, L. 1905; re-en. Sec. 2254, Rev. C. 1907.

CHAPTER 156.

RECLAMATION OF STATE ARID LANDS.

Section 1966. Powers of Carey Land Act Board.
1967. Board to Have Power to Enter Into Contracts for Reclamation and Settlement of Land.
1968. Power to Make Rules and Regulations.
1969. Members of Board Not to Be Interested in Contract.
1970. Applications to Board to Reclaim Lands.
1971. State Engineer to Examine.
1972. Approval of Requests for Contracts.
1973. Deposits to Cover Preliminary Survey.
1974. Contracts and Bonds.
1975. Rights of Contractor.
1976. Same.
1977. Co-operative Reclamation Projects.
1978. Default of Construction.
1979. Classification of Lands.
1980. Applications to Settle Lands Reclaimed.
1981. Execution of Deeds.
1982. Failure of Claimants to Comply With Contract.
1983. Water Rights—Foreclosure of Lien for Deferred Payments.
1984. Rights of Way.
1985. Board May Exercise Right of Eminent Domain.
1986. Right of Board to Appropriate Water.
1987. Seal—Fees.
1988. Board May Permit Limited Settlements.
1989. Disposition of Proceeds of Sale or Lease of Lands.
1990. Expenses.
1991. Board Shall Issue Biennial Reports.
1992. Sale of Irrigable State Land in Farm Units.
1993. Withdrawal of Lands Embraced Within Irrigation Project.
1994. Sale of Withdrawn Lands at Public Auction.
1995. Lease of Withdrawn Lands.

1966. Powers of Carey land act board. The Carey land act board shall have and it is hereby granted full power and authority to take all steps necessary to comply with all and singular the conditions of an act of congress approved August 18, 1894, entitled, "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other expenses," and all acts amendatory thereto now in force or which may hereafter be enacted providing for the reclamation of desert lands by state within whose borders the same may lie, and acts pertaining thereto, to the end that the state may receive the full benefit and advantage accruing to it from the same.

Said board shall have, and it is hereby given full power to prepare and file any map or maps of any land or lands proposed to be irrigated and reclaimed, which shall exhibit the plan showing the mode of contemplated irrigation and reclamation, and to enter into contracts on behalf of the state with the United States for the reclamation and irrigation of such lands; provided, that said board shall have no power, by any such contract, to create any indebtedness against the state, or to obligate the state to pay to the United States or to any one anything on account of such lands.

History Note.—Sections 1966 to 1991 were enacted as sections 1 to 21, chapter 105, Laws of 1905, appearing as sections 2255 to 2281, Revised Codes 1907.

1967. Board to have power to enter into contract for reclamation and settlement of land. The said board shall have, in the manner hereinafter provided, authority to enter into contracts for the reclamation and irrigation of any such lands, in respect to which contract may be or may have been entered into between the state and the United States, and for placing settlers thereon, and any and all contracts heretofore entered into by said board for the reclamation, irrigation, and settlement of any lands, for the reclamation and irrigation of which the state has heretofore entered into contracts with the United States, are hereby ratified and confirmed; provided, however, that nothing in this act shall be construed as authorizing the board to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for failure of contractors to complete the work according to the terms of their contract with the state.

History: Sec. 2256, Rev. C. 1907. See also history of Sec. 1966.

1968. Power to make rules and regulations. Said board shall have power to make such rules and regulations for the conduct of its business as may be necessary, which do not conflict with the acts of congress relating to Carey lands or laws of Montana.

History: Sec. 2257, Rev. C. 1907. See also history of Sec. 1966.

1969. Members of board not to be interested in contract. No member of the board or any employee thereof shall in any way be financially interested in any contract or work contemplated by this act.

History: Sec. 2258, Rev. C. 1907. See also history of Sec. 1966.

1970. Applications to board to reclaim lands. Any person or persons, company, association, or corporation, constructing, having constructed, or desiring to construct ditches, canals, or other irrigation works to reclaim land under the provisions of this act, may file with the board a request for the selection, on behalf of the state by the board, of the land to be reclaimed, describing said land by the government survey. This request shall be accompanied by a proposal to construct the ditch, canal, or other irrigation works necessary for the reclamation of the land asked to be selected, and to put settlers on the same. The proposal shall be prepared in accordance with the rules of the board, and with the regulations of the department of the interior. It shall state the source of an available and adequate water supply, the location and dimensions of the proposed

works, the estimated cost thereof, and that perpetual water rights inseparable from the land reclaimed and to embrace a proportionate interest in the canal or other irrigation works will be sold or leased to settlers on the land to be reclaimed, and be accompanied by a map of the lands to be reclaimed, and the route of the ditches or canals to be constructed.

History: Sec. 2259, Rev. C. 1907. See also history of Sec. 1966.

1971. State engineer to examine. Whenever the state engineer shall in his judgment, from an examination of the maps and field notes submitted for his examination, be unable to determine whether or not the proposed irrigation works are feasible and adequate, whether or not the proposed cost of construction is reasonable, and whether or not the lands proposed to be irrigated are of such character as to come under the provisions of the aforesaid acts of congress, the board may direct the engineer to make, or cause to be made by some qualified assistant, such survey or examination as will enable him to report intelligently thereon to the board.

History: Sec. 2260, Rev. C. 1907. See also history of Sec. 1966.

1972. Approval of requests for contracts. If such request shall be approved by the board, it shall forthwith cause reservation of such lands to be made, and enter into appropriate contract with the United States, subject to the limitations by this act prescribed for the reclamation of the same. When requests or proposals are not approved by the board, the board shall notify the parties making such proposal of such action and the reason therefor. The parties so notified shall have sixty days in which to submit a satisfactory proposal, but the board may at its discretion extend the time to six months.

History: Sec. 2261, Rev. C. 1907. See also history of Sec. 1966.

1973. Deposits to cover preliminary survey. Any person wishing to reclaim land under this act may apply to the board for a reconnaissance, or a preliminary survey, and the board shall require from such applicant a deposit of such an amount as in its judgment will defray the expense thereof, and cause such survey to be made by the state engineer; and thereafter the unused part of such deposit, if any, shall be returned to such person. Persons at whose instance such reservations are made shall pay all land office fees and furnish necessary maps; provided, that the provisions of this section shall not apply to co-operative projects described in section 1977 of this code.

History: Sec. 2262, Rev. C. 1907. See also history of Sec. 1966.

1974. Contracts and bonds. Upon contracting with the United States for the reclamation of such lands, it shall be the duty of the board immediately to enter into a contract with the parties submitting the proposal in accordance therewith, which contract shall contain complete specifications of the location, dimensions, character, and estimated cost of the proposed ditch, canal, or other irrigation works, the date or dates when the contractor will put settlers on the reclaimed land, and the price and terms upon which the state is to sell or lease the land to the settlers.

The proposed contractor shall execute a bond in such an amount and with such sureties as the board shall require, to be conditioned upon the faithful performance of the contract with the state, and in case he shall fail, within sixty days after being notified by the board that it has contracted with the United States for the reclamation of the said lands and is ready to enter into a contract with him in accordance with his proposal, or if he shall fail within such time to execute such bond, the said board may enter into similar contract with any other person, exacting a like bond. No contract shall be made by the board which requires a greater time than five years for the construction of the works, and all contracts shall state that the work shall begin within one year from the date of contract, and thereafter to be prosecuted diligently to completion.

History: Sec. 2263, Rev. C. 1907. See also history of Sec. 1966.

1975. Rights of contractor. The builder of any such canal or other irrigation works shall have the right to so construct or to subsequently enlarge or make such changes in the same as will permit the water to be used for power purposes, and to use any surplus water carried therein for such purpose; such construction, enlargement, change, or use to be done without cost to or interference with any purchaser or owner of perpetual water right from such canal. All income from the use of such water for power shall belong to said builder, his heirs, or assigns; but the use for power development shall be subordinate to the irrigation and domestic use of the water, and shall not interfere in any way with perpetual rights.

History: Sec. 2264, Rev. C. 1907. See also history of Sec. 1966.

1976. Same. Any person or company entering into a contract to construct canals or other irrigation works, and to sell water rights to settlers under this act, may maintain and operate the same until perpetual water rights appurtenant to ninety per cent. of the lands, to reclaim which such works were constructed, have been sold and paid for, when such works shall be turned over to the settlers and others owning rights to take water from such canals, who shall have the right thereafter to maintain and operate it. The contractor, so long as he maintains and operates the irrigation works, shall have the right to collect from settlers on such lands not to exceed one dollar per acre, per year, for each acre of land to which his or her water right is appurtenant, said charge to include the cost of of maintenance, operation, and delivery of water to said land.

History: Sec. 2265, Rev. C. 1907. See also history of Sec. 1966.

1977. Co-operative reclamation projects. It shall be the duty of the Carey land act board to aid co-operative reclamation projects as follows: Parties desiring such aid shall incorporate as a co-operative irrigation association for the purpose of reclamation by their own labor of arid lands open to reservation under the said acts of congress, and of the settlement upon said lands. Each member shall subscribe to one share of the stock for each forty-acre tract of land to be filed upon and reclaimed by him, and the total number of shares issued by such association shall be limited

to one for each forty acres of land filed upon. After the articles of incorporation are filed with the secretary of state, the fee for which shall be five dollars, the association may apply to the Carey land act board for aid, and it shall be the duty of the state engineer or his assistant, under such rules and regulations as the board may adopt, to investigate the proposed project, and, if found feasible, to prepare the maps and data required for reserving the land under the Carey act, and subsequently to furnish the association with the engineering plans necessary for reclamation, and to exercise a general supervisory control over their execution. Thereupon the said board shall, if in the judgment of the state engineer the reclamation of such land is feasible and practicable, cause the same to be reserved, and contract with the United States, subject to the same limitations as hereinbefore provided, for the reclamation of the same. The association shall pay the United States land office fees for the reservation of the lands, and immediately after contract shall have been entered into with the United States shall pay to the Carey land act board twenty-five cents per acre filing fee for each acre reserved. When all or any part of said land has been reclaimed, the board shall apply for patent for same; provided, that all cash outlay required for obtaining patent shall be paid to the board by the association immediately. After water has been available for irrigation of said lands for four seasons, the association shall, not later than November 1st of said fourth season, pay to the Carey land act board such additional amount, not exceeding one dollar per acre, as may have been agreed upon between said board and such association before the reservation was made, for all said land patented to the state, and thereupon deeds shall be issued by the state to each of the stockholders of said association having settled upon any of said lands, for so many acres as their stock may entitle them to respectively. After the state has obtained patent, it may issue deeds at any time when the land is paid for, in tracts of not less than forty acres nor more than one hundred and sixty acres to any stockholder designated by the association, being a settler upon any of said lands. Water rights for said lands shall be apppurtenant to and inseparable from the legal subdivision for which it was appropriated.

History: Sec. 2266, Rev. C. 1907. See also history of Sec. 1966.

1978. Default of construction. Upon the failure of any parties having contracts with the state for the construction of irrigation works to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, or on a cessation of work under the contract for a period of six months after the second year, it shall be the duty of the board to give such parties written notice of such failure, and if, after a period of sixty days from the receipt of such notice, they shall have failed to proceed with the work, or to conform to the specifications of their contract with the state, the penal bond securing performance of such contract shall at once be declared forfeited to the state, and the contract, in so far as it relates to any of said land not settled or reclaimed, shall immediately thereafter be void. On the application of the said board the attorney-general shall be required to institute or defend any suits or actions in

which may, in any manner, be brought in question the rights of the state in any lands in which the state has acquired any interest under any of the said acts of congress, and the said board is hereby authorized and empowered, in the name of the state, to execute any conveyances of any property, the title to which is in the name of the state by reason of any acts of the said board or its predecessor, the arid land grant commission, a conveyance of which is necessary to or made a condition of the relief asked for by the state in any such action.

History: Sec. 2267, Rev. C. 1907. See also history of Sec. 1966.

1979. Classification of lands. The board shall cause to be classified all lands reserved under this act, the expenses for which shall be paid by the state out of the funds in the Carey land act fund, if any; if none, then out of funds not otherwise appropriated, upon vouchers duly approved by the board. The board shall sell or lease any or all of the lands acquired by the state under provisions of this act, in quantity not to exceed one hundred and sixty acres to one individual, the price and terms of such sale or lease to be fixed by the board according to said classification; provided, the selling price be not less than fifty cents per acre nor more than two dollars and fifty cents per acre.

History: Sec. 2268, Rev. C. 1907. See also history of Sec. 1966.

1980. Applications to settle lands reclaimed. Any citizen of the United States, or any person having declared his intention to become a citizen of the United States, over the age of twenty-one years, may make application, under oath, to the board, to enter any of said land at any time after the same has been classified, in any amount not to exceed one hundred and sixty acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of settlement in accordance with the act of congress and the laws of this state relating thereto, and that the applicant has never received the benefit of the provisions of this act to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company, or association who has been authorized by the board to furnish water for the reclamation of said lands; and if said applicant has at any previous time entered land under the provisions of this act, he shall so state in his application, together with description, date of entry, and location of said land. The board shall thereupon file in its office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications of entry shall be accompanied by a payment of twenty-five cents per acre, which shall be paid as partial payment on the land if the application is allowed; and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, the twenty-five cents per acre accompanying it shall be returned to applicant; provided, that where the construction company fails to furnish water to any settler under the provisions of its contract with the state, the state

shall refund to such settler all payments that he shall have made to the state.

History: Sec. 2269, Rev. C. 1907. See also history of Sec. 1966.

1981. Execution of deeds. After the state has received a patent for any such land reclaimed, and a purchaser has paid in full for any part of it, said board shall, in the name of the state, execute and deliver to him a deed for the same.

History: Sec. 2271, Rev. C. 1907. See also history of Sec. 1966.

1982. Failure of claimants to comply with contract. If any claimant having filed on any such land shall fail, for a period of one year after water is available for his land, and after notice thereof is given to him by said board, by letter mailed to the postoffice nearest such land, to make payment of any sums remaining due on account of the purchase price for such land, then, after notice shall have been published once a week for four successive weeks in a newspaper of general circulation in the county where the land is located, his or her rights to any and all such land and any water right appurtenant to the same, and all payments made, shall be forfeited.

History: Sec. 2272, Rev. C. 1907. See also history of Sec. 1966.

1983. Water rights—Foreclosure of lien for deferred payments. The water rights to all lands acquired under the provisions of this act shall attach to and become appurtenant to the land as soon as title passes from the United States to the state. Any person, company, or association furnishing water for any tract of land shall have a first and prior lien on said water right and land upon which said water is used for all deferred payments for said water rights; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner or possessor of said lands. Upon default in any of the deferred payments secured by any lien under the provisions of this act, the person, company of persons, association, or incorporated company holding or owning said lien may foreclose the same in the same manner as mortgages of real property are foreclosed. All sales shall be advertised in a newspaper of general circulation, published in the county where said land or some part thereof is situate, for six consecutive weeks, and the same shall be sold to the highest bidder at the front door of the court-house of the county, or such place as may be agreed upon by the terms of the aforesaid contract. The sheriff of said county shall in all such cases give all notices of sale, and shall sell all such land and water rights, and shall make and execute a certificate of sale to the purchaser thereof, and at such sale no person, company of persons, association, or incorporated company owning and holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on deferred payment for said water right and land, and the cost incurred in making the sale of said land and water right. At any time within twelve months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner against whom the lien has been foreclosed may apply to the person, company of persons, association, or incorporated company purchasing at such sale, to redeem said land and water rights, and the purchaser shall assign the certificate

of sale to such land and water rights to such original owner upon the payment by him within such twelve months of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest at ten per cent. per annum, costs, and charges thereon. When the lien holder becomes the purchaser at such foreclosure sale, and such lands and water rights are not redeemed by the original owner within twelve months, then at any time within three months thereafter any person desiring to settle and use such lands and water rights may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale of such land and water rights to the person desiring to redeem the same, upon the payment by him of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs, and charges thereon. Upon issuing any certificate of sale, it shall be the duty of the sheriff to file for record in the office of the county clerk of the county where such land is situated, a certified copy of such certificate of sale assigned to him by the purchaser as aforesaid, upon his redemption of such land and water rights. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, issue a deed for such land and water rights to the person redeeming the same. If the land and water rights shall not be redeemed by any person within the time and in the manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of certificate of sale by the original purchaser to issue a deed to such purchaser. Where such land and water rights are not purchased by the lien holder at such foreclosure sale, it shall be the duty of the sheriff to first pay the lien holder out of the proceeds of such sale the amount of the lien, together with all interest, costs, and charges thereon, and to pay any balance remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by law in civil cases. Under no circumstances shall a lien be foreclosed against land belonging to the state and not filed on by an individual. In case the claimant whose rights to any such land and water shall have been divested by any deed issued, as in this section provided, shall not have paid to the state sums due or to become due to it on account of such land, any person desiring to settle upon the same shall acquire the right so to do upon payment to the grantee under such sheriff's deed of the amount which would have effected a redemption at the time, with ten per cent. additional; provided, that the holder under the deed shall have the right to remove any crops which may be growing upon such land at the time such intending settler offers to pay such sum.

History: Sec. 2273, Rev. C. 1907. See also history of Sec. 1966.

1984. Rights of way. The map in the office of the board of the lands selected under the provisions of this act shall show the location of the canals or other irrigation works approved in contract with the board, and all lands filed upon shall be subject to the right of way such canals or irrigation works; said right of way to embrace the entire width of the canal and such additional width as may be required for its proper construction,

operation, and maintenance, the width of the right of way to be specified in the contracts provided for in this act.

History: Sec. 2274, Rev. C. 1907. See also history of Sec. 1966.

1985. Board may exercise right of eminent domain. The right of eminent domain may be exercised in the manner prescribed by the Code of Civil Procedure by any person, association, or corporation, foreign or domestic, entering into any contract with the said board to reclaim any lands in order to condemn any property subject to condemnation as therein provided, for right of way the construction of which may be provided for by any such contract, or for the erection or construction of any works to be used in connection therewith.

History: Sec. 2275, Rev. C. 1907. See also history of Sec. 1966.

1986. Right of board to appropriate water. The said board, or any person, association, or corporation contracting with it for the reclamation of any such lands, shall have the right to appropriate any unappropriated waters of the state necessary to the carrying out of any contracts entered into by them, or either of them, in relation to the same, in the same manner as appropriations are required to be made in behalf of individuals.

History: Sec. 2276, Rev. C. 1907. See also history of Sec. 1966.

1987. Seal—Fees. The board shall prescribe the duties of all its employees, shall use a seal, and shall collect the following fees: For filing each application, one dollar; for filing each final proof, one dollar; for issuing each patent, one dollar; for making certified copies of records or papers, the same fees as provided to be charged by the secretary of state for like services. The money collected for fees shall be paid to the state treasurer on the last day of each month, and by him credited to the Carey land act fund. The filing fees, when paid for land reserved but not patented to the state, shall be kept in a separate fund, called Carey land filing fund, and can be paid out only for refunds in the event that the land is not reclaimed within the contract period; said refund to be made upon orders from the board to the state auditor, specifying the lands filed on and by whom; but after any of these lands are patented, the filing fees paid for the same shall be transferred from the said fund to the Carey land act fund, upon an order from the board to the state auditor specifying the legal subdivisions of land and total acreage.

History: Sec. 2277, Rev. C. 1907. See also history of Sec. 1966.

1988. Board may permit limited settlements. For the purpose of expediting the settlement of any lands for the reclamation of which the said board may make contracts, it may, on such terms as may by the said board be prescribed by rule or contract, permit any such lands to be improved and occupied and cultivated for limited periods; provided, however, that such occupancy shall not preclude any person desiring to settle upon such lands from doing so at any time.

History: Sec. 2278, Rev. C. 1907. See also history of Sec. 1966.

1989. Disposition of proceeds of sale or lease of lands. All moneys received by the board from the sale or lease of lands reclaimed under the

provisions of this act shall be deposited upon the last day of each month with the state treasurer to the credit of the Carey land act fund, and such sums as may be necessary shall be used:

1. For the payment of the current expenses of the board and of the state engineer's office hereafter incurred in carrying out the provisions of this act, said engineer's expenses to include a charge for actual cost of time devoted to board matters.

2. To reimburse the state general fund for expenses of the board, two thousand dollars, and of the state engineer two thousand dollars, heretofore incurred and paid out of the general fund.

3. To reimburse the state for expenses of the state arid land grant commission, five thousand seven hundred and seven dollars and sixty-five cents, heretofore paid out of the general fund; provided, that the reimbursements thus made shall be paid into the state engineer's expense fund, which is hereby created, and shall be used under the direction of the state board of land commissioners and the state engineer in carrying out the provisions of paragraphs 2, 3, and 4 of section 1955 of this code. Claims against said expense fund shall be passed upon and paid in same manner as other claims against state funds.

4. After paying the current expenses and reimbursements above designated, if there be a balance in said fund, there shall be estimated by the board the sum that in its judgment will suffice for its next two years' expenses, and whenever the remainder in said fund, less said estimate, shall equal two thousand dollars, the same shall be applied pro rata to the payment of warrants issued by the state arid land grant commission for expenses incurred by it against districts Nos. 1, 2, and 4, and open accounts which are credited on the ledger of said commission to sundry persons for supplies furnished, the aggregate of said warrants and accounts being, without interest, eighteen thousand six hundred ninety-seven dollars and forty-five cents; and any balance remaining shall constitute a trust fund in the hands of the state treasurer, the same to be used only for the reclamation of other arid lands.

History: Sec. 2279, Rev. C. 1907. See also history of Sec. 1966.

1990. Expenses. That the expenses actually incurred in connection with each district or project to be reclaimed under this act may be determined, it shall be the duty of the state engineer to report to the board his expenses and the time he spends in connection with each. The office and clerical expenses of the board shall be by it apportioned at the end of each fiscal year among various districts and projects, and correct charges of these and the engineer's salary and expenses made against the different districts and projects.

History: Sec. 2280, Rev. C. 1907. See also history of Sec. 1966.

1991. Board shall issue biennial reports. The board shall issue a biennial report showing the status of various districts and projects, the receipts and expenses, lands reclaimed and patented to the state, if any, and other results of its work. If requested by the governor, a report shall be made at any time.

History: Sec. 2281, Rev. C. 1907. See also history of Sec. 1966.

1992. Sale of irrigable state land in farm units. In order to assist in the reclamation and settlement of arid lands in this state, and for the purpose of co-operating with and aiding in the construction of works for the irrigation and reclamation of arid lands, all lands now or hereafter owned by the state and designated as irrigable lands under any existing or proposed irrigation system in Montana shall be disposed of in farm units and at public sale.

History: En. Sec. 1, Ch. 123, L. 1911.

1993. Withdrawal of lands embraced within irrigation project. Any irrigation company or association now operating in this state, or which shall hereafter propose to operate for the reclamation of arid lands, shall file with the state board of land commissioners a petition asking that an order be made and entered, withdrawing from sale all irrigable state lands embraced within the irrigation project until the completion of the irrigation system whereby such state land may be reclaimed.

There shall be filed, accompanying said petition, a plat showing the location of the lands owned by the state with reference to the proposed or existing irrigation system, and satisfactory evidence must be submitted to the board showing the ability of the corporation, association, person or persons to complete the irrigation system, and provide a sufficient supply of water to reclaim the state lands embraced in the project, and also showing that the state lands are so located that they can be properly irrigated from such irrigation system.

After investigating the subject, if the board of land commissioners be satisfied that lands owned by the state will be benefited, and that the withdrawal of same from sale until the completion of any irrigation project will benefit and assist such project, it shall make and enter an order withdrawing such lands from sale in accordance with the terms of this act.

Such order may thereafter be revoked by said board if, in its judgment and discretion, the continuance of the withdrawal of such lands is not of benefit to the state, the public, or aidful to the irrigation project.

History: En. Sec. 2, Ch. 123, L. 1911.

1994. Sale of withdrawn lands at public auction. At any time after such withdrawal, the state board of land commissioners shall, upon the application of the said corporation, association, person or persons having such withdrawal made, offer the said lands or the part thereof covered by such application for sale at public auction, in such tracts or parcels as may be designated in such application, not exceeding 160 acres to one person, corporation, or association.

History: En. Sec. 3, Ch. 123, L. 1911.

1995. Lease of withdrawn lands. After withdrawal of any state lands from sale under the terms of this act, the state board of land commissioners may, if it deems it to the best interests of the state, lease said lands or any part or portion thereof.

History: En. Sec. 4, Ch. 123, L. 1911.

REVENUE OF THE STATE. CHAPTERS 157 TO 191.

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CHAPTER 157.

DEFINITIONS.

Section 1996. Definition of Terms.

1996. Definition of terms. Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First—The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

Second—The term "real estate" includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, subject to the provisions of section 2088 of this code, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

3. Improvements.

Third—The term "improvements" includes:

All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth—The term "personal property" includes everything which is the subject of ownership, not included within the meaning of the term "real estate" and "improvements."

Fifth—The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term "credit" means those solvent debts, secured or unsecured, owing to a person.

The term "debts" means those secured or unsecured liabilities, owing by a person.

In making up the amount of credits which any person is required to list, he will be entitled to deduct from the gross amount the amount of all bona fide debts owing by him, but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, must be considered a debt within the intent of this section; and no person is entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of any unpaid subscription to any institution or society, nor on account of a subscription to or instalment payable on the capital stock of any company or corporation; and no liability of any person or persons as surety for another must be deducted; and no deduction must be made in any case unless the party claiming such deduction discloses to the assessor, under oath, the name or names of the persons to whom such party is indebted, and the amount of such indebtedness to each, and also that such indebtedness is not barred by the statute of limitations.

History: En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907. Cal. Pol. C. Sec. 3617.

Personal property owned by a national bank is not subject to taxation under state laws. First Nat. Bank v. Province, 20 Mont. 374, 376, 377, 51 Pac. 821.

For the purposes of taxation, the word "property" includes "real estate," and within the definition of "real estate" is the possession of, claim to, ownership of, or right to the possession of land. State lands after sale, but before the price is fully paid, are subject to taxa-

tion as the property of the purchaser. Courtney v. Missoula County, 21 Mont. 591, 593, 594, 55 Pac. 359.

Stocks of a state bank or trust company fall within the definition of the term "property" as given in subdivisions 1 and 4 of this section. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 106, 81 Pac. 950.

Moneys due a bank from other banks are credits within the definition of the term given in this section. Clark v. Maher, 34 Mont. 391, 400, 87 Pac. 272.

This section determines the classification of property for purposes of taxation, and courts are limited by that classification in determining how property should be assessed. Helena Water Works Co. v. Settles, 37 Mont. 237, 239, 95 Pac. 838.

For purposes of taxation a water right is personal property. Helena Water Works Co. v. Settles, 37 Mont. 237, 239, 95 Pac. 838.

If unpatented mining claims are not taxable, it is not because they are not property within the definition in this section, but because they have been exempted from the general provisions of the revenue laws. Cobban v. Meagher, 42 Mont. 399, 409, 113 Pac. 290.

The provision of the above section, that "the term 'real estate' includes the possession of, claim to, ownership of, or right to the possession of land," declares a rule independent of statute. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 294, 137 Pac. 386.

Coal deposits underlying land form a part of the real estate within the definition of that term given in the above section, and the reservation of those deposits in a deed, with the right to mine, constitutes an interest in real estate. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 294, 137 Pac. 386.

The right reserved in a deed of a railroad company to such use of the surface of the land as may be found necessary for the exploration, mining, and carrying away of the coal that may be found below, is a valuable interest in the land itself, and as such properly subject to taxation under this section and section 1997. The taxable value of the right to the use of the surface of the land for such purposes, omitting the deposit from the estimate, is to be ascertained as if the entire estate or land was vested in the grantee, the assessor to make an equitable apportionment of this value between the grantee and the railway company. Northern Pac. Ry. Co. v. Musselshell Co., 54 Mont. 96, 108, 169 Pac. 53.

All taxable property must be assessed at its full cash value, the terms "value" and "full cash value" being defined as "the amount at which property would be taken in payment of a just debt due from a solvent creditor." Wells Fargo & Co. v. Harrington, 54 Mont. 235, 242, 169 Pac. 463.

An option to purchase real and personal property created no indebtedness which could be enforced, and, therefore, the amount due and unpaid under the contract was not a "credit," within the meaning of this section, namely, a solvent debt, which could properly be taxed. Read v. Lewis and Clark County, 55 Mont. 412, 418, 178 Pac. 177.

Cited or applied as section 2501, Revised Codes, in Anaconda C. Min. Co. v. Ravalli County, 52 Mont. 422, 425, 158 Pac. 682; Cruse v. Fischl, 55 Mont. 258, 265, 175 Pac. 878.

Meaning of "property" as used in tax statutes, see note in 2 Ann. Cas. 755; 29 L. R. A. (N. S.) 60.

Outstanding accounts or building association stocks subject to taxation, see note in 29 L. R. A. (N. S.) 60; 38 L. R. A. (N. S.) 137.

What constitute taxable credits, see 26 R. C. L. 138.

Amount due under contract for the purchase of land, not evidenced by note or purchase-money mortgage, as a credit subject to taxation, see note in 17 L. R. A. (N. S.) 1220.

CHAPTER 158.

PROPERTY SUBJECT TO TAXATION.

Section 1997. Property Subject to Taxation.
1998. Exemptions from Taxation.

1997. Property subject to taxation.—All property in this state is subject to taxation, except as provided in the next section.

History: Ap. p. Sec. 1667, Comp. Stat. 1887; en. Sec. 1, p. 73, L. 1891; re-en. Sec. 3670, Pol. C. 1895; re-en. Sec. 2498, Rev. C. 1907. Cal. Pol. C., Sec. 3607.

A mortgage regarded as collateral security belongs to the owner of the debt, and is deemed to have no situs except that of the domicile of the owner, and, if owned by one not a resident of the state, is not property in the state, subject to taxation, and can only be assessed at the domicile or place of residence of the creditor, without regard to

the domicile of the debtor. Holland v. Board of Commissioners, 15 Mont. 460, 462, 39 Pac. 575, 27 L. R. A. 797. See, also, Monidah Trust v. Sheehan, 45 Mont. 424, 430, 123 Pac. 692.

The provisions of the code relating to revenue, contain a scheme for assessment, equalization, and collection of taxes complete in itself, which is available for all taxing purposes for the state, county, and subdivisions of counties. The fundamental idea of this scheme or plan is that there must be one tax-roll for all purposes, and that the board of county commissioners must levy all taxes for the county and its subdivisions, except incorporated cities and towns which have ordinances providing for the assessment and collection of their own taxes. Hilburn v. St. Paul etc. Ry. Co. 23 Mont. 229, 242, 58 Pac. 551.

The separate estates which different persons may own in the same land, as where one owns the surface, another the growing timber, and a third the mineral underground, may each be subject to taxation, except such as specifically exempted. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 295, 137 Pac. 386.

Where lands are sold with reservations in the grantor of minerals therein and the right to mine the same, as well as of a right of way over them for mining purposes, and for the removal of timber from adjoining lands, such reservations constitute property subject to taxation under this section and section 1996, post. Anaconda C. Min. Co. v. Ravalli County, 52 Mont. 422, 425, 158 Pac. 682.

Cited or applied as section 3670, Political Code, in Montana Coal & Coke Co. v. Livingston, 21 Mont. 59, 52 Pac. 780; Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 106, 81 Pac. 950; as section 2498, Revised Codes, in Cobban v. Meagher, 42 Mont. 399, 407, 113 Pac. 290; Northern Pac. Ry. Co. v. Musselshell Co., 54 Mont. 96, 108, 169 Pac. 53; Cruse v. Fischl, 55 Mont. 258, 263, 175 Pac. 878.

Property subject to taxation, see notes in 33 A. S. R. 400; 37 A. S. R. 747; 89 A. S. R. 652; 131 A. S. R. 867.

1998. Exemptions from taxation. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidences of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purposes is exempt; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

History: Ap. p. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919. Cal. Pol. C., Secs. 3607 and 3611.

The provisions of the constitution and of this section, making certain property exempt from taxation, do not extend to a charitable institution as an association or corporate body, but only to such property of the institution as is used exclusively for charitable purposes, and the mere intention of such institution to devote certain of its lands to the erection of buildings for charitable purposes does not change the rule. Montana Catholic Missions v. County of Lewis and Clark, 13 Mont. 559, 564, 565, 35 Pac. 2, 22 L. R. A. 684.

Lands to which the state retains the title under a contract of purchase are subject to taxation as property of the purchaser. Courtney v. Missoula County, 21 Mont. 591, 55 Pac. 359.

The provisions of the two preceding sections are general, and are limited by section 17 of article 12 of the state constitution, relative to the taxation of the stocks of companies and corporations. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 106, 81 Pac. 950.

Assessments for special municipal improvements are not taxes; hence constitutional and statutory provisions exempting property from taxation are not appli-

cable to such assessments. Under this rule the property of a school district, devoted exclusively to school purposes, in the absence of express constitutional or statutory exemption, is liable for assessments made for special municipal improvements. City of Kalispell v. School Dist., 45 Mont. 221, 228, 122 Pac. 742, Ann. Cas. 1913D, 1101. Compare with Ford v. Great Falls, 46 Mont. 292, 308, 127 Pac. 1004, in which the foregoing decision is commented upon and explained.

Property belonging to the United States is exempt from special assessments, as well as from ordinary taxes, even in the absence of such provisions relative thereto as those found in the constitution or state laws. Ford v. City of Great Falls, 46 Mont. 292, 308, 127 Pac. 1004.

The constitution expresses the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions; this section authorizing exemptions from taxation is therefore to be construed strictly; nothing is to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under the preceding section. Cruse v. Fischl, 55 Mont. 258 263, 175 Pac. 878.

State and county bonds held in private ownership within the state are "property," within the meaning of that term as employed in the constitution and revenue laws of the state, and, not being declared exempt, are taxable as such. Cruse v. Fischl, 55 Mont. 258, 265, 175 Pac. 878.

Cited or applied as section 2499, Revised Codes, before amendment, in Cobban v. Meagher, 42 Mont. 399, 407, 113 Pac. 290; Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 295, 137 Pac. 286; State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 33, 140 Pac. 82; Wells Fargo & Co. v. Harrington, 54 Mont. 235, 240, 169 Pac. 463.

For authorities upon subject of exemptions from taxation, see 26 R. C. L. 296.

Constitutionality of exemption of particular educational, religious or charitable institution from taxation, see note in 2 A. L. R. 471.

Prospective use for religious or charitable purpose as rendering property exempt from taxation, see note in 2 A. L. R. 545.

What is included in exemption of religious institutions from taxation, see notes in Ann. Cas. 1912A, 354; Ann. Cas. 1918B, 532.

Masonic or Elks' lodge as charitable institution exempt from taxation, see notes in Ann. Cas. 1912A, 1187; Ann. Cas. 1914C, 958; Ann. Cas. 1916E, 786; Ann. Cas. 1918E, 1043.

Exemption of charitable institution as applicable to fraternal benefit society, see note in 7 Ann. Cas. 39.

CHAPTER 159.

CLASSIFICATION OF TAXABLE PROPERTY.

Section 1999. Classification of Property for Taxation.
2000. Basis for Imposition of Taxes.

1999. Classification of property for taxation. For the purpose of taxation the taxable property in this state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 2565 of the Revised Codes of Montana (2090); also where the right to enter upon land to explore or prospect or dig for oil, gas, coal, or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, coal, oil, or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of

the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds, boats and all water craft, harness, saddlery and robes.

Class Three. Livestock, poultry and all agricultural products; stocks of merchandise of all sorts; together with furniture and fixtures used therewith.

Class Four. All land, town and city lots, with improvements, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana.

Class Five. All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities without any deduction or offset; provided, however, that the terms, moneys, and credits as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

Class Six. The shares of stock of national banking associations and the moneyed capital employed in conducting a banking business by any other banking corporation, association or individual in this state. Such money capital to be ascertained by deducting from the moneys and credits of such banking corporation, association, or individual, the amount of the deposits and any indebtedness representing money borrowed for use in said business, and the value of the shares of any national banking association, to be ascertained by deducting the value of all real estate of such association.

Class Seven. All property not included in the six preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921.

Note.—Section 2565 above referred to has been superseded by section 2090 of this code.

This section providing for the classification of property for purposes of taxation does not infringe upon the guaranty of the equal protection of the laws. Hilger v. Moore, 56 Mont. 146, 182 Pac. 477.

Classification of property for purposes of taxation, see note in 62 A. S. R. 175.

Classification of subjects as affected by constitutional requirement of uniformity in taxation, see note in 1 Ann. Cas. 638.

State taxation of deposits in national bank, see note in Ann. Cas. 1912D, 37.

Taxation of shares of stock of national banks, see notes in 69 A. S. R. 38; 45 L. R. A. 743; 3 L. R. A. (N. S.) 584.

2000. Basis for imposition of taxes. As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent. of its true and full value.
Class 2. Twenty per cent. of its true and full value.
Class 3. Thirty-three and one-third per cent. of its true and full value.
Class 4. Thirty per cent. of its true and full value.
Class 5. Seven per cent. of its true and full value.
Class 6. Forty per cent. of its true and full value.
Class 7. Forty per cent. of its true and full value.

History: En. Sec. 2, Ch. 51, L. 1919.

This section is not invalid as in violation of the principle of uniformity of

taxation declared by section 1 of article XII of the constitution of Montana. Hilger v. Moore, 56 Mont. 146, 182 Pac. 477.

Validity of statute providing for assessment at fixed per cent of value of property, see note in Ann. Cas. 1915D, 446.

CHAPTER 160.

ASSESSMENT OF PROPERTY—POWERS, DUTIES, AND LIABILITIES OF ASSESSOR.

Section 2001. Property Assessed at Cash Value.
2002. When Assessment to Be Made—Credits Must Be Assessed, How.
2003. Statement—What to Contain.
2004. County Commissioners to Furnish Blanks, etc.
2005. Statement to Be Filled Out and Returned to Assessor.
2006. General Powers of Assessor.
2007. Method of Making Assessment Upon Refusal of Statement.
2008. Assessment of Unknown or Absent Owners.
2009. Same—In Whose Name Property to Be Assessed.
2010. Property Situated in Another County.
2011. Consigned Property.
2012. Trustees, Guardians, Executors, etc.
2013. Property of a Firm or Corporation—Where Assessed.
2014. Undistributed Property of Deceased Persons.
2015. Capital Stock and Franchises of Corporations, Where Assessed.
2016. Personal Property of Merchant or Manufacturer.
2017. Property of Express and Stage Companies.
2018. Gas and Water Companies.
2019. Gas and Water Mains.
2020. Street Railroads, Bridges, and Ferries.
2021. Assessment of Railroads, Telegraph, Telephone, and Electric Light Lines.
2022. Railroads—How Assessed.
2023. Land—How Assessed.
2024. Uniform Classification of Lands for Taxation.
2025. Duty County Commissioners to Provide for Classification.
2026. Basis of Classification.
2027. Classification Fund—Warrants—Payment of Existing Contracts.
2028. Tax Levy for Classification Fund.
2029. Accuracy and Use of Classification.
2030. Assessment of Lands for Taxation.
2031. Notice of Classification to Land Owners.
2032. Property and Money in Litigation.
2033. Property Concealed, Misrepresented, etc.
2034. Property Not Assessed the Previous Year.
2035. Supplemental Assessment.
2036. Assessment Not Illegal for Informality or Delay.
2037. Deputies for Assessors.
2038. Traveling Expenses of Assessor and Deputies.
2039. Assessors Liable for Unassessed Property.
2040. County Attorney Must Prosecute.
2041. Judgment, When Entered Against Assessor.
2042. Annual Settlements.
2043. County Assessor to Collect Farm Statistics.
2044. Delivery to Commissioner of Agriculture.
2045. Statistics, How Obtained.
2046. Penalty for Refusal to Furnish Statistics.
2047. Penalty for Neglect of Act by Officer.

2001. Property assessed at cash value. All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed.

History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907. Cal. Pol. C. Sec. 3627.

The difficulty which may confront the assessor in ascertaining the full cash value of an interest in real estate re-

served by the grantor in himself in a deed conveying the land may not be taken into account in determining whether such interest is subject to taxation. Northern Pac. Ry. Co. v. Mjelde, 48 Mont. 287, 304, 305, 137 Pac. 386.

The stock of a national bank is assessable at its full cash value, less the amount of property representing that stock which has been otherwise taxed. Dennis v. First Nat. Bank of Great Falls, 55 Mont. 448, 456, 178 Pac. 580.

This section is not in anywise affected by sections 2123 et seq. and 2138 et seq., and is to be considered in connection with them. State v. State Board of Equalization, 56 Mont. 413, 444, 185 Pac. 708.

Cited or applied as section 3690 Political Code, in First National Bank v. Province, 20 Mont. 374, 376, 51 Pac. 821; Danforth v. Livingston, 23 Mont. 558, 59 Pac. 916; State v. Fortune, 24 Mont. 154, 157, 60 Pac. 1086; Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 106, 81 Pac. 950; as section 2502, Revised Codes, in State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 33, 140 Pac. 82; Wells Fargo Co. v. Harrington, 54 Mont. 235, 242, 169 Pac. 463; Hilger v. Moore, 56 Mont. 146, 166, 182 Pac. 477.

For general discussion of subject of assessment for tax purposes, see 26 R. C. L. 340.

2002. When assessment to be made—Credits must be assessed, how. The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock m., of the first Monday of March next preceding; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in section 1996, subdivision 6.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907. Cal. Pol. C., Sec. 3628.

The listing of land in the name of a person other than the owner is not an irregularity or informality which, of itself, does not avoid the assessment nor render the tax illegal or unauthorized, and affords no ground for restraining the collection, by sale of the property itself, of the taxes due thereon. Cobban v. Hinds, 23 Mont. 338, 349, 59 Pac. 1.

The provisions of this section and section 2009, post, are mandatory, and, with the qualifications therein mentioned, require the assessor to assess personal property in the name of the real owner, if known; if not known, then to "unknown owners." A misnomer of the owner of personal property assessed as the property of a particular person vitiates the assessment, and renders a sale thereunder void. Birney v. Warren, 28 Mont. 64, 67, 72 Pac. 293. See, also, Cullen v. Western Mortgage & Warranty Title Co., 47 Mont. 513, 525, 134 Pac. 302.

The assessment and sale of property for delinquent taxes is a proceeding in invitum; the purchaser at such sale buys at his peril, and the rule of caveat emptor applies. Birney v. Warren, 28 Mont. 64, 68, 72 Pac. 293; Larson v. Peppard, 38 Mont. 128, 133, 99 Pac. 136, 129 Am. St. Rep. 630, 16 Ann. Cas. 800.

The authorized capital stock of a corporation engaged solely in a general real estate business, and which does not own any of its capital stock, was not taxable, as such, against the corporation. Butte Land & Investment Co. v. Sheehan, 44 Mont. 371, 372, 120 Pac. 241. See note to section 7, article XII, constitution of Montana.

Where an assessor listed for taxation lands with the reservation of minerals, mining rights, etc., to the grantee for the full cash value, and, at the same time, assessed the grantor's reservations at a certain amount per acre, it was deemed to be a case of double taxation. The grantor was in no position to complain of the double assessment, however, as the only person who could do so was the one who was made to bear more than his proportion of the burden of taxation. Anaconda C. Min. Co. v. Ravalli County, 52 Mont. 422, 425, 426, 158 Pac. 682.

Cited or applied as section 3700, Political Code, in Montana Coal & Coke Co. v. Livingston, 21 Mont. 59, 60, 52 Pac. 780; Danforth v. Livingston, 23 Mont. 558, 562, 59 Pac. 916: Flowerree Cattle Co. v. Lewis and Clark Co., 33 Mont. 32, 35,

81 Pac. 398, 8 Ann. Cas. 674; Coburn Cattle Co. v. Small, 35 Mont. 288, 293, 88 Pac. 953; as section 2510, Revised Codes, in Westchester Fire Ins. Co. v. Sullivan, 45 Mont. 18, 19, 121 Pac. 472; Hill v. County of Lewis and Clark, 54 Mont. 479, 483, 171 Pac. 929; Hayes v. Smith, 58 Mont. 306, 312, 192 Pac. 615.

2003. Statement—What to contain. He must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession, or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession, or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession, or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres which have been sectionized by the United States government; improvements, and personal property, including all vessels, steamers, and other water-craft, and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold-dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured, and the property in the county affected thereby.

6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent.

Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included.

7. All depots, shops, stations, buildings, and other structures erected on the space covered by the right of way, and all other property owned by any person, corporation, or association of persons, owning or operating any railroad within the county.

The fact that such statement is not required, or that a person has not

made such statement under oath, or otherwise, does not relieve his property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907. Cal. Pol. C. Sec. 3629.

An increase in an assessment by the assessor in obedience to a void order of the board of equalization cannot be sustained under this section or section 2036. Western Ranches v. Custer County, 28 Mont. 278, 283, 72 Pac. 659.

It was the duty of a county assessor to require from the agent of a company to be assessed a verified list of its property in his county on the first Monday of March, which list, among other things, must have shown the particular property belonging to the company, and the county in which it was situated, or in which it was liable to taxation. Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 36, 81 Pac. 398, 8 Ann. Cas. 674.

The provisions of this section are general and applicable alike to all taxpayers, whether natural persons or corporations. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 107, 81 Pac. 950; Clark v. Maher, 34 Mont. 391, 399, 87 Pac. 272.

The purpose of subdivision 6 of this section being merely to ascertain the just amount and value of property subject to taxation, in conformity with section 1 of article XII of the constitution, does not have the effect of exempting from taxation property other than that enumerated in section 2 of said article, and it is therefore constitutional. Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 107, 81 Pac. 950.

This section authorizes any taxpayer to deduct or have deducted from his credits all debts then owing by him; but it does not authorize the deduction of debts from money on hand, and, if it attempted to do so, would clearly violate the provisions of the constitution. Clark v. Maher, 34 Mont., 391, 399, 87 Pac. 272.

Cited or applied as subdivision 7, section 14, Laws of 1891, p. 78, in Northern Pac. Ry. Co. v. Brogan, 52 Mont. 461, 464, 158 Pac. 820; as section 2511, Revised Codes, in State v. State Board of Equalization, 56 Mont. 413, 438, 185 Pac. 708; Hayes v. Smith, 58 Mont. 306, 312, 192 Pac. 615.

2004. County commissioners to furnish blanks, etc. The board of county commissioners must furnish the assessor with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ———, do swear that I am a resident of the county of ——— (naming it), and that my postoffice address is ————; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock m. on the first Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time when taxes become delinquent, and the time of the meeting of the county board of equalization, must be stated in such form.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907. Cal. Pol. C. Sec. 3630.

Cited or applied as section 2512, Revised Codes, in Hayes v. Smith, 58 Mont. 306, 312, 192 Pac. 615.

2005. Statement to be filled out and returned to assessor. The assessor may fill out the statement at the time he presents it, or he may

deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The assessor must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by such assessor.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907. Cal. Pol. C. Sec. 3631.

2006. General powers of assessor. Every assessor has power:

1. To require any person found within such assessor's county to make and subscribe an affidavit, giving his name and place of residence and postoffice address.

2. To subpoena and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his county; and he may exercise this power in any county where the person whom he desires to examine may be found, but has no power to require such persons to appear before him in any other county than that in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the assessor, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the assessor in any police or justice's court. In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken, or the statement discloses property in any county other than that in which it is made, the assessor must, in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the assessor of the county in which such residence or property is therein shown to be. All moneys recovered by any assessor under the provisions of this section must by him be paid into the treasury of his county.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907. Cal. Pol. C. Sec. 3632.

2007. Method of making assessment upon refusal of statement. If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the assessor must note the refusal on the assessment-book opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the assessor must not be reduced by the board of county commissioners.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907. Cal. Pol. C. Sec. 3633.

2008. Assessment of unknown or absent owners. If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property.

History: En. Sec. 19, p. 82, L. 1891; re-en. Sec. 3706, Pol. C. 1895; re-en. Sec. 2516, Rev. C. 1907. Cal. Pol. C. Sec. 3635.

Cited or applied as section 3706, Political Code, in Birney v. Warren, 28 Mont. 64, 67, 72 Pac. 293.

2009. Same—In whose name property to be assessed. If the name of the absent owner is known to the assessor, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Sec. 20, p. 82, L. 1891; re-en. Sec. 3707, Pol. C. 1895; re-en. Sec. 2517, Rev. C. 1907. Cal. Pol. C. Sec. 3636.

Cited or applied as section 3707, Political Code, in Birney v. Warren, 28 Mont. 64, 67, 72 Pac. 293; Hill v. County of Lewis and Clark, 54 Mont. 479, 483, 171 Pac. 929.

2010. Property situated in another county. The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same by mail to the assessor of the proper county, who must assess the same as other taxable property therein.

History: En. Sec. 3708, Pol. C. 1895; re-en. Sec. 2518, Rev. C. 1907. Cal. Pol. C. Sec. 3637.

Where live stock was caused to be driven by a corporation from the county in which it maintained its headquarters, where its real estate was situated, and where its business manager and foreman resided, into another county to be winter-fed, but with the intention of having it returned to the former county in the following spring, the situs of such live stock for the purposes of taxation was in the former county. Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 37, 81 Pac. 398, 8 Ann. Cas. 674.

Situs of personal property for tax purposes, see note in 62 A. S. R. 448.

Situs of animals for tax purposes, see note in 8 Ann. Cas. 677.

Situs, as between different states or countries, of personal property for purposes of property taxation, see note in L. R. A. 1915C, 903.

2011. Consigned property. All personal property consigned for sale to any person within this state from any place out of the state must be assessed as other property.

History: En. Sec. 21, p. 82, L. 1891; re-en. Sec. 3709, Pol. C. 1895; re-en. Sec. 2519, Rev. C. 1907. Cal. Pol. C. Sec. 3638.

When transit beginning in another state deemed terminated or definitely interrupted so as to render goods liable to local taxation, see notes in 10 Ann. Cas. 65; 2 L. R. A. (N. S.) 662.

2012. Trustees, guardians, executors, etc. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

History: En. Sec. 22, p. 82, L. 1891; re-en. Sec. 3710, Pol. C. 1895; re-en. Sec. 2520, Rev. C. 1907. Cal. Pol. C. Sec. 3639.

2013. Property of a firm or corporation—Where assessed. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

History: En. Sec. 23, p. 82, L. 1891; re-en. Sec. 3711, Pol. C. 1895; re-en. Sec. 2521, Rev. C. 1907. Cal. Pol. C. Sec. 3641.

Personal property, particularly that of an intangible character, such as credits represented by notes and mortgages, has its situs only at the domicile of the owner for purposes of taxation. Gallatin County v. Beattie, 3 Mont. 173, 174; Holland v. Commissioners, 15 Mont. 460, 461, 462, 39 Pac. 575, 27 L. R. A. 797; Monidah Trust v. Sheehan, 45 Mont. 424, 431, 123 Pac. 692.

The provisions of this section apply equally to all kinds of property. Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 35, 81 Pac. 398, 8 Ann. Cas. 674; Coburn Cattle Co. v. Small, 35 Mont. 288, 293, 88 Pac. 953.

Place of taxation of partnership property, see notes in 62 A. S. R. 465; Ann. Cas. 1912B, 758.

Situs, for taxation, of tangible personal property of domestic corporation, see notes in 19 Ann. Cas. 958; 69 L. R. A. 431.

2014. Undistributed property of deceased persons. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.

History: En. Sec. 24, p. 82, L. 1891; re-en. Sec. 3712, Pol. C. 1895; re-en. Sec. 2522, Rev. C. 1907. Cal. Pol. C. Sec. 3642.

An assessment to the "estate" of a deceased person is tantamount to an assessment to his heirs, guardians of his heirs, executors of his will or administrators of his estate, as the case may be, if they have actual notice of it, since the purpose of this section is to assure that notice to some interested person shall be given and to provide that payment, when made, shall bind all parties in interest. Hill v. County of Lewis and Clark, 54 Mont. 479, 483, 171 Pac. 929.

Situs of decedent's personal property for tax purposes, see notes in 1 Ann. Cas. 438; 20 Ann. Cas. 729.

Assessment of property of decedent's estate, see notes in 56 L. R. A. 634; 50 L. R. A. (N. S.) 407.

2015. Capital stock and franchises of corporations—Where assessed. The capital stock and franchises of corporations and persons, except as otherwise provided, must be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the state, then at the place in the state where any such corporation or person transacts business.

History: En. Sec. 3713, Pol. C. 1895; re-en. Sec. 2523, Rev. C. 1907.

Taxability of corporate franchises, see notes in 131 A. S. R. 867; 57 L. R. A. 34.

Place of taxation of corporate franchise, see note in 7 Ann. Cas. 518.

Taxation of capital stock of corporations, see note in 58 L. R. A. 513.

Classification of corporations for taxation or assessment, see note in 62 A. S. R. 175.

Taxation of interstate consolidated corporation, see notes in 89 A. S. R. 652; 15 L. R. A. 85.

Assessment of corporate property at full value according to law when valuations generally are illegally fixed lower, see note in 3 A. L. R. 1370.

2016. Personal property of merchant or manufacturer. The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on.

History: En. Sec. 25, p. 83, L. 1891; re-en. Sec. 3714, Pol. C. 1895; re-en. Sec. 2524, Rev. C. 1907.

Cited or applied as section 3714, Political Code, in Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 35, 81 Pac. 398, 8 Ann. Cas. 674; Coburn Cattle Co. v. Small, 35 Mont. 288, 293, 88 Pac. 953.

2017. Property of express and stage companies, etc. The personal property of express, transportation, and stage companies, steamboats, vessels, and other water-craft must be listed and assessed in the county, town, or district where such property is usually kept.

History: En. Sec. 26, p. 83, L. 1891; re-en. Sec. 3715, Pol. C. 1895; re-en. Sec. 2525, Rev. C. 1907.

All of the tangible property of an express company is liable to taxation. Wells Fargo & Co. v. Harrington, 54 Mont. 235, 244, 169 Pac. 463.

Cited or applied as section 3715, Political Code, in Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 35, 81 Pac. 398, 8 Ann. Cas. 674; Coburn Cattle Co. v. Small, 35 Mont. 288, 294, 88 Pac. 953; as section 26, Laws of 1891, in Wells Fargo Co. v. Harrington, 54 Mont. 235, 240, 169 Pac. 463.

Taxation of express companies, see 57 L. R. A. 64; 60 L. R. A. 687.

Situs of vessels for purpose of taxation, see notes in 3 Ann. Cas. 1103; 6 Ann. Cas. 211; 7 Ann. Cas. 446; 20 Ann. Cas. 966; Ann. Cas. 1914D, 289; 37 L. R. A. 518; 69 L. R. A. 447; 29 L. R. A. (N. S.) 105.

2018. Gas and water companies. The personal property and franchises of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located.

History: En. Sec. 27, p. 83, L. 1891; re-en. Sec. 3716, Pol. C. 1895; re-en. Sec. 2526, Rev. C. 1907.

A water right owned by a water company was properly assessed in a school district where its place of business and principal works were located, and into the limits of which water was conveyed by pipe-lines for distribution to the inhabitants. Helena Water Works Co. v. Settles, 37 Mont. 237, 240, 95 Pac. 838.

Cited or applied as section 3716, Political Code, in Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 35, 81 Pac. 398, 8 Ann. Cas. 674; Coburn Cattle Co. v. Smith, 35 Mont. 288, 294, 88 Pac. 953; as section 27, Laws of 1891, in Wells Fargo & Co. v. Harrington, 54 Mont. 235, 169 Pac. 463.

Place of taxation of water or gas mains, conduits, etc., situate in more than one taxing district, see note in 18 Ann. Cas. 717.

2019. Gas and water mains. Gas and water mains and pipes laid in roads, streets, or alleys are personal property.

History: En. Sec. 28, p. 93, L. 1891; amd. Sec. 3717, Pol. C. 1895; re-en. Sec. 2527, Rev. C. 1907.

2020. Street railroads, bridges, and ferries. Street railroads and bridges, and ferries, and their franchises, owned by persons or corporations, must be listed and assessed in the county, town, or district where such property or any portion thereof is located, and the track of the railroad and the bridge are personal property.

History: En. Sec. 29, p. 83, L. 1891; re-en. Sec. 3718, Pol. C. 1895; re-en. Sec. 2528, Rev. C. 1907.

The frequent use of the prefix "street" in statutes similar to this and the following section indicates the intention of the legislature to maintain the distinction between "railroads" and "street railroads," and suggests that in construing enactments touching railroads they should not be held to apply to street railroads unless the intention that they shall so apply is apparent. Helena etc. Ry. Co. v. City of Helena, 47 Mont. 18, 34, 130 Pac. 446.

Cited or applied as section 2528, Revised Codes, in Northern Pac. Ry. Co. v. Brogan, 52 Mont. 461, 469, 158 Pac. 820; as section 29, Laws of 1891, in Wells Fargo & Co. v. Harrington, 54 Mont. 235, 240, 169 Pac. 463.

Taxation of ferries by state as regulation of interstate commerce, see note in Ann. Cas. 1914B, 684.

Situs of rolling stock of street railway for purpose of taxation, see note in 10 Ann. Cas. 355.

Taxation of interstate and intercounty bridges, see note in 18 Ann. Cas. 716.

2021. Assessment of railroads, telegraph, telephone, and electric light lines. Railroads operated or situated in one county and not assessed by the state board of equalization, telegraph, telephone, and electric light lines and similar properties situated in one county, and their franchises; canals, ditches, and flumes, situated in one county and the franchises of the same, must be listed and assessed in the county in which such property is located, and the assessor must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement containing a list of the number of miles such property is operated or situated in the county, and the value thereof.

History: En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921.

So much of a telegraph line used exclusively for railroad purposes, extending along a right of way across the state, as is within any given county, is assessable by the assessor of that county, and not by the state board of equalization as part of the "roadway." Northern Pac. Ry. Co. v. Brogan, 52 Mont. 461, 469, 158 Pac. 820.

Cited or applied as section 2529, Revised Codes, in Helena etc. Ry. Co. v. City of Helena, 47 Mont. 18, 34, 130 Pac. 446; Wells Fargo & Co. v. Harrington, 54 Mont. 235, 240, 169 Pac. 463.

Situs of rolling stock of railroad for tax purposes, see note in 10 Ann. Cas. 355.

Valuation of railroad property for purpose of taxation, see notes in Ann. Cas. 1916E, 1180, 1196, 1198, 1201; Ann. Cas. 1917E, 110.

Nature of railroad property for purpose of taxation, see note in 66 L. R. A. 51.

Place of taxation of telephone company where its lines, conduits, etc., are situate in more than one taxing district, see note in 18 Ann. Cas. 717.

Statute imposing tax on telegraph company as interference with interstate commerce, see note in Ann. Cas. 1914A, 987.

2022. Railroads—How assessed. The franchise, roadway, roadbed rails, and rolling-stock of all railroads operated in more than one county in this state must be assessed by the state board of equalization as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

History: En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907. Cal. Pol. C. Sec. 3628.

So much of a telegraph line used exclusively for railroad purposes, and extending along the right of way across the state, as is within any given county, is assessable by its assessor, and not by the state board of equalization as part of the "roadway." Northern Pac. Ry. Co. v. Brogan, 52 Mont. 461, 464, 469, 158 Pac. 820.

See Clark v. Maher, 34 Mont. 391, 399, 87 Pac. 272, for a discussion of this section prior to its amendment.

Cited or applied as section 2508, Revised Codes, in Northern Pac. Ry. Co. v. County of Musselshell et al., 54 Mont. 96, 169 Pac. 53; as section 11, Laws of 1891, in Wells Fargo & Co. v. Harrington, 54 Mont. 235, 240, 169 Pac. 463.

2023. Land—How assessed. All other taxable property must be assessed in the county, city, or district in which it is situated. Land must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The assessor must set aside one line in the assessment-book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. He must also set aside a line in the assessment-book for the description of each town or city lot, the description to be entered in one column, the value in another column on the same line, the value of improvements in another column, and the total in the total column; provided, that all of the unimproved lots of the same value, situate in one block, or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the separate value of the same and the value of the improvements thereon.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907. Cal. Pol. C. Sec. 3628.

Cited or applied as section 3697, Political Code, in Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 35, 81 Pac. 398, 8 Ann. Cas. 674; Coburn Cattle Co. v. Small, 35 Mont. 288, 293, 88 Pac. 953; cited in part as section 12, Laws of

1891, p. 73, in Northern Pac. Ry. Co. v. Brogan, 52 Mont. 461, 464, 158 Pac. 820.

What constitutes real estate for purposes of taxation, see note in 15 L. R. A. 297.

Place of taxation of realty situate in more than one taxing district, see note in 18 Ann. Cas. 713.

Interest of one other than the owner of the soil in mineral in situ as independent subject of taxation, see notes in 17 L. R. A. (N. S.) 688; L. R. A. 1916D, 307.

Form of assessment where land is owned by co-tenants in undivided interests, see note in 50 L. R. A. (N. S.) 402.

2024. Uniform classification of lands for taxation. It is hereby made the duty of the state board of equalization to provide for a general and uniform method of classifying lands, for the purposes for which they may be valuable, in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxable purposes.

History: En. Sec. 1, Ch. 239, L. 1921.

Note.—Earlier acts were chapter 89, Laws of 1919.

2025. Duty county commissioners to provide for classification. It is hereby made the duty of the board of county commissioners of the several counties of the state of Montana to provide, in such manner as they may determine, for the classification of all lands, except vacant lands in forest reserves, Indian reservations and unsurveyed lands, within their respective counties, which classification must be made and a record thereof kept upon such maps and plats, and entered in such books of record, as may be prescribed by the state board of equalization. Such maps and plats and books of record shall be official records of the county. A certified copy of all such records as may be desired shall be furnished to the state board of equalization and the state board of equalization shall provide for the payment to the several counties the cost of preparing such copy of the records so provided for, as they may require.

History: En. Sec. 2, Ch. 239, L. 1921.

2026. Basis of classification. All lands shall be classified into:

1. Agricultural lands.
2. Irrigated or non-irrigated lands.
3. Grazing lands.
4. Timber lands and stump lands.
5. Lands bearing stone, coal, or valuable deposits.
6. Lands bearing natural gas, petroleum, or other mineral deposits.
7. Lands which may be valuable for more than one purpose shall be so classified. All lands shall be classified in accordance with the legal subdivision thereof.

The state board of equalization may provide for such other and additional subdivisions of classification herein enumerated as they may deem proper.

History: En. Sec. 3, Ch. 239, L. 1921.

Constitutionality of classification of minerals for purpose of taxation, see note in L. R. A. 1916F, 164.

Classification of subjects of taxation as affected by constitutional requirement of uniformity, see note in 1 Ann. Cas. 638.

Validity of taxing statute classifying municipalities according to differences in population, see note in 15 Ann. Cas. 860.

2027. Classification fund—Warrants—Payment of existing contracts. The board of county commissioners shall create and establish a fund to be

known as the "Classification Fund." All warrants drawn in payment of work and labor performed, in the payment of service rendered under any contract for the classification of land in any county shall be drawn on the classification fund. The board of county commissioners of any county which has heretofore procured the performance of any work or labor or the rendering of any services in the classification of land in the county for taxation or assessment purposes, or incurred any expenses pursuant to the provisions of chapter 89 of the laws of the sixteenth legislative assembly, and have not compensated the person or persons for such work, labor or services, or paid such expenses incurred, are hereby authorized and empowered, and it is hereby made the legal duty of such board, to pay such person or persons for such work, labor or services, and such expenses incurred out of the classification fund of said county.

Any and all contracts heretofore entered into by the boards of county commissioners of the various counties for the classification of lands under chapter 89 of the laws of the sixteenth session of the legislative assembly of Montana are hereby declared to be validated and in full force and effect, and it is hereby made the duty of the various boards of county commissioners where contracts for said classification are partially performed to complete the same according to the terms of said contracts; provided, however, that the said boards of county commissioners may make such supplemental contracts as they deem necessary for the purpose of carrying out the terms of this act.

Whenever at any time before the completion of any contract for classification under the terms of this act or of chapter 89 of the laws of the sixteenth legislative assembly of the state of Montana, a new county is formed, containing any portion of the county included in said contract, such new county shall assume the uncompleted portion of said contract, so far as it applies to the territory within said new county, and such portion of said contracts shall be an obligation of said new county in the same manner as if said contract had been originally entered into by said county; and whenever, before the completion of any contract as above described, a portion of one county is taken from said county and added to another county, such county to which said territory is added shall assume the uncompleted portion of said contract so far as it applies to the territory transferred and such portion of said contract shall be an obligation of said enlarged county in the same manner as if said contract had been originally entered into by said county to which such territory is transferred.

History: En. Sec. 4, Ch. 239, L. 1921.

2028. Tax levy for classification fund. The board of county commissioners of each county shall levy annually a tax not to exceed one mill upon all of the properties situate in said county subject to taxation, which shall be levied and collected in the same manner as other taxes.

All moneys collected in pursuance of the aforesaid levy shall be by the county treasurer deposited to the credit of the "classification fund" and shall not be used for any purpose other than as herein provided. Whenever the classification of all lands in any county shall have been completed and all warrants drawn upon the classification fund shall have

been paid, the special levy herein provided shall cease and shall not be made by the board of county commissioners.

History: En. Sec. 5, Ch. 239, L. 1921.

2029. Accuracy and use of classification. The classification herein provided shall be full, complete and accurate, and shall be used as the basis upon which land values shall be fixed for purpose of assessment and taxation.

History: En. Sec. 6, Ch. 239, L. 1921.

2030. Assessment of lands for taxation. It shall be the duty of the county assessor to assess all lands for taxation purposes in accordance with the classification, as made by the board of county commissioners.

History: En. Sec. 7, Ch. 239, L. 1921.

2031. Notice of classification to land owners. It shall be the duty of the board of county commissioners to cause to be mailed by registered mail, return card requested, to each owner a notice of the classification of the land owned by him. If the owner of any land is dissatisfied with the classification of his land, the board of county commissioners shall make such investigation as they deem necessary to determine the true and correct classification of such land and when so determined, the same shall be classified in the manner ordered by the board of commissioners.

History: En. Sec. 8, Ch. 239, L. 1921.

2032. Property and money in litigation. Money and property in litigation in possession of a county treasurer, or of a court or a clerk thereof, or receiver, must be assessed to such treasurer, clerk, or receiver, and the taxes paid thereon under the direction of the court.

History: En. Sec. 32, p. 84, L. 1891; re-en. Sec. 3721, Pol. C. 1895; re-en. Sec. 2540, Rev. C. 1907. Cal. Pol. C. Sec. 3647.

2033. Property concealed, misrepresented, etc. Any property wilfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation, upon discovery, must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of county commissioners.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907. Cal. Pol. C. Sec. 3648.

2034. Property not assessed the previous year. Any property discovered by the assessor to have escaped assessment may be assessed at any time, if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3723, Pol. C. 1895; re-en. Sec. 2542, Rev. C. 1907. Cal. Pol. C. Sec. 3649.

Where, after the assessment-roll had passed out of the assessor's hands and the county board of equalization had adjourned, that officer discovered, listed for assessment, and assessed under the authority of this section, personal property belonging to the undistributed estate of a deceased person, the fact that the executors in charge of it were thus deprived of a right to appeal to the board of equalization did not invalidate the additional assessment, since the property was taxable, and appeal to the board is available, not to him who has concealed property, but who has delivered to the assessor a sworn statement of all his taxable property. Hill et al. v. County of Lewis and Clark, 54 Mont. 479, 171 Pac. 929.

Right of taxpayer to notice and opportunity to be heard on assessment of omit-

ted property for taxation, see note in 12 Ann. Cas. 468.

Liability of estate for taxes on decedent's property which escaped taxation in his lifetime, see notes in 18 Ann. Cas. 350; Ann. Cas. 1913C, 1373.

2035. Supplemental assessment. When any personal property liable to taxation is brought into a county at any time after the second Monday of July, and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected by the assessor, as provided in this title, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907.

Power to make reassessment of taxes, see note in 6 L. R. A. 802.

2036. Assessment not illegal for informality or delay. No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

History: En. Sec. 4014, Pol. C. 1895; re-en. Sec. 2732, Rev. C. 1907. Cal. Pol. C. Sec. 3885.

The listing of land in the name of a person other than the owner is but an irregularity or informality which, of itself, does not avoid the assessment or render the tax illegal or unauthorized. Cobban v. Hinds, 23 Mont. 338, 349, 59 Pac. 1.

An increase in an assessment by the assessor in obedience to a void order of the board of equalization cannot be sustained under this section or section 2003, ante. Western Ranches v. Custer County, 28 Mont. 278, 283, 72 Pac. 659.

2037. Deputies for assessors. The board of county commissioners may allow the assessor such a number of deputies, not exceeding two in counties of the first class, to be appointed by him as will, in the judgment of the board, enable the assessor to complete the assessment within the time prescribed by law.

History: En. Sec. 4012, Pol. C. 1895; re-en. Sec. 2736, Rev. C. 1907.

2038. Traveling expenses of assessor and deputies. The assessor and his deputies in each county in this state shall be paid the actual and necessary traveling expenses by them incurred, not to exceed fifty dollars in any one month, during the months of March, April, May, and June of each year, while in the performance of official duty, upon presenting and filing a verified claim thereof, supported by vouchers, for each item of expense, to the board of county commissioners of their respective county.

History: En. Sec. 1, Ch. 44, L. 1909.

Meaning of "necessary expense" "necessarily traveled," and "necessary travel," see notes in Ann. Cas. 1918D, 921, 934.

2039. Assessors liable for unassessed property. The assessor and his sureties are liable on his official bond for all taxes on property within the county which, through his wilful failure or neglect, is unassessed.

History: En. Sec. 40, p. 87, L. 1891; re-en. Sec. 3734, Pol. C. 1895; re-en. Sec. 2553, Rev. C. 1907. Cal. Pol. C. Sec. 3660.

Civil liability of assessor for erroneous assessment, see notes in 4 Ann. Cas. 942; 13 Ann. Cas. 678.

2040. County attorney must prosecute. The county attorney must, after the assessor completes the assessment-book for the year, commence an action on the assessor's bond for the amount of taxes lost from such wilful failure or neglect.

History: En. Sec. 41, p. 87, L. 1891; re-en. Sec. 3735, Pol. C. 1895; re-en. Sec. 2554, Rev. C. 1907. Cal. Pol. C. Sec. 3661.

2041. Judgment—When entered against assessor. On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

History: En. Sec. 42, p. 87, L. 1891; re-en. Sec. 3736, Pol. C. 1895; re-en. Sec. 2555, Rev. C. 1907. Cal. Pol. C. Sec. 3662.

2042. Annual settlements. Every assessor, county attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907.

2043. County assessor to collect farm statistics. It shall be the duty of each county assessor and his deputies, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator or renter as shall be called for by the commissioner of agriculture and on blanks to be prepared and furnished by the commissioner of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921.

2044. Delivery to commissioner of agriculture. The original blanks upon which the statistics are gathered by the county assessor and his deputies shall be returned by them to the commissioner of agriculture immediately on completion of his assessment work and not later than July first each year.

History: En. Sec. 2, Ch. 187, L. 1921.

2045. Statistics, how obtained. If for any reason the county assessor or his deputy is unable to obtain the statistics from any farm owner, operator or renter, he shall obtain them from the most reliable source, so that the returns may be complete.

History: En. Sec. 3, Ch. 187, L. 1921.

2046. Penalty for refusal to furnish statistics. Any farm owner, operator, or renter refusing to furnish the information called for in section 2043 of this code, or wilfully furnishes fraudulent information to any county assessor or his deputy, upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars, nor more than one hundred dollars, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921.

2047. Penalty for neglect of act by officer. Any county assessor or deputy county assessor who shall wilfully neglect or refuse in whole or in part to perform the duties required in this act, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum of not less than twenty dollars, nor more than two hundred dollars, and the cost of prosecution.

History: En. Sec. 5, Ch. 187, L. 1921.

CHAPTER 161.

THE ASSESSMENT-BOOK—STATEMENTS FURNISHED BY ASSESSOR.

Section 2048. Property—How Listed.
2049. Form of Assessment-Book.
2050. Assessment-Book, When to Be Completed—Affidavit.
2051. Map-Book.
2052. Assessment and Map-Book Delivered to and Kept by Clerk.
2053. Statement by Assessor to State Board of Equalization.
2054. Penalty for Failure of Assessor to Complete Assessment-Book and Transmit Statement.
2055. Persons Claiming Ownership of Land Desiring to Be Assessed.
2056. Commissioners to Furnish Assessor Maps.
2057. List of Lands Sold by State to Be Transmitted by State Land Agent.
2058. Defects in Form of Assessment-Book May Be Supplied.
2059. Omissions in Delinquent-Lists—How Corrected.
2060. Publication of Such Lists.
2061. Abbreviations.
2062. Fines and Forfeitures to Be Paid to County Treasurer.

2048. Property—How listed. The assessor must prepare an assessment-book with appropriate headings, alphabetically arranged, unless otherwise directed by the state board of equalization, in which must be listed all property within the county, and in which must be specified in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed.

2. Land, by township, range, section, or fractional section; and when such land is not a United States land division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate, other than city or town lots.

6. The cash value of improvements on such real estate.

7. The cash value of city and town lots.

8. The cash value of improvements on city and town lots.

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The cash value of all personal property, exclusive of money.

11. The amount of money.

12. Taxable improvements owned by the person, firm, association, or corporation located upon land exempt from taxation must, as to the manner of assessment, be assessed as other real estate upon the assessment-roll. No value, however, must be assessed against the exempt land, nor under any circumstances must the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, and other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll-tax.

16. Such other things as the state board of equalization may require.

History: En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907. Col. Pol. C. Sec. 3650.

An assessor must list all property in his county in an assessment-book under appropriate headings. State ex rel. Faddness v. Eie, 53 Mont. 138, 146, 162 Pac. 164.

Cited or applied as section 3724, Political Code, in Hilburn v. St. Paul etc. Ry. Co., 23 Mont. 229, 242, 58 Pac. 551; Danforth v. Livingston, 23 Mont. 558, 562, 59 Pac. 916.

2049. Form of assessment-book. The form of the assessment-book must be as directed by the state board of equalization, and in those counties for which said board does not prescribe a different form it must be substantially as follows:

Assessment-book of the property of ..... county, for the year 19.., assessed to the owner, when known, and if not known, to unknown owner.

Remarks			
Poll-tax			
Total Tax			
Total value of all property after equalization by the state board of equalization			
Total value of all property for taxation			
Deductions on account of debts due			
Total value of all property			
Amount of money			
Value of personal property			
Value of improvements on real estate assessed to persons other than the owners of the real estate. Value of improvements thereon			
Value of city and town lots			
Value of improvements thereon			
Value of real estate other than city and town lots			
Number of mines, value of same and net proceeds			
School, road, or other district in which located			
Number of acres			
Description of Property.	Real estate other than city and town lots.	City or town lots.	Block .....
			Lot .....
			Fraction .....
			Range E. or W. .....
			Township N. or S. .....
			Section .....
			Subdivision of section .....
Residence			
Taxpayers' names			
When tax paid			

History: En. Sec. 3725, Pol. C. 1895; re-en. Sec. 2544, Rev. C. 1907.

The assessment-book must be so kept that it will appear therefrom what property is within the limits of cities or towns, and what is elsewhere. State ex rel. City of Butte v. Weston, 29 Mont. 125, 129, 74 Pac. 415.

2050. Assessment-book, when to be completed—Affidavit. On or before the second Monday in July, in each year, the assessor must complete his assessment-book. He must take and subscribe an affidavit, in the assessment-book, to be substantially as follows: "I, ..., assessor of ..... county, do swear that between the first Monday in March and the second Monday in July, nineteen hundred and ....., I have made diligent inquiry and examination to ascertain all the property within the county, subject to assessment by me, and that the same has been assessed on the assessment-book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill will or otherwise; nor allowed any one to escape a just and equal assessment through favor, or reward, or otherwise." But the failure to take or subscribe such an affidavit, or any affidavit, will not in any manner affect the validity of the assessment.

History: Ap. p. Sec. 1697, 5th Div. Comp. Stat. 1887; amd. Sec. 19, p. 91, Ex. L. 1887; en. Sec. 36, p. 86, L. 1891; re-en. Sec. 3726, Pol. C. 1895; re-en. Sec. 2545, Rev. C. 1907. Cal. Pol. C. Sec. 3652.

An assessor is required to have his assessment-book completed on or before the second Monday of July. State ex rel. Fadness v. Eie, 53 Mont. 138, 146, 147, 162 Pac. 164.

Cited or applied as section 3726, Political Code, in State ex rel. City of Butte v. Weston, 29 Mont. 125, 130, 74 Pac. 415.

First and last days in computing time for assessment, see notes in 49 L. R. A. 236; 15 L. R. A. (N. S.) 691.

Necessity of verification of assessment-roll by assessor, see note in 11 Ann. Cas. 1118.

2051. Map-book. The assessor must, when directed so to do by the board of commissioners, in a map-book make a plat of the various blocks within any incorporated city or town, and mark thereon, in each subdivision, the name of the person to whom it is assessed.

History: En. Sec. 3727, Pol. C. 1895;re-en. Sec. 2546, Rev. C. 1907.

2052. Assessment and map-book delivered to and kept by clerk. As soon as completed, the assessment-book, together with the map-book and statements, must be delivered to the county clerk, who must immediately give notice thereof, and of the time the board of commissioners will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment-book must remain in his office for the inspection of all persons interested.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907. Cal. Pol. C. Sec. 3654.

An assessor's assessment-book, when completed, must be delivered to the county clerk, who must give notice of the fact by publication, and also that the board of commissioners will meet to equalize assessments. State ex rel. Fadness v. Eie, 53 Mont. 138, 146, 162 Pac. 164.

Cited or applied as section 3728, Political Code, in State ex rel. City of Butte v. Weston, 29 Mont. 125, 130, 74 Pac. 415.

2053. Statement by assessor to state board of equalization. On the second Monday in July in each year, the assessor of each county must transmit to the state board of equalization a statement, showing:

1. The several kinds of personal property.
2. The average and total value of each kind.

3. The number of livestock, number of bushels of grain, number of pounds, or tons, of any article sold by the pound or ton.

4. When practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

History: En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907. Cal. Pol. C. Sec. 3655.

2054. Penalty for failure of assessor to complete assessment-book and transmit statement. Every assessor who fails to complete his assessment-book, or who fails to transmit the statement mentioned in the preceding section to the state board of equalization, forfeits the sum of one thousand dollars to be recovered on his official bond, for the use of the county, or to be deducted from his salary by the board of county commissioners.

History: En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907. Cal. Pol. C. Sec. 3656.

2055. Persons claiming ownership of land desiring to be assessed. Lands once described on the assessment-book need not be described a second time, but any person claiming the same, and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed.

History: En. Sec. 3731, Pol. C. 1895; re-en. Sec. 2550, Rev. C. 1907. Cal. Pol. C. Sec. 3657.

Where lands were sold with reservations in the grantor of minerals, mining rights, etc., the grantor was entitled as of right under this section to have its name inserted upon the assessment-roll with each of its grantees, and to have the reservation in every instance assessed to it and not to its grantee upon proper request. Anaconda C. Min. Co. v. Ravalli County, 52 Mont. 422, 426, 158 Pac. 682.

2056. Commissioners to furnish assessor maps. The board of county commissioners must provide maps for the use of the assessor, showing the private lands owned or claimed in the county, and if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the county general fund.

History: En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907. Cal. Pol. C. Sec. 3658.

2057. List of lands sold by state to be transmitted by state land agent. On or before the first Monday in March in each year, the state land agent must make out and transmit to the assessor of each county where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

History: En. Sec. 3733, Pol. C. 1895; re-en. Sec. 2552, Rev. C. 1907. Cal. Pol. C. Sec. 3659.

This section was enacted for the sole purpose of advising the several county assessors with respect to such lands as may have been sold by the state for which either certificates of purchase or patents have issued, to the end that such lands might be listed to the vendees and assessed. Courtney v. Missoula County, 21 Mont. 591, 594, 55 Pac. 359.

Cited or applied as section 2552, Revised Codes, in Hayes v. Smith, 58 Mont. 306, 312, 192 Pac. 615.

2058. Defects in form of assessment-book may be supplied. Omissions, errors, or defects in form in any original or duplicate assessment-book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the assessor at any time prior to the sale for delinquent taxes, and after the original assessment was made.

History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907. Cal. Pol. C. 3881.

2059. Omissions in delinquent-lists—How corrected. When the omission, error, or defect has been carried into a delinquent-list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

History: En. Sec. 194, p. 127, L. 1891; re-en. Sec. 4011, Pol. C. 1895; re-en. Sec. 2729, Rev. C. 1907. Cal. Pol. C. Sec. 3882.

2060. Publication of such lists. The publication must be made in the same manner as the original publication, and for not less than one week.

History: En. Sec. 195, p. 127, L. 1891; re-en. Sec. 4012, Pol. C. 1895; re-en. Sec. 2730, Rev. C. 1907. Cal. Pol. C. Sec. 3883.

2061. Abbreviations. In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations, and figures may be used to designate the township, range, section, or parts of section.

History: En. Sec. 196, p. 127, L. 1891; re-en. Sec. 4013, Pol. C. 1895; re-en. Sec. 2731, Rev. C. 1907. Cal. Pol. C. Sec. 3884.

Substitution of phrase "et al." for names in tax assessment, see note in 14 Ann. Cas. 572.

Effect of omission of dollar mark or other designation indicating money, see note in Ann. Cas. 1915C, 338.

Use of abbreviations in description of land in notice of tax sale, see note in 1 A. L. R. 1228.

2062. Fines and forfeitures to be paid to county treasurer. The fines, forfeitures, and penalties incurred by a violation of any of the provisions of this title must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

History: En. Sec. 198, p. 127, L. 1891; re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. 2733, Rev. C. 1907.

Note.—The word "title" in the above section referred to the entire taxation laws from sections 2498 to 2780, Revised Codes 1907.

CHAPTER 162.

TAXATION OF BANKS.

Section 2063. National Banks Out of State.
2064. Assessment of Stock in Banking Corporations.
2065. Payment of Taxes—Entry of Assessment.
2066. Statements to Be Furnished by Officers.
2067. Taxation of Private Bankers and Brokers.

2063. National banks out of state. The shares of the capital stock of banks organized under the laws of the United States, not located in this state, owned by residents of this state, are not subject to taxation.

History: En. Sec. 9, p. 76, L. 1891; re-en. Sec. 3694, Pol. C. 1895; re-en. Sec. 2506, Rev. C. 1907.

Cited as section 3694 of Political Code in First Nat. Bank v. Province, 20 Mont. 374, 377; 51 Pac. 821; Daly Bank etc. Co. v. Board of Commrs., 33 Mont. 101, 103, 81 Pac. 950.

2064. Assessment of stock in banking corporations. All shares of stock in national banks existing by authority of the United States and

located and doing business within this state, shall be assessed to the owners thereof in the cities, towns, or places where such banks are located, and not elsewhere, in the assessment of all state, county, school districts, and municipal taxes, imposed and levied in such place whether or not the owner of such stock is a resident of such city, town or place.

History: En. Sec. 1, Ch. 81, L. 1921.

Note.—Prior acts were sections 2503 to 2505, Revised Codes 1907, and chapter 31, Laws of 1915.

State taxation of national banks, see notes in 96 Am. Dec. 290; 69 A. S. R. 38.

Assessment of shares in national bank owned by married woman, see note in 5 Ann. Cas. 743.

State taxation of deposits in national bank, see note in Ann. Cas. 1912D, 37

What property covered by exemption of capital stock in banking corporation, see note in 4 Ann. Cas. 37.

2065. Payment of taxes—Entry of assessment. Every national bank shall pay to the person authorized to collect taxes in the state, county, city, town, or place in which such bank is located, at the time of each year when other taxes become due, the amount of the tax upon the shares in such bank. Said banks shall be liable for the payment of the said tax, and if the same is not paid on or before the thirtieth day of November of each year at six o'clock p. m., the said tax shall become delinquent, and shall be collected in the same manner and be subject to the same laws as all other delinquent taxes.

For convenience, the assessment of shares of stock in national banks, and herein referred to, shall be entered on the personal property assessment-list under the name of the bank, and in such statement the names of the holders of bank stock shall be set forth, and the shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the name and against the holder of bank stock individually.

History. En. Sec. 2, Ch. 81, L. 1921.

2066. Statements to be furnished by officers. The cashier of every national bank shall make and deliver to the assessor of the county in which said bank is located, within five days after demand therefor, a statement, verified by his oath, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business the day next preceding the first Monday in March, in each year, as the same then appeared on the books of said bank, and showing the face value of the capital stock, and the amount of surplus and undivided profits of said bank, and an estimate of the value for which such stock shall be assessed. If said cashier fails to make such statement as required, the assessor shall forthwith obtain said information from the officers of the bank, and for this purpose he shall have access to the books of the bank, and the assessor shall therefor make an assessment of such stock, which shall be as fair and equitable as he may be able to make from the best information available, or he may adopt the figures disclosed by any prior report of the officers or directors of the bank, made to any state or federal officer to whom such bank is by law required to make reports.

History: En. Sec. 3, Ch. 81, L. 1921.

2067. Taxation of private bankers and brokers. The cashier or secretary of every state bank or banking corporation, and every private banker

shall make and deliver to the assessor of the county in which said bank is located within five days after demand therefor, a statement, verified by his oath, showing the total moneys and credits of such bank, the amount of its deposits and any indebtedness representing money borrowed by said bank for use in its banking business, as disclosed by the books of said bank at twelve o'clock noon on the first Monday in March of each year. If said cashier shall fail to make the report hereby required the assessor shall forthwith obtain such information from the officers of said bank, and for this purpose he shall have access to the books of said bank, and the assessor shall thereupon make an assessment of the moneyed capital employed in conducting the business of said bank, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report of the officers or directors of such bank, made to any state or federal officer to whom such bank is by law required to make reports. Any cashier or other person failing to make the statements hereby required shall be guilty of a misdemeanor, and shall be punishable accordingly.

History: En. Sec. 4, Ch. 81, L. 1921.

CHAPTER 163.

TAXATION OF LIVESTOCK—ASSESSMENT OF MIGRATORY LIVESTOCK.

Section 2068. Livestock, Where Assessed.
2069. Assessment of Migratory Livestock.
2070. Duty of Owner When Livestock Is Removed From Home County to Another County.
2071. Apportionment of Taxes Upon Migratory Livestock.
2072. Collection and Disposition of Proceeds of Taxes.
2073. Distribution of Migratory Stock Fund.
2074. Removal of Livestock After Assessment.
2075. Penalty for Violation of Law.
2076. Additional Tax Levy to Pay Expense of Enforcing Stock Laws.
2077. State Board of Equalization to Prescribe Levy.
2078. Limit of Levy and Fund—Separate Levies.
2079. Use of Fund Arising From Taxes Prescribed in Preceding Section.
2080. Transmission of Taxes From County to State Treasurer.
2081. Board of Equalization to Prescribe Rate for Bounty—Limit of Tax—Use of Money.
2082. Tax Levy for Bounties on Predatory Animals.
2083. Presentation of Petition—Amount of Bounties.
2084. County Bounty Fund.
2085. Presentation of Skins—Affidavit.
2086. County Clerk to Provide Forms.
2087. Existing Bounty Laws Not Affected.

2068. Livestock, where assessed. Livestock belonging to a permanent resident of the state must not be listed or assessed while such stock is in transit, nor until it arrives in the county where the person owning the same resides, and must be listed and assessed in such county. If such livestock runs at large in a county other than the one in which such owner resides, it must be listed and assessed in such county.

History: En. Sec. 3720, Pol. C. 1895; re-en. Sec. 2530, Rev. C. 1907.

Cited or applied as section 3720, Political Code, in Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 35, 81 Pac. 398, 8 Ann. Cas. 674; Coburn Cattle Co. v. Small, 35 Mont. 288, 294, 88 Pac. 953.

Place of taxation of horses and cattle, see notes in 62 A. S. R. 465; 8 Ann. Cas. 677.

2069. Assessment of migratory livestock. All livestock pastured, ranged or grazed, or which does pasture, range or graze in any county or counties of the state during any year, other than the county wherein the said livestock is usually kept by the owner thereof on lands claimed by him, to be known as the home county, shall be assessed for taxation, and such tax collected in the county in which it is found at the time fixed by law for the assessment of all property in the state, at the rate of levy of the home county, and it shall be the duty of the owner thereof, or his agent, at the time of the assessment of such livestock, to make and deliver to the assessor of the county where such livestock is found, and to the assessor of the home county, a written statement, under oath, showing the different kinds of such livestock within such county belonging to him or under his charge, with their marks and brands, and showing the full time during the current year that such livestock and every part, portion and kind thereof, has been and will be, within any county or counties, other than the home county, and such livestock and the owner thereof, shall be liable to the said county or counties for the taxes thereon, as other property is liable, and the taxes thereon shall be apportioned between the home county and such other county or counties as hereinafter provided; provided, however, that the tax on all livestock fed in feeding pens or other enclosures in any county or counties other than the home county of such livestock, shall not be apportioned as provided herein, but shall be paid in full to the county treasurer of the home county of such livestock.

History: En. Sec. 1, Ch. 125, L. 1909; amd. Sec. 1, Ch. 177, L. 1921.

2070. Duty of owner when livestock is removed from home county to another county. Whenever such livestock is removed, kept, fed, or pastured, or permitted to range or graze, or does range or graze in any county other than its home county, the owner thereof, or the person in charge, or his agent, shall, within fifteen days from the time any such stock enters such other county, deliver to the assessor of such county, and to the assessor of the home county, a written statement, under oath, similar in all respects, as far as practicable, to the statement required at the time of the assessment.

History: En. Sec. 2, Ch. 125, L. 1909.

2071. Apportionment of taxes upon migratory livestock. Each county of the state in which livestock is kept, fed, or pastured, or in which it is permitted to range or graze, or does range or graze, is entitled to receive the taxes on said property, in proportion to the time that the same is in such county, and the county to which said livestock is so removed shall be entitled to receive and recover from the home county the taxes collected on said stock, in proportion to the time for the current year such stock is so kept, fed, or pastured, or does range or graze in the county other than where said livestock is assessed.

History: En. Sec. 3, Ch. 125, L. 1909.

2072. Collection and disposition of proceeds of taxes. The assessor shall indicate on the assessment-roll livestock which has or will be kept, fed, pastured, ranged, or grazed in more than one county, and the treasurer, on collecting the taxes thereon in the county in which the same is assessed,

shall remit the portion levied for state purposes, as in case of other taxes levied by the state of Montana, and he shall place the remainder of the tax in a separate fund, known as the migratory stock fund, which shall be subject to distribution as hereinafter provided.

History: En. Sec. 4, Ch. 125, L. 1909.

2073. Distribution of migratory stock fund. At the regular meeting in March of the board of county commissioners, the assessor of such county shall transmit to the board all information filed with him or in his possession concerning stock assessed, wherein the taxes are to be apportioned between two or more counties, and the board of county commissioners shall proceed, on receipt of such information, to distribute said migratory stock fund, in proportion to the time said stock has been in each of such counties, as above provided, and order warrants drawn in favor of the counties entitled to receive a portion of the said taxes against such migratory stock fund, and the portion remaining, belonging to the home county, shall be distributed on the order of the board of county commissioners to the proper fund, according to the tax levy made during the year such assessment was levied, and the board shall make a like distribution of all moneys received from other counties under the provisions of this act.

History: En. Sec. 5, Ch. 125, L. 1909.

2074. Removal of livestock after assessment. No county, by reason of the removal of stock from the home county after assessment, shall be entitled to receive a portion of the taxes collected by reason of said livestock being fed, pastured, ranged, or grazed in a county other than the home county because of the change of ownership of said livestock at the time of its removal, or while being fed or pastured in a pen, field, or enclosure.

History: En. Sec. 6, Ch. 125, L. 1909.

2075. Penalty for violation of law. Any person or persons, company, or corporation, who is the owner or has in charge any livestock within this state, who refuses to make the statement or statements as provided in section 2069 of this code, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars.

History: En. Sec. 7, Ch. 125, L. 1909.

2076. Additional tax levy to pay expense of enforcing stock laws. In addition to appropriations made for such purposes, a tax is hereby authorized and directed to be levied on all livestock in this state, for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the stock laws of the state of Montana and for the payment of bounties on wild animals, as hereinafter specified.

History: En. Sec. 1, Ch. 127, L. 1915.

2077. State board of equalization to prescribe levy. The state board of equalization is hereby empowered and it is made its duty, annually, to prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the various boards herein named shall have the right to recommend to said state board of equalization the amount of such levy.

History: En. Sec. 2, Ch. 127, L. 1915.

2078. Limit of levy and fund—Separate levies. The amount of such levy shall not in any event exceed the sum of one mill, which shall be levied to aid in the payment of the general expense of the board of stock commissioners and of the board of sheep commissioners, including salaries, office expense, detective expense, expense of prosecution, travel, and all incidental expenses, and a separate levy of not exceeding one and one-half mills for the use of the state livestock sanitary board for the payment of indemnity for animals slaughtered and of expenses incurred in investigating and suppressing diseases, including expenses of quarantine and all expenses incurred for such purposes; provided, that not more than fifty thousand dollars of said state livestock sanitary board fund shall be set aside as an emergency fund, and shall be expended only when said sanitary board determines that an emergency exists requiring its expenditure, and it shall then be expended for such purposes as said sanitary board may order and direct.

History: En. Sec. 3, Ch. 127, L. 1915.

Note.—The boards first above named have been superseded by the state livestock commission.

2079. Use of fund arising from taxes prescribed in preceding section. The money received from the tax levied on sheep, as provided in the first part of the preceding section, shall be placed to the credit of the sheep inspection and indemnity fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expense of prosecution, travel, and other expense of the board of sheep commissioners, and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the stock inspection and detective fund, to be used for like purposes for said board of stock commissioners. The moneys received from the tax levied by the second division of the preceding section, shall be placed in a fund to be known as the state livestock sanitary board fund, to be used by said board for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith.

History: En. Sec. 4, Ch. 127, L. 1915.

2080. Transmission of taxes from county to state treasurer. The taxes levied and the money collected pursuant to the provisions of section 2078 of this code shall be transmitted annually, with other taxes for state purposes, to the state treasury by the county treasurer of each county, and such county treasurer shall designate the amount received from the tax levied on sheep, and the amount received from the tax levied on all other livestock, and shall specify said separate amounts in his report to the state treasurer, and such money, when received by the state treasurer, shall be placed to the credit of the funds as provided in the preceding section.

History: En. Sec. 5, Ch. 127, L. 1915.

2081. Board of equalization to prescribe rate for bounty—Limit of tax—Use of money. The state board of equalization shall, in addition to the tax heretofore in this act provided for, annually prescribe the levy to be made against livestock of all classes for the purpose of aiding in the payment of bounties on wild animals killed within this state, which tax shall not in any one year exceed one and one-half mills on the dollar upon the

assessed valuation of such livestock, and such money so received shall be used and applied only in payment of claims for bounty for the killing of wild animals after the passage and approval of this act, and the moneys received from the taxes so levied shall be transmitted annually, with other taxes for state purposes, to the state treasury by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the bounty fund, and such money shall thereafter be paid out only on claims duly and regularly presented to the state board of examiners in accordance with the law for the payment of bounty for the killing of wild animals.

History: En. Sec. 6, Ch. 127, L. 1915.

2082. Tax levy for bounties on predatory animals. Whenever the owners, or agent or agents of such owners, representing fifty-one per cent. of the livestock of any county in this state shall present a petition to the board of county commissioners of such county, asking for the levy of a tax upon the livestock of such county for the purpose of paying bounties on predatory animals killed in such county, it shall be the duty of such board of county commissioners to make such levy, which shall not exceed ten mills on the dollar on the assessed valuation of all livestock in such county, which tax shall be assessed and collected in the same manner as all other state and county taxes.

History: En. Sec. 1, Ch. 180, L. 1921.

Bounty as proper purpose for imposition of tax, see note in 16 Ann. Cas. 369.

2083. Presentation of petition—Amount of bounties. The petition provided for in the preceding section shall be signed by not less than fifty-one per cent. of the stockowners of such county as ascertained from the assessment-books of such county, and shall recommend to the said board of county commissioners the bounties to be paid on such predatory animals, which shall not exceed the following: On each wolf or mountain lion, one hundred dollars; on each wolf pup or mountain lion kitten, twenty dollars; on each coyote, five dollars; on each coyote pup, two dollars fifty cents.

Such petition shall be presented not later than the first day of August of each year, and the board of county commissioners on determining the sufficiency of such petition shall make an order granting such petition, which said order shall fix the levy for that year, and the amount of the bounties to be paid for the killing of each such predatory animal, which shall not exceed the amounts recommended in such petition, and appoint not less than ten, nor more than twenty, stockowners of such county to be bounty inspectors under this act, without compensation, who shall hold their offices for one year.

History: En. Sec. 2, Ch. 180, L. 1921.

2084. County bounty fund. The tax collected under this act shall be credited by the county treasurer to a fund to be known as "county bounty fund," and shall be paid out by him upon properly drawn warrants issued thereon by the county clerk.

History: En. Sec. 3, Ch. 180, L. 1921.

2085. Presentation of skins—Affidavit. Any person claiming bounty on any predatory animal under this act shall present the green skin, or

pelt, of such animal, with all four feet attached thereto, to any one of the bounty inspectors, provided for in section 2083 of this code, and shall make an affidavit that such animal was killed within the county where the bounty is claimed, which affidavit shall be corroborated by at least two reputable stockowners of such county to the effect that they know, or have good cause to believe, that such animal was killed within such county. For the purpose of this act each bounty inspector provided for in this act shall be empowered to administer oaths. The said bounty inspector shall indorse upon such affidavit his approval or disapproval of such claim and shall cut from such skin or pelt the four feet. The person applying for such bounty shall then present the affidavit, with the indorsements thereon, to the county auditor, or in counties not having an auditor, to the county clerk, who shall attach the same to a claim against said county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county.

History: En. Sec. 4, Ch. 180, L. 1921.

2086. County clerk to provide forms. The county clerk shall provide the necessary forms of affidavits and claims for carrying out the provisions of this act.

History: En. Sec. 5, Ch. 180, L. 1921.

2087. Existing bounty laws not affected. Nothing in this act contained shall be construed as interfering with, in any way, or repealing any part of the existing laws of the state relative to the levying of taxes for and paying of the bounties on predatory animals under such state laws.

History: En. Sec. 6, Ch. 180, L. 1921.

CHAPTER 164.

TAXATION OF MINES.

Section 2088. Taxation of Mines.
2089. Statement Gross Yield of Mines.
2090. Net Proceeds—How Computed.
2091. Certification of Net Proceeds to County Clerk.
2092. Penalty for Failure to Make Statement—Estimate of Net Proceeds.
2093. Penalty for False Statement.
2094. Examination of Records by Board of Equalization.
2095. Collection and Lien of Tax.
2096. Surface Ground and Improvements Not Exempt.

2088. Taxation of mines. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof so used for other than mining purposes shall be taxed at its full value for such other purposes; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining

claims, which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims, shall be taxed as other personal property.

History: En. Sec. 3, p. 73, L. 1891; re-en. Sec. 3672, Pol. C. 1895; re-en. Sec. 2500, Rev. C. 1907.

Note.—For history of early acts exempting mines from taxation, see Northern Pacific Ry. Co. v. Mjelde, 48 Mont. 287, 137 Pac. 386.

Under this section, which is a reiteration of section 3, article 12, of the state constitution, the annual net proceeds of coal mines are liable to taxation "as other personal property." Montana Coal & Coke Co. v. Livingston, 21 Mont. 59, 70, 52 Pac. 780.

Machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, are properly assessed as personal property. Birney v. Warren, 28 Mont. 64, 66, 72 Pac. 293.

This section follows the language of the constitution. Murray v. Hinds, 30 Mont. 466, 469, 76 Pac. 1039; Cobban v. Meagher, 42 Mont. 399, 407, 113 Pac. 290; Barnard Realty Co. v. City of Butte, 50 Mont. 159, 163, 145 Pac. 946.

Where a mining claim was within the limits of a city, and, while it had never been made an addition to the city, the owners had made a plat, and sold lots and blocks from the claim for townsite purposes, describing the portions sold by metes and bounds, and it appeared that a shaft had once been sunk on such reserve, but that it had been abandoned, and that the lot on which the shaft was sunk had been sold, the so-called reserve was taxable for purposes other than mining. Murray v. Hinds, 30 Mont. 466, 469, 76 Pac. 1039.

A ditch, appurtenant to placer claims, which had always been used to convey water for mining such claims, and for no other purpose, and which, independently of such use, had never been the source of revenue to its owner, although the water could be sold for irrigation and other purposes, and would be valuable in this connection, had no value independent of its use in connection with the placer lands so as to render it subject to taxation under this section. Hale v. County of Jefferson, 39 Mont. 137, 142, 101 Pac. 973.

One claiming an exemption from taxation has the burden of showing that he is entitled to it; but in an action to enjoin the collection of taxes upon a ditch used solely in connection with placer mining operations, and therefore not subject to taxation, the burden rests upon the state to show that the ditch has a value independent of the placer mining claim, so as to render it liable to taxation, as provided in this section. Hale v. County of Jefferson, 39 Mont. 137, 143, 101 Pac. 973.

The surface ground of an unpatented mining claim, when used for other than mining purposes, and when it has a separate value for such other purposes, is subject to taxation. Cobban v. Meagher, 42 Mont. 399, 409, 113 Pac. 290.

Under the state constitution and this section the net proceeds of all mines and mining claims are taxable the same as other personal property; and the assessor need not follow up the proceeds thereof, the tax being a lien on the mine itself until paid. Tong v. Maher, 45 Mont. 142, 144, 145, 122 Pac. 279.

Under the constitution and the above section, before the land embraced in a mining claim becomes subject to taxation at a valuation greater than the price paid the government therefor, the taxing officers must ascertain, and they have the burden of showing when their authority is questioned, that the surface ground, or some portion thereof, is used for other than mining purposes, and has an independent value for such purpose. Barnard Realty Co. v. City of Butte, 50 Mont. 159, 163, 166, 145 Pac. 946. See, also, note of this decision under section 2, article XII, constitution of Montana.

Coal in place, found in lands granted by the government to the Northern Pacific Railway Company, which coal the company reserved to itself in deeds to portions thereof sold by it, constitutes a mine, and as such, in its undeveloped condition, is not a proper subject for taxation. Northern Pacific Ry. Co. v. County of Musselshell et al., 54 Mont. 96, 169 Pac. 53.

Id. The rights, also reserved in deeds referred to above, to such use of the surface of the land as may be necessary for the exploration, mining and carrying away of the coal that may be found below, is a valuable interest in the land itself, and as such properly subject to taxation.

What are minerals within taxing statute, see 15 Ann. Cas. 514.

Interest in minerals as taxable separately from land, see note in 15 Ann. Cas. 1513.

Valuing undeveloped mining property as prospect, see note in 2 A. L. R. 1550.

2089. Statement gross yield of mines. Every person, corporation or association engaged in mining upon any quartz vein or lode, or placer mining claim, or mining from or upon any mine whatsoever containing gold, silver, copper, coal, lead, or other valuable mineral or minerals deposit, must, between the first and tenth days of June in each year, make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person, corporation, or association during the year preceding the first day of June, and the value thereof. Such statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person, or the manager, superintendent, agent, president or vice-president of such corporation, association, or partnership, and must be delivered to the state board of equalization, on or before the tenth day of July. Such statement shall show the following:

1. The name and address of the owner or lessee of the mine.
2. The description and location of the mine.
3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.
4. The amount and character of such ores, mineral products or deposits, and the yield of such ores, mineral products or deposits to such person, corporation, or association so engaged in mining, in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum, or other crude or mineral oil, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement, yielded to such person, corporation, or association so engaged in mining, during the period covered by the statement.
5. The gross yield or value in dollars and cents.
6. Actual cost of extracting same from mine.
7. Actual cost of transporting to place of reduction or sale.
8. Actual cost of reduction or sale.
9. Actual cost of marketing the product, and conversion of same into money.
10. Cost of construction, repairs and betterments of mines, and costs of repairs and replacements of reduction works.
11. The assessed valuation of reduction works for the calendar year next preceding the year within which such return is made.

History: En. Sec. 1, Ch. 237, L. 1921.

Note.—Earlier acts were sections 1047 to 1050, Revised Statutes 1879; re-enacted sections 1791 to 1794, Fifth Division Compiled Statutes 1887; sections 50 to 57, pp. 93 to 95, Laws of 1891; re-enacted sections 3760 to 3768, Political Code 1895; re-enacted sections 2563 to 2571, Revised Codes 1907.

2090. Net proceeds—How computed. The state board of equalization shall thereupon calculate and compute from said return the gross product yielded to such person, corporation or association so engaged in mining, and its gross value in dollars and cents of every mine for the year preceding the first day of June, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation, or association so engaged in mining, which said net proceeds shall be ascer-

tained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to-wit:

All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments; for improvements, repairs and betterments necessary in and about the working of the mine; for costs of repairs and replacements of the milling and reduction works used in connection with the mine; depreciation in the sum of six per cent. of the assessed valuation of such milling and reduction works for the calendar year ending December 31st and immediately preceding; also all money expended for transporting the ores, mineral products or deposits from the mine to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money; but moneys invested in the mines and improvements during any year, except in the year immediately preceding such statement, must not be included in such expenditures, and such expenditures shall not include the salaries, or any portion thereof, of any person or officers not actually engaged in the working of the mine or superintending the management thereof.

Provided, however, that if any such report contains any wilfully false or fraudulent statements as to the gross amount received by any person, corporation, or association so engaged in mining as aforesaid, for any mine's product, then the said state board of equalization shall compute the gross value of such mine's product, and such gross value shall be based upon the average quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery, as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York City, or some other standard publication, giving the market reports for the year covered by the statement; and, provided further, that if any such person, corporation or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York City, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 2, Ch. 237, L. 1921.

2091. Certification of net proceeds to county clerk. On or before the first day of August in each year the state board of equalization shall certify

to the county clerk of each county in which mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purposes of taxation, as the same have been determined and fixed by such state board of equalization, and the county clerk shall immediately enter the same upon an assessment-roll called "Assessment-Roll of Net Proceeds of Mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1. The name and address of the owner or lessee of the mine.
2. The description and location of the mine.
3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.
4. The gross value of the ores, mineral products or deposits, in dollars and cents, extracted and treated, or sold during the year, to be determined as provided in the preceding section.
5. The net proceeds, in dollars and cents, of such mine or mining claim during the year, to be determined as provided in the preceding section.

The form of said assessment-roll shall be prescribed by the state board of equalization in conformity with the provisions of this act, and the state board of equalization shall furnish said form to the assessor of each county in order that forms may be uniform throughout the state.

History: En. Sec. 3, Ch. 237, L. 1921.

2092. Penalty for failure to make statement—Estimate of net proceeds. If any person, partnership, association, or corporation shall refuse or neglect to make and deliver, under oath, to the state board of equalization any statement required by this act, or to comply with any requirements of this act, the state board of equalization must cause such refusal to be noted upon the assessment-roll opposite the name of such person, partnership, association, or corporation, and must make an estimate of the ores, mineral products, or deposit mined and treated or sold by such person, partnership, association, or corporation, and upon such estimate shall fix and determine the value of the net proceeds of said mine or mining claim, as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state board of equalization shall have the power to subpoena and examine, under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association, or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state board of equalization as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 237, L. 1921.

2093. Penalty for false statement. If any person required by this act to make or file any statement, or to verify, under oath, any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any material respect, such person shall

be deemed guilty of perjury, and upon conviction thereof shall be punished as is by law provided for the punishment of perjury.

History: En. Sec. 5, Ch. 237, L. 1921.

2094. Examination of records by board of equalization. The state board of equalization shall have the right and power, at any time, to examine the records of any person, partnership, association, or corporation specified in this act, as the same may pertain to the yield of ore or mineral products or deposit, in order to verify the statements made by such person, partnership, association, or corporation, and if, from such examination, or from other information, said state board of equalization find any statement, or any material part thereof, wilfully false or fraudulent, said state board of equalization must assess in the same manner as provided for in section 2090 of this code.

History: En. Sec. 6, Ch. 237, L. 1921.

2095. Collection and lien of tax. The tax on such net proceeds must be levied, collected and the payment thereof enforced as the levy, collection and enforcement of other taxes are provided for, and every such tax is a lien upon the mine or mining claim from which the ore, or mineral products or deposits, are mined or extracted, which lien attaches on the first Monday of March in each year, and the sale thereof for delinquent taxes may be made as provided for the sale of real estate for delinquent taxes.

History: En. Sec. 7, Ch. 237, L. 1921.

2096. Surface ground and improvements not exempt. Nothing in this act must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim, or used in connection therewith, or supplies used either in mills, reduction works or mines.

History: En. Sec. 8, Ch. 237, L. 1921.

CHAPTER 165.

TAXATION OF FREIGHT LINE COMPANIES.

Section 2097. Freight Line Companies Defined.
2098. Situs of Cars for Taxation Purposes.
2099. Freight Line Companies to File Statements—Contents.
2100. Construction of Terms Used in Law Relative to Earnings.
2101. Ascertainment of Gross Earnings—Tax Levy.
2102. Procedure on Failure to File Statement.
2103. Statement Gross Earnings and Tax to Be Mailed Companies—Protests.
2104. Compelling Attendance Officers Freight Line Companies—Penalty.
2105. Certification of Valuation for Taxation.
2106. State Treasurer to Collect Tax—Exemption.
2107. Repealing Clause.
2108. When Tax Becomes Delinquent—Penalty and Interest—Seizure and Sale of Property.
2109. Legal Proceedings to Enforce Payment of Tax.
2110. Disposition of Proceeds of Tax.

2097. Freight line companies defined. Any person or persons, joint-stock company, association, or corporation, wherever organized or incorporated, engaged in the business of operating cars, or engaged in the business of furnishing or leasing cars, not otherwise listed for taxation in Montana, for the transportation of freight (whether said cars be owned by such com-

pany or any other person or company) over any railway line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such company, whether such cars be termed flat, coal, ore, tank, stock, gondola, furniture, or refrigerator-car, or by some other name, shall be deemed a freight line company.

History: En. Sec. 1, Ch. 5, Ex. L. 1919.

2098. Situs of cars for taxation purposes. For the purpose of taxation, all cars used exclusively within this state, or used partially within and without this state, are hereby declared to have a situs in the state, the value of such property, for the purpose of taxation, to be determined as provided in the three succeeding sections of this code.

History: En. Sec. 2, Ch. 5, Ex. L. 1919. Situs of railroad rolling-stock for taxation, see note in 10 Ann. Cas. 355.

2099. Freight line companies to file statements—Contents. Every freight line company, as hereinbefore defined shall annually, between the first and thirtieth day of April, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent, manager, or chief officer of such association, joint-stock company, or corporation, file with the state board of equalization, or Montana tax commission if such commission be created by this assembly of this state a statement in such form as the state board of equalization, or Montana tax commission, if such commission be created by this assembly, may require and prescribe, showing the following:

1. The name of the person or persons, association, joint-stock company or corporation.
2. Under laws of what state or country organized or existing.
3. The location of its principal office.
4. The location of its principal office in this state, if any.
5. The name and postoffice address of the president, secretary, auditor, treasurer, superintendent, general manager, or chief officer.
6. The total gross earnings received from all sources from the operation of such freight line company within this state for the year next preceding the first day of April.
7. Such other facts and information as the commission may require in the form of return prescribed by it.

History: En. Sec. 3, Ch. 5, L. 1919; amd. Sec. 1, Ch. 146, L. 1921.

2100. Construction of terms used in law relative to earnings. That terms "total gross earnings received from all sources from the operation of such freight line company within this state," and "total gross earnings," wherever used in this act, are hereby declared and shall be construed to mean all earnings on business beginning and ending within the state, and a proportion, based upon the proportion of mileage over which said business is done, of all earnings on all interstate business passing through or into or out of this state.

History: En. Sec. 4, Ch. 5, Ex. L. 1919.

2101. Ascertainment of gross earnings—Tax levy. The state board of equalization, or Montana tax commission, if such commission be created by this assembly, shall, on or before the first Monday of August in each year,

proceed to ascertain and determine the total gross earnings of each freight line company from all sources from the operation of such freight line company within this state for the year preceding the first day of April, and the amount of such total gross earnings as so ascertained and determined by said state board of equalization, or Montana tax commission if such commission be created by this assembly, shall be deemed and considered as the value for taxation of all cars operated, furnished or leased by such freight line company and having a situs for taxation in this state, and such state board of equalization, or Montana tax commission if such commission be created by this assembly, shall, immediately after having determined the valuation of such property for taxation, levy and assess against such property a tax amounting to five per centum of such valuation.

History: En. Sec. 5, Ch. 5, Ex. L. 1919; amd. Sec. 1, Ch. 146, L. 1921.

2102. Procedure on failure to file statement. In case of failure or refusal of any freight line company to make and file the statement required by section 2099 of this code or to furnish the state board of equalization, or Montana tax commission if such commission be created by this assembly, any information required by it, the state board of equalization, or Montana tax commission if such commission be created by this assembly, shall inform itself as best it may on the matters necessary to be known in order to determine the gross earnings of such freight line company.

History: En. Sec. 6, Ch. 5, Ex. L. 1919; amd. Sec. 1, Ch. 146, L. 1921.

2103. Statement gross earnings and tax to be mailed companies—Protests. The state board of equalization, or Montana tax commission if such commission be created by this assembly, shall, immediately upon the first Monday of August in each year, mail to each freight line company a statement showing the amount of the total gross earnings received from all sources from the operation of such freight line company within this state for such year, as ascertained and determined by the state board of equalization, or Montana tax commission if such commission be created by this assembly, together with the amount of the tax assessed and levied by the state board of equalization, or Montana tax commission if such commission be created by this assembly, against the property of such freight line company, and such freight line company may, at any time before the third Monday in August, file with said state board of equalization, or Montana tax commission if such commission be created by this assembly, a protest, in writing, against such determination or assessment, or both, and the state board of equalization, or Montana tax commission if such commission be created by this assembly, may, on the filing of such protest, or on its own motion, review and correct its findings in such manner as it may deem to be just and proper; provided, however, that no action of any kind shall be instituted or maintained by any freight line company to enjoin the collection of any tax, or to enjoin the sale of any property seized by the state treasurer on account of the non-payment of any such tax, or to recover any tax, or any portion thereof, paid under protest, unless such freight line company shall have filed with the commission a protest, in writing, in the manner and form and within the time provided in this section.

History: En. Sec. 7, Ch. 5, Ex. L. 1919; amd. Sec. 1, Ch. 146, L. 1921.

2104. Compelling attendance officers freight line companies—Penalty. The state board of equalization, or Montana tax commission if such commission be created by this assembly, shall have power, by subpoena, to require the president, secretary, auditor, treasurer, superintendent, manager, chief officer, agent, receiver, or other officer or employee of a freight line company, to attend before the state board of equalization, or Montana tax commission if such commission be created by this assembly, and to bring with him for inspection by the state board of equalization, or Montana tax commission if such commission be created by this assembly any books, papers, or documents in his possession, or under his control, in any manner affecting, and to testify under oath concerning any matter relating to the organization or business of such freight line company. Any member of the state board of equalization, or Montana tax commission if such commission be created by this assembly, is authorized and empowered to administer such oath. Any person who shall fail, neglect or refuse to attend before the state board of equalization, or Montana tax commission if such commission be created by this assembly, when subpoenaed so to do, or who shall fail, neglect, or refuse to bring with him and submit for inspection by the state board of equalization, or Montana tax commission if such commission be created by this assembly, any books, papers, or documents in his possession, or under his control, affecting the organization or business of such freight line company, or who shall refuse to testify, or refuse to answer any question which may be asked him concerning the organization or business of such freight line company, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars, and not more than one thousand dollars.

History: En. Sec. 8, Ch. 5, Ex. L. 1919; amd. Sec. 1, Ch. 146, L. 1921.

2105. Certification of valuation for taxation. The state board of equalization, or Montana tax commission if such commission be created by this assembly, shall, immediately after the third Monday in August, or, if a protest has been filed by any freight line company, immediately after the state board of equalization, or Montana tax commission if such commission be created by this assembly, has finally acted thereon, enter in a book provided for that purpose, the amount of the total gross earnings of each and every freight line company for the year next preceding the first day of April, the valuation of the cars of such freight line company for taxation in this state, and the amount of the tax assessed and levied against such cars, as ascertained, determined, fixed, assessed, and levied by such state board of equalization, or Montana tax commission if such commission be created by this assembly under the provisions of this act, and the state board of equalization, or Montana tax commission if such commission be created by this assembly, shall, immediately thereafter certify the same to the state treasurer as the value for taxation of all cars operated, furnished or leased by such freight line company in this state, and the amount of the tax levied and assessed against the same.

History: En. Sec. 9, Ch. 5, Ex. L. 1919; amd. Sec. 1, Ch. 146, L. 1921.

2106. State treasurer to collect tax—Exemption. It shall be the duty of the state treasurer, not later than five o'clock p. m. of the thirtieth day

of November, to collect from each freight line company the amount of the tax levied and assessed against the cars of each such freight line company, as certified to the state treasurer by the state board of equalization, or Montana tax commission if such commission be created by this assembly, which tax shall be in lieu of all other taxes on said cars of any freight line company paying the same; provided, however, that the payment of such tax shall not exempt such freight line company, if a corporation, from the payment of any corporation license tax required to be paid by corporations doing business in this state.

History: En. Sec. 10, Ch. 5, Ex. L. 1919; amd. Sec. 1, Ch. 146, L. 1921.

2107. Repealing clause. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that any and all taxes levied and assessed under the provisions of chapter 5, session laws extraordinary session sixteenth legislative assembly, and which have not been paid and have become delinquent, shall be collected under, and all of the provisions of such chapter shall apply to the collection thereof in the same manner as though none of the provisions of such chapter had been amended by this act.

History: En. Sec. 2, Ch. 146, L. 1921.

2108. When tax becomes delinquent—Penalty and interest—Seizure and sale of property. If any tax required to be paid by any freight line company under the provisions of this act shall not be paid before five o'clock p. m. of the thirtieth day of November, such tax shall become delinquent, and the state treasurer shall add thereto a penalty of ten per cent. thereof, and such tax, with the penalty added thereto, shall bear interest at the rate of twelve per centum per annum until paid, and the state treasurer shall seize personal property belonging to such freight line company found within this state sufficient to pay the amount of such tax, with penalty and interest. The state treasurer, immediately after seizing said property, shall proceed to advertise such property for sale by publishing a notice for at least two times in a newspaper published in Lewis and Clark county, which notice shall describe the property seized, the amount of the tax and penalty for which the property has been seized, and the time, day, and place when and where said property will be sold, and if the said tax and penalty, with the interest due thereon, is not paid before the time appointed for such sale, which shall not be less than ten days after the first publication of such notice, the state treasurer shall proceed to sell such property, or so much thereof as may be necessary, to pay such tax, penalty, interest, and the costs of such seizure and sale, at public auction to the highest bidder.

History: En. Sec. 11, Ch. 5, Ex. L. 1919.

2109. Legal proceedings to enforce payment of tax. If the state treasurer is unable to find within this state sufficient personal property belonging to such company charged with such tax to pay such tax, with the penalty and interest thereon, he shall notify the attorney-general of the amount of such delinquent tax, with penalty and interest accrued thereon, and it shall be the duty of the attorney-general to institute an action in the district court of Lewis and Clark county to collect the same, and upon the

institution of any such action an attachment may be issued and any real estate owned by such freight line company may be attached.

History: En. Sec. 12, Ch. 5, Ex. L. 1919.

2110. Disposition of proceeds of tax. All taxes collected under the provisions of this act shall be credited to the general fund of the state.

History: En. Sec. 13, Ch. 5, Ex. L. 1919.

CHAPTER 166.

TAXATION OF INSURANCE COMPANIES.

Section 2111. Assessment and Taxation of Insurance Companies.
2112. Method of Computing Taxable Property.

2111. Assessment and taxation of insurance companies. Every insurance company organized under the laws of the state of Montana shall be assessed and taxed upon its real estate and personal property at the same rate and in the same maner as other property is assessed and taxed in this state.

History: En. Sec. 1, Ch. 64, L. 1915.

Deposit by insurance company as subject of taxation, see note in 36 L. R. A. (N. S.) 226.

Validity of statute imposing tax on fire insurance companies for fire protection purposes, see note in 17 Ann. Cas. 671.

2112. Method of computing taxable property. In computing the taxable property of insurance companies organized under the laws of this state, there shall be deducted therefrom the value of the real property on which the company pays taxes, such real estate being assessed to the company as other real estate; also the legal reserve required by the laws of this state, or by the insurance department thereof, for the protection of policy holders; also all assets not admitted as such by the state, or by the insurance department thereof; also such debts and liabilities as may be due or owing by such company.

History: En. Sec. 2, Ch. 64, L. 1915.

CHAPTER 167.

COUNTY BOARDS OF EQUALIZATION.

Section 2113. County Commissioners—When to Equalize Assessment.
2114. Board Empowered to Equalize Assessments.
2115. The Person Aggrieved Must Apply.
2116. Examination of Persons Assessed.
2117. Witnesses May Be Subpoenaed.
2118. Assessor to Be Present—Statement of Property Not Assessed.
2119. County Commissioners to Use Records in Equalizing.
2120. Board May Direct Assessor to Assess in Certain Instances.
2121. County Clerk Must Keep Record of Proceedings and Make Oath.

2113. County commissioners—When to equalize assessment. The board of county commissioners is the county board of equalization, and must meet on the third Monday of July in each year to examine the assessment-book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of

equalization is disposed of, but not later than the second Monday in August.

History: Note.—Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907. Cal. Pol. C. Sec. 3672.

Held under former statutes that the board of county commissioners, sitting as a board of equalization, is responsible for the correctness of the assessment-book of the county. State v. Commrs. of Yellowstone Co., 12 Mont. 503, 509, 31 Pac. 78.

Under the law as it stood in 1898, it was held that since there was no statute providing for an appeal from the action of the county assessor and board of county commissioners, sitting as a board of equalization, under sections 3700 et seq. and sections 3780-3785 of the Political Code, courts would not interfere with the action of such officers where the assessor acted fairly and honestly and the board gave the plaintiff a fair hearing. Danforth v. Livingston, 23 Mont. 558, 562, 563, 59 Pac. 916.

While boards of equalization are provided for in the constitution, their periods of life are prescribed by the legislature, and they cannot hold for any other or longer period than the legislature has fixed. So, when a county board adjourned on the second Monday of August, as provided in the above section, its term of existence for that year absolutely expired. Matador L. & C. Co. v. Custer Co., 28 Mont. 286, 287, 72 Pac. 662.

Cited or applied as section 2572, Revised Codes, in State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2114. Board empowered to equalize assessments. The board has power, after giving notice in such manner as it may by rule prescribe, to increase or lower any assessment contained in the assessment-book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value of such property in money.

History: Sec. 2573, Rev. C. 1907. See also history of Sec. 2113. Cal. Pol. C. Sec. 3673.

See State v. Ellis, 15 Mont. 224, 227, 38 Pac. 1079, as to the power of the county board of equalization to increase or lower assessments under this section.

Referred to as partially defining the powers and duties of the board of county commissioners, sitting as a board of equalization, in relation to individual assessments and the changes it may make in them. State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

Cited or applied as section 3781, Political Code, in Montana Ore Purchasing Co. v. Maher, 32 Mont. 480, 486, 81 Pac. 13; as section 2573, Revised Codes, in Anaconda Copper Min. Co. v. Ravalli County et al., 56 Mont. 530, 186 Pac. 332.

Action of board of equalization as affecting right to attack assessment on ground of assessor's fraud, see note in 9 L. R. A. 1284.

2115. The person aggrieved must apply. No reduction must be made in the valuation of property, unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made.

History: Sec. 2574, Rev. C. 1907. See also history of Sec. 2113. Cal. Pol. C. Sec. 3674.

As a condition precedent to the reduction of the valuation of property, the party affected thereby, or claiming a reduction, or his agent, must file a written application therefor with the board of equalization, verified by his oath, showing the facts upon which such reduction is claimed. Before a plaintiff in an action to recover taxes paid to the county treasurer, claimed to be unlawfully assessed, could be entitled to relief, his complaint should show a compliance with this essential condition. Barrett v. Shannon, 19 Mont. 397, 399, 400, 48 Pac. 746.

Defining the powers and duties of the board of county commissioners, sitting as a board of equalization, in relation to individual assessments and the changes it may make in them. State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2116. Examination of persons assessed. Before the board grants the application or makes any reduction applied for, it must examine, on oath, the person or the agent making the application, touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

History: Sec. 2575, Rev. C. 1907. See also history of Sec. 2113. Cal. Pol. C. Sec. 3675.

Cited or applied as section 2575, Revised Codes, in State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2117. Witnesses may be subpoenaed. Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

History: Sec. 2576, Rev. C. 1907. See also history of Sec. 2113. Cal. Pol. C. Sec. 3676.

Cited or applied as section 2576, Revised Codes, in State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2118. Assessor to be present—Statement of property not assessed. During the session of the board the assessor and any deputy whose testimony is needed must be present and may make any statement, or introduce and examine witnesses on questions before the board. At said meeting of the board of equalization the county assessor shall present to said board a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or otherwise, has been assessed for less than its correct value; thereupon it shall be the duty of said board immediately and while sitting as a board of equalization, to investigate said statement, and in the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, said board shall correct such assessment in the manner provided for the correction of assessments by the board of equalization.

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; (see also Sec. 2538, Rev. C. 1907); amd. Sec. 1, Ch. 53, L. 1921. Cal. Pol. C. Sec. 3677.

Cited or applied as section 2577, Revised Codes, in State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2119. County commissioners to use records in equalizing. The board of county commissioners must use the abstract and all other information it may gain from the records of the county clerk or elsewhere, in equalizing the assessment of the property of the county, and may require the assessor to enter upon the assessment-book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the assessor before the delivery of the assessment-book to the county clerk.

History: Sec. 2580, Rev. C. 1907. See also history of Sec. 2113. Cal. Pol. C. Sec. 3679.

Cited or applied as section 2580, Revised Codes, in State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

Cited or applied as section 3788, Political Code, in Cosier v. McMillan, 22 Mont. 484, 56 Pac. 965.

2120. Board may direct assessor to assess in certain instances. During the session of the board of county commissioners it may direct the assessor to assess any taxable property that has escaped assessment, or to add to the amount, number, or quantity of property, when a false or incomplete

list has been rendered, and to make and enter new assessments (at the same time canceling previous entries), when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax; but the clerk must notify all persons interested, by letter deposited in the postoffice, postpaid, and addressed to the person interested, at least ten days before action is taken, of the day fixed when the matter will be investigated.

History: Sec. 2581, Rev. C. 1907. See also history of Sec. 2113. Cal. Pol. C. Sec. 3681.

Where the board, instead of requiring the assessor to do so, itself placed a valuation upon the stock in trade of an Indian post trader licensed to do business upon a reservation, the property in question being subject to state and county taxation so long as the Indians were not interested therein, the irregularity in making the assessment was waived by the appearance of the taxpayer before the board to request it to strike the same, without objecting either to the irregularity or to the valuation adopted. Cosier v. McMillan, 22 Mont. 484, 490, 491, 56 Pac. 965.

The notice of ten days, required by this section to be given a taxpayer, is jurisdictional. Western Ranches v. County of Custer, 28 Mont. 278, 281, 72 Pac. 659; Montana Ore Purchasing Co. v. Maher, 32 Mont. 480, 487, 81 Pac. 13. See, also, Anaconda Copper Min. Co. v. Ravalli County, 56 Mont. 530, 533, 186 Pac. 332.

Failure by the county board of equalization to give a taxpayer the ten days' notice of an increase in his assessment, is not waived by his voluntary appearance before the board, after the raise had been made, for the purpose of seeking a reduction of the assessment. Western Ranches v. County of Custer, 28 Mont. 278, 281, 72 Pac. 659; Montana Ore Purchasing Co. v. Maher, 32 Mont. 480, 488, 81 Pac. 13. See Anaconda Copper Min. Co. v. Ravalli County, 56 Mont. 530, 533, 186 Pac. 332.

Where a county board of equalization gave notice to a taxpayer on August 8, 1896, to appear on September 8th, following, the notice mailed on the former date was void, the functions of the board as a board of equalization having, as prescribed in section 2172, expired on the second Monday of August, which was the tenth of the month. Matador Land & Cattle Co. v. Custer County, 28 Mont. 286, 287, 72 Pac. 662.

The right of the owner of property to obtain relief from illegal taxes by injunction is not in anywise affected by his failure, after notice from the board, to make timely objection. Barnard Realty Co. v. City of Butte, 50 Mont. 159, 167, 145 Pac. 946.

The notice prescribed by this section was designed to give the property owner an opportunity to appear and be heard, and is jurisdictional, and a new assessment so made, of which the property owner was not notified until afterwards, was invalid. Western Ranches v. Custer County, 89 Fed. 577.

Cited or applied as section 2581, Revised Codes, in Dolenty v. Broadwater County, 45 Mont. 261, 263, 122 Pac. 919; State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2121. County clerk must keep record of proceedings and make oath. The county clerk must record, in a book to be kept for that purpose, all changes, corrections, and orders made by the board, and during its session, or as soon as possible after its adjournment, must enter upon the assessment-book all changes and corrections made by the board, and on or before the first Monday of August must affix his affidavit thereto, subscribed by him as follows: "I, ..., do swear that, as county clerk of ..... county, I have kept correct minutes of all the acts of the board of county commissioners touching alterations in the assessment-book; that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized.

History: Sec. 2582, Rev. C. 1907. See also history of Sec. 2113. Cal. Pol. C. Sec. 3682.

Changes wrought in assessments by the board of county commissioners, sitting as a board of equalization, must be noted by the clerk and entered on the book in the proper places. State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

CHAPTER 168.

STATE BOARD OF EQUALIZATION.

Section 2122. Who Constitute the Board.
2123. General Powers and Duties of Board.
2124. Appeal to State Board of Equalization.
2125. Statement of Changes to Be Sent to County Clerk.
2126. Determination of State Rate of Taxation—Notice of.
2127. Penalty for Refusing to Obey Rules and Regulations of Board.
2128. Who May Administer Oaths.
2129. Expenses to Be Allowed.
2130. Employment of Assistants and Clerical Help.

2122. Who constitute the board. The governor, secretary of state, state treasurer, state auditor, and attorney-general constitute a state board of equalization, of which the governor is president and the secretary of state the secretary.

History: En. Sec. 71, p. 100, L. 1891; re-en. Sec. 3800, Pol. C. 1895; re-en. Sec. 2583, Rev. C. 1907.

Statutes such as the above cannot be construed as conferring the power to increase or decrease the total valuation of the property in the state as shown by the abstracts transmitted to it by the county boards, since such power is denied to it by the constitution. State ex rel. State Board of Equalization v. Fortune, 24 Mont. 154, 157, 60 Pac. 1086; State ex rel. Wallace v. State Board of Equalization, 18 Mont. 473, 46 Pac. 266, affirmed. See note to section 15, article XII, constitution of Montana.

Cited or applied as section 2583, Revised Codes, in State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2123. General powers and duties of board. The powers and duties of the state board of equalization are as follows:

1. To prescribe rules for its own government and for the transaction of its business.

2. To prescribe rules and regulations, not in conflict with the constitution and laws of the state of Montana, to govern county boards of equalization and the assessors of the different counties in the performance of their duties.

3. To prepare and enforce the use of forms in relation to the assessment of property.

4. To hold meetings at the state capitol as prescribed by its rules, and such special meetings as the president of the board may direct.

5. To annually assess the franchise, roadway, roadbed, rails, and rolling-stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals, and flumes, and other similar properties, constituting a single and continuous property operated in more than one county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis; provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and power-houses, depots, stations, shops, and other buildings erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the county assessor of the county wherein they are situate.

6. To transmit to the county clerk of each county its apportionment of all assessments made by such board.

7. To meet at the state capitol on the fourth Monday in July, and remain in session from day to day (Sundays and holidays excepted) until the third Monday of August, and later if the business of the board requires, and at such meetings adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in the same, and in the several counties and between individual taxpayers; supervise and review the acts of the county assessor and the county boards of equalization; change, increase, or decrease valuation made by county assessors or equalized by the county boards of equalization, and exercise such authority and do any and all things necessary to secure a fair, just, and equitable valuation of taxable property among the counties, and between the different classes of property and individual taxpayers; provided, however, that no change shall be made in the assessment of the property of any individual taxpayer as made by any assessor, or as adjusted and equalized by any county board of equalization, without first notifying the taxpayer whose assessment is proposed to be changed, by a letter deposited in the postoffice, postpaid, and addressed to the taxpayer at least ten days before action is taken of the day fixed when the matter will be investigated.

8. To visit as a board, or by the individual members thereof, the several counties of the state, whenever deemed necessary, for the purpose of inspecting the property and learning the value thereof.

9. To call before it, or any member thereof, on such visit, any officers of the county, and to require them to produce any public records in their custody; to issue subpoenas for the attendance of witnesses or production of books before the board, or any member thereof, which subpoenas must be signed by a member of the board, and may be served by any person.

10. To furnish to the legislative assembly such information as may be requested by such legislative assembly, or either house, or any committee of either house.

11. To keep a record of all its proceedings.

12. To appoint a clerk, who must assist the secretary of the board and perform such other duties as the board may require, and who shall hold office during the pleasure of the board.

13. To require of any person, firm, or corporation against whom the assessment of any property required to be assessed by said board is made, such information as may be necessary or desired by said board for the purpose of making such assessment.

Note.—Sections 2123 to 2129 are here given as enacted by chapter 48, Laws of 1919. This act repealed sections 2584 to 2592, Revised Codes 1907, which appeared as sections 3800 to 3809, Political Code 1895, and which were enacted as sections 71 to 79, pp. 100 to 104, Laws of 1891.

History: Sec. 1, Ch. 48, L. 1919. Cal. Pol. C. Sec. 3692.

This section, authorizing the state board of equalization to make an original assessment of the rights of way, pole, and transmission lines, distributing systems, etc., of electric power companies, is not constitutionally objectionable as conferring the power upon an unauthorized agency. State v. State Board of Equalization, 56 Mont. 413, 441, 185 Pac. 708.

This act is not invalid because it denies to the taxpayer the right to have his property assessed by the local assessing officer, as well as the right to have the valuation put thereon reviewed by the county board of equalization. It is

not a right of the taxpayer to have his assessment made, in the first instance, by any particular officer, or to have it equalized by any particular board. So long as the principles of uniformity and just valuation are observed, his rights are not invaded. State v. State Board of Equalization, 56 Mont. 413, 443, 185 Pac. 708.

Delegation of power of taxation to board of equalization or revision, see note in 15 L. R. A. (N. S.) 66.

2124. Appeal to state board of equalization. Any person, firm, or corporation aggrieved by the action of any county board of equalization, may appeal to the state board of equalization by filing with the county board a notice of appeal, and a duplicate thereof with the state board of equalization, within five days after the action of said county board, which notice shall specify the action complained of, and the reasons assigned for such complaint. The state board may require the county board to certify the minutes of its proceedings resulting in such action, and all testimony taken in connection therewith, and may reverse, modify, or affirm the action complained of.

History: Sec. 2, Ch. 48, L. 1919. Cal. Pol. C. Sec. 3693.

2125. Statement of changes to be sent to county clerk. The secretary of the board shall transmit to each county clerk a statement of the changes made by the board in the assessment-book of the county, or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the board resulting in the action which is the subject-matter of the statement.

History: Sec. 3, Ch. 48, L. 1919. Cal. Pol. C. Sec. 3695.

2126. Determination of state rate of taxation—Notice of. Between the first and third Monday in August of each year, the board must determine the rate of state tax to be levied and collected upon the assessed valuation of the property of the state, which, after allowing twelve per cent. for delinquencies in the cost in collection of taxes, must be sufficient to raise the specific amount of the revenue required by the legislative assembly for state purposes. The board must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state board of equalization thereof.

History: Sec. 4, Ch. 48, L. 1919. Cal. Pol. C. Sec. 3696.

2127. Penalty for refusing to obey rules and regulations of board. Every person served with a subpoena who fails or neglects, without just excuse, to obey it, and every officer who refuses to obey the rules and regulations prescribed by the board, or to perform the duties prescribed therein, shall forfeit to the state of Montana five hundred dollars, to be recovered by action in the name of the state, which action may be commenced and tried in any county of the state.

History: Sec. 5, Ch. 48, L. 1919. Cal. Pol. C. Sec. 3697.

2128. Who may administer oaths. The secretary or any member of the board may administer and certify oaths.

History: Sec. 6, Ch. 48, L. 1919. Cal. Pol. C. Sec. 3699.

2129. Expenses to be allowed. Each member of the board is entitled to repayment for actual expenses incurred by him while traveling in dis-

charge of his duties, and all money paid out for necessary clerical work, stationery, and postage-stamps, to be audited and allowed by the state board of examiners.

History: Sec. 7, Ch. 48, L. 1919. Cal. Pol. C. Sec. 3702.

2130. Employment of assistants and clerical help. The state board of equalization shall have authority and power to employ and appoint such experts, assistants, clerks, and stenographers as may be necessary in order to enable such board to perform the duties imposed on such board by law in connection with the classification, taxation, and equalization of property for taxation, and the enforcement of the laws of this state with reference to taxes and licenses; provided, however, that the total expenses for such experts, assistants, clerks, and stenographers shall not exceed the sum of fifteen thousand dollars per annum.

History: En. Sec. 1, Ch. 165, L. 1919.

CHAPTER 169.

ASSESSMENT OF RAILROADS BY STATE BOARD OF EQUALIZATION.

Section 2131. Assessment of Railroads.
2132. Assessment, How Made.
2133. State Board of Equalization Must Transmit Statement to County Clerk.
2134. County Commissioners to Enter Assessment Order.
2135. Dissatisfied Owners of Railroads May Apply Again.
2136. Record of Assessment and Apportionment of Railroads.
2137. Basis of Taxation.

2131. Assessment of railroads. The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person, or association of persons, owning or operating any railroad in more than one county in this state, must, on or before the first Monday in March of each year, furnish the said board a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the first Monday in March in each year:

1. The whole number of miles of railroad in the state; and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association.

2. The value of the roadway, roadbed, and rails of the whole railroad, and the value of the same within the state.

3. The width of the right of way.

4. The number of each kind of all rolling-stock used by such corporation, person, or association in operating the entire railroad, including the part without the state.

5. Number, kind, and value of rolling-stock owned and operated in the state.

6. Number, kind, and value of rolling-stock used in the state, but not owned by the party making the returns.

7. Number, kind, and value of rolling-stock owned but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railroads.

8. The whole number of side-tracks in each county, including the number of miles of track in each railroad yard in the state.

9. The number of each kind of rolling-stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof, of all engines, passenger, mail, express, baggage, freight, and other cars, or property owned or leased by such corporation, persons, or association.

10. The number of sleeping and dining-cars not owned by such corporation, person, or association, but used in operating the railroads of such corporation, person, or association in the state, or on the line of the road without the state, during each month of the year for which the return is made; also the number of miles each month said cars have been run or operated within and without the state.

11. A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given, no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad, or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

12. Also showing in detail for the year preceding the first of January:

(a) The gross earnings of the entire road;

(b) The gross earnings of the road within the state, and where the railroad is let to other operators, how much was derived by the lessor as rental;

(c) The cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(d) Net income for such year, and amount of dividend declared.

(e) Capital stock authorized;

(f) Capital stock paid in;

(g) Funded debt;

(h) Number of shares authorized;

(i) Number of shares of stock issued.

13. Any other facts the state board of equalization may require.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 43, p. 87, L. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907. Cal. Pol. C. Sec. 3664.

Referred to as section 43, Laws of 1891, in Northern Pac. Ry. Co. v. Brogan, 52 Mont. 461, 464, 158 Pac. 820; Hayes v. Smith, 58 Mont. 312, 316, 192 Pac. 615.

2132. Assessment, how made. The state board of equalization must meet at the state capitol on the fourth Monday in July, and continue in open session from day to day, Sundays excepted, until the second Monday in August, and later if the business of the board requires it. At such meeting the board must assess the franchise, roadway, roadbed, rails, and

rolling-stock of all railroads operated in more than one county; but franchises derived from the United States must not be assessed. All rolling-stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state, and must include the right of way, bridges, and culverts of the railroad. The depots, stations, shops and buildings erected upon the space covered by the right of way, and all other property owned or leased by such person, corporation, or association, except as above provided, are assessed by the assessor of the county wherein they are situate. Between the second and third Mondays of August, the board must apportion the total assessment of the franchise, roadway, roadbed, rails, and rolling-stock of each railroad to the counties in which such railroad is located, in proportion to the number of miles of railroad laid in such counties.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907. Cal. Pol. C. Sec. 3665.

Cited or applied as section 3738, Political Code, in Hilburn v. St. Paul etc. Ry. Co., 23 Mont. 229, 242, 58 Pac. 551; as section 2557, Revised Codes, in Northern Pac. Ry. Co. v. Brogan, 52 Mont. 461, 464, 158 Pac. 820.

2133. State board of equalization must transmit statement to county clerk. The state board of equalization must, within the time mentioned in the preceding section, transmit by mail to the county clerk of each county to which such apportionment has been made, a statement showing the length of the main track of such railroad within the county, with a description of the whole of said track within the county, including the right of way, by metes and bounds or other description sufficient for identification, the assessed value per mile of the same, as fixed by a pro rata distribution per miles of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling-stock of such railroad within the state, and the amount apportioned to the county. The county clerk must enter the statement on the assessment-roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment-book or roll as aforesaid, which shows the total value of all property for taxation of the county.

History: En. Sec. 45, p. 90, L. 1891; re-en. Sec. 3739, Pol. C. 1895; re-en. Sec. 2558, Rev. C. 1907. Cal. Pol. C. Sec. 3665.

2134. County commissioners to enter assessment order. On the second Monday in September, the board of county commissioners must make and cause to be entered in the proper record book an order stating and declaring the length of main track of the railroad assessed by the state board of equalization within the county, the assessed value per mile of such railroad, the number of miles of track, and the assessed value of such railroad lying in each city, town, school and road district, or lesser taxing district in the county through which such railroad runs, as fixed by the state board of equalization, which constitutes the assessment value of said property for taxable purposes in such city, town, school, road, or other district; and the county clerk must on application, transmit a copy of each order or equalization to the city or town council or trustees, or other

legislative body of incorporated cities or towns, the trustees of each school district, and the authorized authorities of other taxation districts through which such railroad runs. All such railroad property is taxable upon said assessment at the same rates, by the same officers, and for the same purposes, as the property of individuals within such city, town, school, road, and lesser taxation districts, respectively, and such taxes must be collected in the same manner and by the same officers as other taxes are collected.

History: En. Sec. 46, p. 91, L. 1891; re-en. Sec. 3740, Pol. C. 1895; re-en. Sec. 2559, Rev. C. 1907. Cal. Pol. C. Sec. 3665.

2135. Dissatisfied owners of railroads may apply again. If the owner of a railroad assessed by the state board of equalization is dissatisfied with the assessment made by the board, such owner may, at the meeting of the board, under the provision of section 2584 (2123 of this code), between the third Monday in July and the second Monday in August, apply to the board to have the same corrected in any particular, and the board may correct and increase or lower the assessment made by it so as to equalize the same with the assessment of other property in the state. If the board increases or lowers any assessment previously made by it, it must make a statement to the county clerk affected by the change in the assessment of the change made, and he must note such change upon the assessment book of the county as directed by the board.

History: En. Sec. 47, p. 91, L. 1891; re-en. Sec. 3741, Pol. C. 1895; re-en. Sec. 2560, Rev. C. 1907. Cal. Pol. C. Sec. 3665.

Note.—Section 2584, Revised Codes 1907, has been repealed; for corresponding section see 2123 of this code.

2136. Record of assessment and apportionment of railroads. The state board of equalization must prepare each year a book, to be called "Record of Assessment of Railroads," in which must be entered each assessment made by the board, either in writing or by both writing and printing. Each assessment so entered must be signed by the president and secretary. The record of the apportionment of the assessments made by the board to the counties must be made in a separate book, to be called "Record of Apportionment of Railroad Assessments." In such last-described book must be entered the names of the railroads assessed by the board, the names of the corporations to which, or the name of the person or association to whom each railroad was assessed, the whole number of miles of the railroad in the state, the number of miles in each county, the total assessment of the franchise, roadway, roadbed, rails, and rolling-stock for purposes of state taxation, and the amount of the apportionment of such total assessment to each county for county taxation.

History: En. Sec. 48, p. 92, L. 1891; re-en. Sec. 3742, Pol. C. 1895; re-en. Sec. 2561, Rev. C. 1907. Cal. Pol. C. Sec. 3666.

2137. Basis of taxation. The assessment made by the county assessor, and that of the state board of equalization, as apportioned by the boards of county commissioners to each city, town, school, road, or other district in their respective counties, is the only basis of taxation for the county, or any subdivision thereof, except in incorporated cities and towns, and may also be taken as such basis in incorporated cities and

towns when the proper authorities may so elect. All taxes upon road, school, or other local districts must be collected in the same manner as county taxes.

History: En. Sec. 49, p. 92, L. 1891; re-en. Sec. 3743, Pol. C. 1895; re-en. Sec. 2562, Rev. C. 1907. Cal. Pol. C. Sec. 3671.

Cited or applied as section 3743, Political Code, in Hilburn v. St. Paul etc. Ry. Co., 23 Mont. 229, 242, 58 Pac. 551.

CHAPTER 170.

ASSESSMENT OF CERTAIN TELEGRAPH, TELEPHONE, AND ELECTRIC POWER PROPERTIES BY STATE BOARD OF EQUALIZATION.

Section 2138. Officers of Certain Telegraph, Telephone, Electric Power, and Other Lines to Furnish Statement to State Board of Equalization.
2139. Statement to Be Transmitted by County Assessor to State Board.
2140. Statement to Be Transmitted by County Clerk.
2141. Hearing Before State Equalization Board.
2142. Hearing for the Determination of Facts Pertaining to Assessment.
2143. Meeting of State Board and Assessment of Property—Apportionment to Counties.
2144. Transmission of Statement of Amount Apportioned to Counties.
2145. Order of Board of Commissioners Declaring Valuation.
2146. Assessment-Books of State Board of Equalization—Contents.

2138. Officers of certain telegraph, telephone, electric power, and other lines to furnish statement to state board of equalization. The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, electric power or transmission line, canal, ditch, flume, or other property other than real estate, not included in right of way, and which constitute a single and continuous property throughout more than one county, must, on or before the first Monday of March in each year, furnish the state board of equalization a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the first Monday of March each year, as follows:

1. The whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association.

2. The total value of the entire property and plant both within and without the state, and the total value of that portion of the same within the state.

3. A complete description of the property within the state, giving the points of entrance into and the points of exit from the state, and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state.

4. Such other information regarding such property as may be required by the state board ef equalization.

History: En. Sec. 1, Ch. 49, L. 1919.

Taxation of franchises and receipts of telegraph companies, see note in 57 L. R. A. 56, 64.

Telegraph line as real estate for purpose of taxation, see note in 15 L. R. A. 299.

Statute imposing tax on telegraph company franchise as interference with interstate commerce, see note in Ann. Cas. 1914A, 987.

2139. Statement to be transmitted by county assessor to state board. The county assessor of every county must, on the second Monday in July of each year, transmit to the state board of equalization a statement showing:

1. The name and address of each corporation, person, and association owning or operating any telegraph, telephone, electric power or transmission line, canal, ditch, flume, or other similar property in more than one county of the state, whose property, or any part thereof, has been assessed by such county assessor;

2. A complete description of all such property assessed to every such corporation, person, or association, together with the assessed value thereof.

History: En. Sec. 2, Ch. 49, L. 1919.

2140. Statement to be transmitted by county clerk. The county clerk of each county must, on the second Monday in August of each year, transmit to the state board of equalization a statement showing any and all changes, corrections, and orders made by the county board of equalization regarding the assessment of the property of any such corporation, person, or association.

History: En. Sec. 3, Ch. 49, L. 1919.

2141. Hearing before state equalization board. At the regular meeting of the state board of equalization in each year, it shall be the duty of the board to afford an opportunity to any corporation, person, or association owning or operating any such property in this state, or to any taxpayer, to appear before the board and submit any facts which may tend to inform the board or to give it information to the end that a fair and equitable assessment of such property may be made.

History: En. Sec. 4, Ch. 49, L. 1919.

2142. Hearing for the determination of facts pertaining to assessment. If any corporation, person or association shall fail, neglect, or refuse to furnish the state board of equalization with a full, true, and correct statement as required by section 2138 of this code, or if the board shall have reason to believe that any such statement furnished the board is incorrect or erroneous in any particular, the board shall order a hearing for the purpose of ascertaining and determining such facts as will enable the board to assess the property of such corporation, person or association in accordance with the provisions of section 2143 of this code. At least five days' written notice of such hearing shall be given to such corporation, person, or association, and on such hearing the board shall ascertain and determine each and all of the matters and facts which should have been stated in such statement.

History: En. Sec. 5, Ch. 49, L. 1919.

2143. Meeting of state board and assessment of property—Apportionment to counties. The state board of equalization must meet at the capitol on the fourth Monday in July of each year, and remain in session from day to day (Sunday and holidays excepted) until the third Monday in August, and later if the business of the board requires it.

At such meeting the board must assess all the properties described in section 2138 of this code, but franchises granted by the United States must not be assessed.

The value for taxation of the property and plant of each telegraph, telephone, electric power and transmission line, canal, ditch, flume, and other properties to be assessed by the state board of equalization, shall be that portion of the total value of the entire plant and property, wherever situated, that the total mileage within this state bears to the total mileage wherever situated, after deducting from such portion the total assessed value of all property which has been assessed for taxation in this state by the county assessors of the several counties of this state, and the state board of equalization shall assess the same accordingly.

Between the third and fourth Mondays in August, the state board of equalization must apportion the total assessment of each of the properties assessed by such board to the counties in which the same are situated, in proportion to the number of miles in such counties.

History: En. Sec. 6, Ch. 49, L. 1919.

This act does not repeal existing statutes on the subject of assessment, but is to be treated as a supplement thereto. The various sections of the act, and of existing acts, are, therefore, in pari materia, and are to be construed together. State v. State Board of Equalization, 56 Mont. 413, 444, 185 Pac. 708.

This act does not affect section 2001, and that section is to be considered in connection with it. State v. State Board of Equalization, 56 Mont. 413, 444, 185 Pac. 708.

This section does not establish an arbitrary rule of assessment, but only requires that the total value of the plant and property, wherever situated, shall be taken into consideration in determining the actual cash value for taxation of that portion of the plant and property situated within this state. State v. State Board of Equalization, 56 Mont. 413, 446, 185 Pac. 708.

Since the state board of equalization is an agency created by the constitution, with well-defined powers, discretionary in character, and this act does not attempt to direct the board as to the method or means to be pursued by it in arriving at the actual value of the property of electric power corporations, the supreme court cannot, by writ of mandate, interfere and direct the board how to make the assessment; so long as it is not guilty of fraud, and does not adopt a fundamentally wrong principle of assessment, the supreme court cannot interpose, or substitute its judgment for that of such board. State v. State Board of Equalization, 56 Mont. 413, 448, 185 Pac. 708.

2144. Transmission of statement of amount apportioned to counties. The state board of equalization must, not later than the fourth Monday of August, transmit or mail to the county clerk of each county to which such apportionment has been made, a statement showing the length of the property in such county; a description of the same sufficient for identification; the assessed value per mile of the same as determined by a pro rata distribution per mile of the assessed value of the whole; and the amount apportioned to the county. The county clerk must enter the statement on the assessment-roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment-roll or book which shows the total value of all property for taxation in the county.

History: En. Sec. 7, Ch. 49, L. 1919.

2145. Order of board of commissioners declaring valuation. On the second Monday in September, the board of county commissioners of each county must make and cause to be entered in the proper record book an order stating and declaring the length of the property within the county of each of such properties assessed by the state board of equalization; the assessed value per mile; the total valuation within the county; the number of miles, and the assessed value in each incorporated city and town, and

in each school, road, or other taxing district in the county through which such property extends, as fixed by the state board of equalization, which shall constitute the assessment value of such property for taxation purposes in such cities, towns, school, road, and other taxing districts, and the county clerk must transmit a copy of said order to the city or town council, trustees, or other legislative body of each incorporated city and town, to the trustees of each school district, and to the authorized authorities for other taxing districts through which such property extends. All such property is taxable upon said assessment at the same rate, by the same officers, and for the same purposes as the property of individual taxpayers within such cities, towns, school, road, and other taxing districts, respectively, and such taxes must be collected in the same manner, at the same time, and by the same officers as other taxes are collected.

History: En. Sec. 8, Ch. 49, L. 1919.

2146. Assessment-books of state board of equalization—Contents. The state board of equalization must prepare each year a book in which must be entered every such assessment made by the board, either in writing or by both writing and printing. Each assessment so entered must be signed by the president and secretary of the board. The record of the apportionment of assessments made by the state board of equalization to the several counties must be made in a separate book. In the last described book must be entered the name of the corporation, person, or association to whom such property was assessed; the whole number of miles of such property in the state; the number of miles in each county; the value per mile of said property; and the amount of such total assessment apportioned to each county for taxation.

History: En. Sec. 9, Ch. 49, L. 1919.

CHAPTER 171.

LEVY OF TAXES.

Section 2147. The Levy.
2148. State Tax Levy of Three and One-Half Mills—Support of University of Montana.
2149. Rate of Taxation Fixed by State Board.
2150. Rate of County Fixed by Board of County Commissioners.
2151. Failure of County Commissioners to Levy.
2152. Tax Operates as a Judgment or Lien.
2153. Tax on Personal Property a Lien on Real Property.
2154. Tax Upon Real Property and Tax on Improvements a Lien Upon Both.
2155. Tax for School Purposes.

2147. The levy. There must be levied at each session of the legislative assembly, upon all property in the state liable to taxation, a sufficient sum to realize the amount necessary to meet the appropriations made for the two succeeding fiscal years, and for the payment of deficiencies, if any have occurred in the previous fiscal year or years. Such levy must be made for each fiscal year separately, and must not exceed two and one-half mills on each dollar of valuation. The fiscal year commences on the first day of July.

History: En. Sec. 80, p. 104, L. 1891; amd. Sec. 3820, Pol. C. 1895; re-en. Sec. 2593, Rev. C. 1907.

The sum of the corrected assessments of the several counties, with the additions made by the state board of equalization, is the basis for taxation for state purposes at the rate fixed biennially by the legislature. State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2148. State tax levy of three and one-half mills—Support of university of Montana. The rate of taxation on real and personal property for state purposes for each year for a period of ten years, beginning with the year 1921, shall be increased one and one-half mills on each dollar of valuation, and the legislative assembly is authorized and empowered to levy a tax for state purposes for each of said years of not exceeding three and one-half mills on each dollar of valuation for state purposes, and all money derived from one and one-half mills of such levy for each of such years shall be appropriated by the legislative assembly for the support, maintenance and improvement of the state university at Missoula, the state college of agriculture and mechanic arts at Bozeman, the Montana state school of mines at Butte, and the Montana state normal college at Dillon, now comprised in the university of Montana.

History: Enacted by the people as an initiative measure Nov. 2, 1920. Effective under governor's proclamation Dec. 6. 1920.

2149. Rate of taxation fixed by state board. The state board of equalization must, for state purposes, for each fiscal year fix an ad valorem rate of taxation upon each one hundred dollars of taxable property of the state, after allowing twelve per cent. for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislative assembly for each fiscal year.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907. Cal. Pol. C. Sec. 3713.

2150. Rate of county fixed by board of county commissioners. The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund, and must levy taxes upon the taxable property of the county.

History: En. Sec. 81, p. 104, L. 1891; re-en. Sec. 3825, Pol. C. 1895; re-en. Sec. 2598, Rev. C. 1907. Cal. Pol. C. Sec. 3714.

Board of county commissioners, at the conclusion of its sitting, must fix the rate of taxation for the year. State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2151. Failure of county commissioners to levy. The action of the state board of equalization in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed, and imposes upon the county commissioners, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of county commissioners had made the levy at the proper time.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907. Cal. Pol. C. Sec. 3715.

2152. Tax operates as a judgment or lien. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

History: En. Sec. 82, p. 104, L. 1891; re-en. Sec. 3827, Pol. C. 1895; re-en. Sec. 2600, Rev. C. 1907. Cal. Pol. C. Sec. 3716.

Note.—The title referred to in the above section embraced the entire taxation laws contained in the Revised Codes of 1907.

Under this section and the two following, no tax lien attaches to assessed per-

sonality, the owner of which owns no realty, and the sale for taxes of such sonalty, the owner of which owns no purchaser should be enjoined. Walsh v. Croft, 27 Mont. 407, 408, 71 Pac. 409.

The fee required of a foreign corporation by section 145 is not a property tax, creating a lien on the property until paid. State ex rel. General Electric Co. v. Alderson, 49 Mont. 29, 33, 140 Pac. 82.

Cited or applied as section 3827, Political Code, in State ex rel. City of Butte v. Johnson, 16 Mont. 570, 573, 41 Pac. 706.

. Validity and construction of statute giving priority to tax liens, see notes in Ann. Cas. 1913B, 520; Ann. Cas. 1917A, 1079.

Lien of one tax as affected by sale for another tax, see note in Ann. Cas. 1913A, 675.

When taxes become a lien on land, see note in 15 L. R. A. 236.

Superiority of lien for special assessments over lien for taxes, see note in 30 L. R. A. (N. S.) 768.

2153. Tax on personal property a lien on real property. Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock m. of the first Monday in March in each year.

History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907. Cal. Pol. C. Sec. 3717.

Cited or applied as section 3828, Political Code, in Walsh v. Croft, 27 Mont. 407, 408, 71 Pac. 409; Hayes v. Smith, 58 Mont. 306, 312, 192 Pac. 615.

2154. Tax upon real property and tax on improvements a lien upon both. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.

History: Ap. p. Sec. 1714, 5th Div. Comp. Stat. 1887; amd. Sec. 83, p. 105, L. 1891; amd. Sec. 3829, Pol. C. 1895; re-en. Sec. 2602, Rev. C. 1907. Cal. Pol. C. Sec. 3718.

Cited or applied as section 3829, Political Code, in State ex rel. City of Butte v. Johnson, 16 Mont. 570, 573, 41 Pac. 706; Walsh v. Croft, 27 Mont. 407, 408, 71 Pac. 409.

2155. Tax for school purposes. There must be levied by the legislative assembly, at the time other state taxes are levied, a tax of such number of cents of each one hundred dollars value of taxable property in the state as will produce a net sum equal to the amount reported to them by the state auditor, or as may be otherwise ascertained as being necessary to be raised, by an ad valorem tax for school purposes; and the assessment and collection of said tax must be performed in the same manner and at the same time as other state taxes are assessed and collected.

History: En. Sec. 84, p. 105, L. 1891; re-en. Sec. 3830, Pol. C. 1895; re-en. Sec. 2603, Rev. C. 1907. Cal. Pol. C. Sec. 3719.

CHAPTER 172.

DUTIES OF COUNTY CLERK IN RELATION TO TAXES.

Section 2156. County Clerk to Enter Total Valuation.
2157. County Clerk to Prepare Duplicate Statement.
2158. Statement to Be Transmitted to State Auditor and State Board of Equalization.
2159. To Follow Directions of State Board of Equalization.
2160. To Compute and Enter Taxes and Foot Up Total.
2161. Delivery of Duplicate Assessment-Book to Treasurer.
2162. County Clerk to Keep Original.
2163. County Treasurer Charged With Taxes Levied.
2164. County Clerk to Vertify Statements Made by Him.
2165. To Transfer From One Treasurer to Another.
2166. Penalty for Neglect of Duty.
2167. County Commissioners May Dispense With Duplicate Book.
2168. State Board May Dispense With Duplicate.

2156. County clerk to enter total valuation. The county clerk, as soon as he receives the book, must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment-book. The column of acres must show the total acreage of the county.

History: Sec. 2604, Rev. C. 1907. Cal. Pol. C. Sec. 3727.

Note.—Secs. 2156 to 2166 were enacted as Secs. 85 to 95, pp. 105, 107, L. 1891; re-en. as Secs. 3840 to 3850, Pol. C. 1895; appearing as Secs. 2604 to 2614, Rev. C. 1907.

When the assessments have been equalized and the necessary changes made, the clerk must sum up the values of the different kinds of property assessed to each owner, and also the gross amount of all assessments as fixed by the equalizations. State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

Cited or applied as section 3840, Political Code, in State ex rel. City of Butte v. Weston, 29 Mont. 125, 130, 74 Pac. 415.

2157. County clerk to prepare duplicate statement. The county clerk must, on or before the second Monday in August of each year, prepare from the assessment-book of such year, as corrected by the board of county commissioners, duplicate statements, showing in separate columns:

1. The total value of all property;
2. The value of real estate, including mining claims, stated separately;
3. The value of the improvements thereon;
4. The value of personal property, exclusive of money;
5. The amount of money;
6. The number of acres of land, and the number of mining claims, stated separately.

History: Sec. 2605, Rev. C. 1907. See also history of Sec. 2156. Cal. Pol. C. Sec. 3728.

Cited or applied as section 3841, Political Code, in State ex rel. City of Butte v. Weston, 29 Mont. 125, 130, 74 Pac. 415; as section 2605, Revised Codes, State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2158. Statement to be transmitted to state auditor and state board of equalization. The county clerk must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the state board of equalization.

History: Sec. 2606, Rev. C. 1907. See also history of Sec. 2156. Cal. Pol. C. Sec. 3729.

It is the duty of the county clerk to ascertain the gross sum of all assessments and transmit it to the state auditor and the state board of equalization. State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

Referred to as section 3842 of the Political Code in State ex rel. Board of Equalization v. Fortune, 24 Mont. 154, 155, 60 Pac. 1086; State ex rel. City of Butte v. Weston, 29 Mont. 125, 130, 74 Pac. 415.

2159. To follow directions of state board of equalization. As soon as the county clerk receives from the state board of equalization a statement of the changes made by the board in the assessment-book of the county, or in any assessment contained therein, he must make the corresponding changes in the assessment-book, by entering the same in a column provided with a proper heading in the assessment-book, counting any fractional sum, when more than fifty cents, as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must, in all cases, dis-

regard any action of the board of county commissioners which is prohibited by section 2007 of these codes.

History: Sec. 2607, Rev. C. 1907. See also history of Sec. 2156. Cal. Pol. C. Sec. 3730.

When the necessary corrections and additions have been made to it under the direction of the state and county boards of equalization, the clerk must complete the assessment-book by extending the tax so that the amount to be paid by each taxpayer for the year will be made to appear. State ex rel. City of Butte v. Weston, 29 Mont. 125, 130, 74 Pac. 415.

Cited or applied as section 2607, Revised Codes, in State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2160. To compute and enter taxes and foot up total. The county clerk must then compute, and enter in a separate money column in the assessment-book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the column showing the total amount of such taxes, and the columns of total value of property in the county, as corrected under the direction of the state board of equalization.

History: Sec. 2608, Rev. C. 1907. See also history of Sec. 2156. Cal. Pol. C. Sec. 3731.

After the necessary changes have been made and the assessments equalized, it is the duty of the clerk to calculate and extend to the proper column the amount due from each taxpayer for the year, at the combined rates fixed by the county board and the legislature. State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

2161. Delivery of duplicate assessment-book to treasurer. On or before the first Monday of October he must deliver a copy of the corrected assessment-book, to be styled "Duplicate Assessment-Book," to the county treasurer, with an affidavit attached thereto, and by him subscribed, as follows:

"I, ..., county clerk of the county of ....., do swear that I received the assessment-book of the taxable property of the county from the assessor, with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state board of equalization; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and that the copy to which this affidavit is affixed is a full, true, and correct copy thereof, made in the manner prescribed by law."

History: Sec. 2609, Rev. C. 1907. See also history of Sec. 2156. Cal. Pol. C. Sec. 3732.

The affidavit must cover all the facts showing that the county clerk has done his duty in taking the basis furnished by the assessor in entering the authorized corrections and extensions, and in making the copy furnished by him such as is required by law. State ex rel. City of Butte v. Weston, 29 Mont. 125, 132, 74 Pac. 415.

The limit of time during which the annual roll must be completed is provided for by this section. Carlson v. City of Helena, 39 Mont. 82, 103, 102 Pac. 39, 17 Ann. Cas. 1233.

2162. County clerk to keep original. The original assessment-book must remain in the office of the county clerk.

History: Sec. 2610, Rev. C. 1907. See also history of Sec. 2156.

2163. County treasurer charged with taxes levied. On delivering the duplicate assessment-book to the county treasurer, the county clerk must charge the treasurer with the full amount of taxes levied.

History: Sec. 2611, Rev. C. 1907. See also history of Sec. 2156. Cal. Pol. C. Sec. 3734.

2164. County clerk to verify statements made by him. The county clerk must verify, by his affidavit attached thereto, all statements made by him under the provisions of this title.

History: Sec. 2612, Rev. C. 1907. See also history of Sec. 2156. Cal. Pol. C. Sec. 3735.

2165. To transfer from one treasurer to another. The county clerk, if the duplicate assessment-book or the delinquent tax-list is transferred from one collector to another, must credit the one and charge the other with the amount then outstanding on the tax-book.

History: Sec. 2613, Rev. C. 1907. See also history of Sec. 2156. Cal. Pol. C. Sec. 3736.

2166. Penalty for neglect of duty. If the county clerk fails or neglects to perform the duties prescribed by sections 2584 and 2585 (section 2123 of this code), he forfeits to the state five hundred dollars, to be recovered by action in the name of the state.

History: Sec. 2614, Rev. C. 1907. See also history of Sec. 2156.

Note.—The sections above referred to have been repealed. See section 2123 of this code.

2167. County commissioners may dispense with duplicate book. The board of county commissioners of any county may, in its discretion, dispense with the making or use of any duplicate assessment-book mentioned in any part of this code; and in all cases where said duplicate assessment-book is referred to, it is lawful to use and consider the original assessment-book in all the requirements of every part of this code referring to the same, and all affidavits or other statements in reference to said duplicate assessment-book must be substantially worded to conform to the use of the original assessment-book.

History: En. Sec. 3851, Pol. C. 1895; re-en. Sec. 2615, Rev. C. 1907.

This section has no application to the duplicate required for the use of city treasurers; it refers to the duplicate necessary for county uses only. The fact that the county commissioners have dispensed with such duplicate assessment-book does not prevent the county clerk from furnishing a duplicate for a city, though the original is to be used by the county treasurer. State ex rel. City of Butte v. Weston, 29 Mont. 125, 130, 74 Pac. 415.

2168. State board may dispense with duplicate. The state board of equalization may, by an order entered upon its minutes and certified to the county clerk of any county in the state, dispense with the duplicate assessment-book in such county, in which event the original assessment-book must perform all the offices of such duplicate, and must have like force and effect.

History: En. Sec. 4019, Pol. C. 1895; re-en. Sec. 2737, Rev. C. 1907.

CHAPTER 173.

COLLECTION OF PROPERTY TAXES—TAX SALES—REDEMPTION.

Section 2169. Treasurer to Publish Notice of Delinquency.
2170. Manner of Publication of Notice.
2171. Treasurer to Note Date of Payment.
2172. Receipt to Be Given.
2173. Payment of Taxes of Decedents—How Enforced.
2174. Settlement of Treasurer With County Clerk.
2175. When Taxes Become Delinquent—Penalty.
2176. Comparison of Original and Duplicate Assessment-Books by Treasurer and County Clerk.
2177. When Delinquent-List Must Be Completed.
2178. All Matters on Assessment-Book to Be Set Down in Numerical or Alphabetical Order.
2179. Credit to Be Given to Treasurer on Final Statement, etc.
2180. Treasurer Charged With Delinquent Taxes and Ten Per Cent. Additional.
2181. Statement to Be Transmitted to State Auditor by County Clerk.
2182. Publication of Delinquent Tax-List.
2183. Notice of Sale Appended to Delinquent-List.
2184. Manner of Making Publication.
2185. Time and Place of Sale to Be Designated.
2186. Time and Place of Sale.
2187. Copy of Publication and Affidavit to Be Filed With the County Clerk.
2188. Additional Sum Collected to Defray Costs.
2189. Manner of Conducting Sale.
2190. Postponement.
2191. Designations of Portions to Be Sold—Purchase of Least Quantity or Interest—Sale to County.
2192. Resale When Purchaser Does Not Make Payment.
2193. Bid of Person Once Refusing to Make Payment Not to Be Received.
2194. Treasurer to Give Purchaser a Duplicate Certificate of Sale.
2195. Signature of Certificate of Sale, and Disposition of Copies.
2196. Treasurer to Enter in a Book Description of Land Sold.
2197. Lien of State When Vests in Purchaser—How Alone Divested.
2198. Postponement Delinquent Tax Sales, 1921.
2199. Publication Notice of Postponement.
2200. Remission of Penalty 1920 Taxes—Claims for Refund.
2201. Time of Redemption of Property.
2202. Redemption to Be Made in Lawful Money—Credit to Be Given to Whom.
2203. Treasurer's Report of Persons Entitled to Redemption and Amount Due Each.
2204. Clerk to File and Enter Certificate of Sale.
2205. When Property Is Redeemed, Clerk to Note It in Book.
2206. Treasurer's Deed When Property Is Not Redeemed in Time—Charges for Making and Acknowledgment.
2207. Assignment of Rights of County in Property Acquired at Sale—Form of Certificate.
2208. To What Sales Preceding Section Applicable—Rights of Holder of Certificate.
2209. Notice of Application for Tax Deed.
2210. Redemption From Tax Sales.
2211. Redemption From Tax Sale or Payment of Tax by Incumbrancer.
2212. No Deed to Issue Under Certain Circumstances.
2213. Form of Tax Deed—Deed Prima Facie Evidence of What.
2214. Of What Deed Is Evidence—Actions to Annul.
2215. Title Conveyed by Deed.
2216. Assessment-Books, Delinquent-Books, etc., Prima Facie Evidence of What.
2217. Comparison of Delinquent List With Unpaid Assessment.
2218. Oath Administered to Treasurer.
2219. Final Settlement of Treasurer With Clerk.
2220. Treasurer's Affidavit Indorsed on List.
2221. Rate of Interest on Delinquent Taxes.
2222. Taxes, etc., Illegally Collected, to Be Refunded.
2223. When Property Assessed More Than Once.

2224. Land Irregularly Assessed, etc., Not to Be Sold.
2225. When Mistakes Do Not Affect Sale of Property for Taxes.
2226. Collection of Taxes From Persons Assessed, But Removed to Another County.
2227. Evidence on Trial of Suit for Such Taxes.
2228. Allowance and Payment of Expense of Such Proceeding.
2229. Protest Against Sale Requisite, When Assessment Void in Part, to Invalidate Sale or Grant Thereunder.
2230. Duty of Treasurer on Delivery of Such Protest.
2231. Assessment of Property Purchased by County and Adjournment of Sale Thereof.
2232. No Sale Unless Directed by Board of County Commissioners.
2233. Conditions of Redemption of Property Sold to County.
2234. Distribution of Such Redemption Moneys, Accounts, etc.
2235. Sale of Unredeemed Property by County Commissioners.
2236. Suspension of Taxes on Property Owned by Persons in Military or Naval Service.
2237. Affidavit to Be Filed With County Treasurer.

2169. Treasurer to publish notice of delinquency. Within ten days after the receipt of the duplicate assessment-book, the county treasurer must publish a notice specifying:

1. That taxes will be delinquent on the thirtieth day of November next thereafter, at six o'clock p. m., and that unless paid prior thereto, ten per cent. will be added to the amount thereof.

2. The time and place at which payment of taxes may be made; and he must send to the last known address of each taxpayer a post card, or other written notice, postage prepaid, showing the amount of taxes due the current year, and the amount due and delinquent for other years; but any failure to give either notice will not affect the legality of the tax.

History: Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917. Cal. Pol. C. Sec. 3746.

2170. Manner of publication of notice. The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his libalities.

History: En. Sec. 3861, Pol C. 1895; re-en. Sec. 2617, Rev. C. 1907. Cal. Pol. C. Sec. 3749.

2171. Treasurer to note date of payment. The county treasurer must mark the date of the payment of any tax in the assessment-book, opposite the name of the person paying.

History: En. Sec. 3862, Pol. C. 1895; re-en. Sec. 2618, Rev. C. 1907. Cal. Pol. C. Sec. 3750.

2172. Receipt to be given. He must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

Note.—Sections 2170 to 2187 (except as otherwise noted) were enacted as sections 97 to 112, pp. 108 to 110, Laws of 1891; re-enacted as sections 3862 to 3878, Political Code, 1895; appearing as sections 2619 to 2634, Revised Codes 1907.

History: Sec. 2619, Rev. C. 1907. Cal. Pol. C. Sec. 3751.

2173. Payment of taxes of decedents—How enforced. The district court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree

for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

History: Sec. 2620, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3752.

2174. Settlement of treasurer with county clerk. On the first Monday in March, June, and September, and the second Monday in December, the county treasurer must settle with the board of county commissioners for all moneys collected for the state or county, and on the said day must deliver to and file in the office of the county clerk a statement, under oath, showing:

1. An account of all his transactions and receipts since his last settlement;

2. That all money collected by him is in the county treasury.

History: Sec. 2621, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3753.

2175. When taxes becomes delinquent—Penalty. On the thirtieth day of November of each year, at six o'clock p. m., all unpaid taxes are delinquent, and thereafter the county treasurer must collect, for the use of the county, an addition of ten per cent.

History: En. Sec. 100, p. 108, L. 1891; amd. Sec. 3866, Pol. C. 1895. amd. Sec. 2, p. 98, L. 1899; re-en. Sec. 2622, Rev. C. 1907. Cal. Pol. C. Sec. 3756.

2176. Comparison of original and duplicate assessment-books by treasurer and county clerk. On the third Monday of December of each year the county treasurer must attend at the office of the county clerk with the duplicate assessment-book, and carefully compare the duplicate with the original assessment-book, and every item marked "paid" in the former must be marked "paid" in the latter.

History: Sec. 2623, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3758.

2177. When delinquent-list must be completed. The county treasurer must, at the time specified in the preceding section, deliver to the county clerk a complete delinquent-list of all persons and property then owing taxes.

History: Sec. 2624, Rev. C. 1907. See also history of Sec. 2172.

2178. All matters on assessment-book to be set down in numerical or alphabetical order. In the list so delivered must be set down, in numerical or alphabetical order, all matters and things contained in the assessment-book and relating to delinquent persons or property.

History: Sec. 2625, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3760.

2179. Credit to be given to treasurer on final statement, etc. The county clerk must carefully compare the list with the assessment-book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the county treasurer who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment-book, and must require from him an immediate account for any existing deficiency.

History: Sec. 2626, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3761.

2180. Treasurer charged with delinquent taxes and ten per cent. additional. After settlement with the county treasurer, as prescribed in the preceding section, the county clerk must charge the treasurer then acting with the amount of taxes due on the delinquent tax-list, with the ten per cent. added thereto, and within three days thereafter deliver the list, duly certified, to such county treasurer.

History: Sec. 2627, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3762.

2181. Statement to be transmitted to state auditor by county clerk. Within ten days after the final settlement, the county clerk must transmit, by mail, a statement to the state auditor, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

History: Sec. 2628, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3763.

2182. Publication of delinquent tax-list. On or before the last Monday of each year the county treasurer must publish the delinquent real estate and personal tax-list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes and costs due, opposite each name and description, with the taxes due on personal property added to the taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person; and he shall likewise publish, as a part thereof and attach thereto, but grouped together and following the foregoing, all personal taxes due and delinquent and owing from persons who are assessed with personal property alone and no real estate, and the amount of delinquent tax due from each person owing the same, placed opposite to the name of each such person. The expenses of such publication shall be a charge against the county.

History: En. Sec. 107, p. 110, L. 1891; amd. Sec. 3873, Pol. C. 1895; amd. Sec. 1, p. 142, L. 1901; re-en. Sec. 2629, Rev. C. 1907. Cal. Pol. C. Sec. 3764.

Sale of land for nonpayment of taxes is discussed in 26 R. C. L. 393.

2183. Notice of sale appended to delinquent-list. The county treasurer must publish with the delinquent tax-list a notice that unless the taxes delinquent, together with the costs and percentage, are paid, the real property upon which such taxes are a lien will be sold at public auction.

History: Sec. 2630, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3765.

Although the statute requires the treasurer to publish the delinquent tax-list notice, it must be published in such newspaper as the board of county commissioners directs. This is a part of the county printing, which must be arranged for by the board. Where the finding discloses that at the time the notice was published there was in existence a contract between the paper in which the notice was published and the county, made pursuant to the statutes of the state, its execution may be treated as an absolute direction to the treasurer to publish the notice in that paper. Conklin v. Cullen, 29 Mont. 38, 44, 74 Pac. 72.

2184. Manner of making publication. The publication must be made once a week for three successive weeks in such newspaper published in the county as the board of county commissioners directs. If there is no news-

paper published in the county, then by posting a copy of the list in three public places.

History: Sec. 2631, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3766.

Where a notice of sale for delinquent taxes was published December 30, 1895, and January 6 and 13, 1896, and the sale took place January 27, 1896, the publication was for a sufficient time. This section does not require the commissioners to designate a paper for publication, but to direct the publication to be made in a certain paper. Conklin v. Cullen, 29 Mont. 38, 43, 44, 74 Pac. 72.

2185. Time and place of sale to be designated. The publication must designate the time and place of sale.

History: Sec. 2632, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3767.

2186. Time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be in front of the county treasurer's office.

History: Sec. 2633, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3767.

Cited and applied as section 3877, Political Code, in Conklin v. Cullen, 29 Mont. 38, 44, 74 Pac. 72.

2187. Copy of publication and affidavit to be filed with the county clerk. The county treasurer, as soon as he has made the publication required by the preceding sections, must file with the county clerk a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places, designating the places therein, which affidavit is prima facie evidence of all the facts stated therein.

History: Sec. 2634, Rev. C. 1907. See also history of Sec. 2172. Cal. Pol. C. Sec. 3769.

2188. Additional sum collected to defray costs. The county treasurer must collect, in addition to the taxes due on the delinquent list and ten per centum added thereto, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property, which must be paid to the county to pay the cost of such publication.

History: Ap. p. Sec. 1730, 5th Div. Comp. Stat. 1887; amd. Sec. 34, p. 95; ex. L. 1887; amd. Sec. 3879, Pol. C. 1895; re-en. Sec. 2635, Rev. C. 1907. Cal. Pol. C. Sec. 3770.

2189. Manner of conducting sale. On the day fixed for sale, or on some subsequent day to which he may have postponed it, of which he must give notice, the county treasurer, between the hours of ten o'clock a. m. and three p. m., must commence the sale of the property advertised, commencing at the head of the list, and continuing in alphabetical or numerical order of lots and blocks until completed.

History: Ap. p. Sec. 1732, 5th Div. Comp. Stat. 1887; amd. Sec. 36, p. 96, Ex. L. 1887; amd. Sec. 113, p. 111, L. 1891; amd. Sec. 3880, Pol. C. 1895; re-en. Sec. 2636, Rev. C. 1907.

2190. Postponement. He may postpone the day of commencing the sale from day to day; but the sale must be completed within three weeks from the day first fixed.

History: En. Sec. 114, p. 111, L. 1891; re-en. Sec. 3881, Pol. C. 1895; re-en. Sec. 2637, Rev. C. 1907.

2191. Designations of portions to be sold—Purchase of least quantity or interest—Sale to county. The owner or person in possession of any real estate offered for sale for taxes due thereon, may designate in writing to the county treasurer, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the treasurer may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the portion of the interest, and pay the taxes and costs due, including fifty cents to the treasurer for the duplicate certificate of sale, is the purchaser. But in case there is no purchaser in good faith for the same, as provided in this chapter, on the first day that the property is offered for sale, then when the property is offered thereafter for sale and there is no purchaser in good faith for the same, the whole amount of the property assessed must be struck off to the county as the purchaser, and the duplicate certificate delivered to the county treasurer and filed by him in his office. No charge must be made for the duplicate certificate when the county is a purchaser; and in such case the county treasurer must make an entry, "Sold to the County," on the duplicate assessment-book opposite the tax, and he must be credited with the amount thereof in the settlement.

Note.—Sections 2191 to 2197 were enacted as sections 115 to 121, pp. 111, 112, Laws of 1891; re-enacted as sections 3882 to 3888, Political Code, 1895; appearing as sections 2638 to 2644, Revised Codes 1907.

History: Sec. 2638, Rev. C. 1907.

A tax deed, showing on its face that it was based on a sale en masse of several non-contiguous parcels, was void. Casey v. Wright, 14 Mont. 315, 319, 36 Pac. 191; North Real Estate, Loan etc. Co. v. Billings L. & T. Co., 36 Mont. 356, 367, 93 Pac. 40; Cullen v. Western Mtg. & W. Title Co., 47 Mont. 513, 526, 134 Pac. 302; Horsky v. McKennan, 53 Mont. 50, 60, 162 Pac. 376. The doctrine laid down in these cases was approved in Lindeman v. Pinson, 54 Mont. 466, 470, 171, Pac. 271.

This section prohibits the county from becoming a competitive bidder at the sale of property for delinquent taxes, and it can only acquire it when there is no other purchaser in good faith; and the recitals in the deed must show the right of the county to take the property, and that it did not enter the lists as a competitive bidder for the same, otherwise the deed is void. The county cannot purchase lands at a tax sale unless authorized to do so by statute, and a strict compliance with the statute must be had before the title of the owner can be divested. Rush v. Lewis and Clark County, 36 Mont. 566, 569, 93 Pac. 943.

A statement in a deed conveying land sold to a county for taxes, that the property was offered for sale "in accordance with law," being merely a conclusion of law, imparts no validity to the deed if the recitals therein show that the sale was had at public auction at which the county was a competitive bidder. Rush v. Lewis and Clark County, 37 Mont. 240, 242, 95 Pac. 836.

2192. Resale when purchaser does not make payment. If the purchaser does not pay the tax and costs before ten o'clock p. m. of the following day, the property, on the next sale day before the regular sale, must be resold for taxes and costs.

History: Sec. 2639, Rev. C. 1907. See also history of Sec. 2191.

2193. Bid of person once refusing to make payment not to be received. The bid of any person refusing to make the payment for the property purchased by him must not be received on the sale of any property advertised in the delinquent tax-list of that year.

History: Sec. 2640, Rev. C. 1907. See also history of Sec. 2191.

2194. Treasurer to give purchaser a duplicate certificate of sale. After receiving the amount of taxes and costs, the treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and the year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

History: Sec. 2641, Rev. C. 1907. See also history of Sec. 2191. Cal. Pol. C. Sec. 3776.

Where from recitals in a tax deed the year of the assessment was made apparent indirectly, the fact that it contained no direct statement imparting such information did not render the deed void. Cullen v. Western etc. Title Co., 47 Mont. 513, 525, 134 Pac. 302.

2195. Signature of certificate of sale, and disposition of copies. The certificate must be signed by the county treasurer, and one copy delivered to the purchaser and the other filed in the office of the county clerk.

History: Sec. 2642, Rev. C. 1907. See also history of Sec. 2191.

2196. Treasurer to enter in a book description of land sold. The county treasurer, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours when not in actual use.

History: Sec: 2643, Rev. C. 1907. See also history of Sec. 2191.

2197. Lien of state when vests in purchaser—How alone divested. On filing the certificate with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and one per cent. additional for each month that elapses from the date of the sale until redeemed.

Hisotry: Sec. 2644, Rev. C. 1907. See also history of Sec. 2191.

2198. Postponement delinquent tax sales 1921. No property upon which taxes of any sort have been levied in the state of Montana for the year 1920 shall be sold for such delinquent taxes until the first day of October, 1921.

History: En. Sec. 1, Ch. 2, L. 1921.

2199. Publication notice of postponement. All county and city treasurers are required to publish a notice for three consecutive weeks in the official newspapers in their respective counties or cities to the effect that the time of such tax sale in their respective counties or cities is postponed until the first day of October, 1921, and all existing laws of the state relative to the place and manner of sale of property for delinquent taxes shall apply to and cover said tax sales made on said date.

History: En. Sec. 2, Ch. 2, L. 1921.

2200. Remission of penalty 1920 taxes—Claims for refund. That the penalty of ten per cent. heretofore added to all taxes delinquent for the

year 1920 is hereby remitted until the first day of October, 1921, at which time such penalty shall be added to all such taxes then remaining unpaid; provided, that in all cases where such penalty has been paid on taxes delinquent for the year 1920, such penalty shall be refunded by the board of county commissioners, or the city council, as the case may be, upon claims filed therefor in the same manner as other claims are filed, as required by law; provided, further, that no such claim for refund shall be allowed on any claims filed after June 1, 1921; provided, further, that all delinquent taxes for the year 1920 shall bear interest at the rate of one per cent. per month from November 30, 1920, until paid.

History: En. Sec. 3, Ch. 2, L. 1921.

2201. Time of redemption of property. A redemption of the property sold may be made by the owner, or any party interested, within thirty-six months from the date of the purchase, or at any time prior to the giving of the notice and the application for a deed, as provided for in this act.

History: En. Sec. 122, p. 113, L. 1891; amd. Sec. 3889, Pol. C. 1895; re-en. Sec. 2645, Rev. C. 1907. Cal. Pol. C. Sec. 3780.

Authorities on redemption from tax sales are collected in 26 R. C. L. 393.

Scope and import of term "owner" in statutes declaring who may redeem from tax sales, see note in 2 A. L. R. 792.

First and last days in computing time for redemption from tax sales, see note in 49 L. R. A. 237.

Sufficiency of notice with respect to expiration of time to redeem from tax sale, see note in Ann. Cas. 1917A, 243.

2202. Redemption to be made in lawful money—Credit to be given to whom. Redemption must be made in lawful money, and when paid to the county treasurer, he must credit the amount paid to the person named in the county treasurer's certificate, and pay it on demand to the person or his assignees.

Note.—Sections 2202 to 2206 were enacted as sections 123 to 127, p. 113, Laws of 1891; re-enacted as sections 3890 to 3894, Political Code 1895; appearing as sections 2646 to 2650, Revised Codes 1907.

History: Sec. 2646 Rev. C. 1907. Cal. Pol. C. Sec. 3781.

Effect of tender of redemption money, see note in 20 L. R. A. 491.

2203. Treasurer's report of persons entitled to redemption and amount due each. In each report the treasurer makes to the board of county commissioners he must name the persons entitled to redemption money, and the amount due to each.

History: Sec. 2647, Rev. C. 1907. See also history of Sec. 2202.

2204. Clerk to file and enter certificate of sale. On receiving the certificate of sale, the county clerk must file it and make an entry in a book similar to that required of the treasurer.

History: Sec. 2648, Rev. C. 1907. See also history of Sec. 2202.

2205. When property is redeemed, clerk to note it in book. On the presentation of the receipt of the person named in the certificate or of the county treasurer for his use, of the total amount of redemption money, the county clerk must mark the word "redeemed," the date, and by whom redeemed, on the certificate and in the margin of the book where the entry of the certificate is made.

History: Sec. 2649, Rev. C. 1907.

2206. Treasurer's deed when property is not redeemed in time—Charges for making and acknowledgment. If the property is not redeemed in the time allowed by law for its redemption, the county treasurer, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. The county treasurer is entitled to receive from the purchaser, for the use of the county, three dollars for making such deed. No charge must be made by the county treasurer for the making of any such deed where the county is the purchaser; and the acknowledgment of all such deeds, as provided in section 2191, must be taken by the county clerk free of charge.

History: Sec. 2650, Rev. C. 1907. Cal. Pol. C. Sec. 3785.

2207. Assignment of rights of county in property acquired at sale—Form of certificate. At any time after any parcel of land has been bid in by the county as the purchaser thereof for taxes, as provided in section 2191, the same not having been redeemed, the county treasurer shall assign all the right of the county therein, acquired at such sale, to any person who shall pay the amount for which the same was bid in, with interest thereon at the rate of one per cent. per month, and the amount of all subsequent delinquent taxes, penalties, costs, and interest, as provided by law, upon the same from time to time when such tax became delinquent. He shall execute to such person a certificate for such parcel, which may be substantially in the following form:

I, ..., the treasurer of the county of..... state of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19...., in the county of ....., and which sale was held on the ..... day of ....., 19...., for the purpose of liquidating said assessment, the following described parcel of land, situate in said county of ....., state of Montana, to-wit, (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law on the first day the property was offered for sale; and thereafter, on the.....day of....., 19..., I again offered said property for sale at the place advertised for such sale, and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid, the whole amount of the property assessed and described as above was struck off to the county of.....as the purchaser thereof for the sum of....., and the same still remaining unredeemed, and on this day ..... having paid into the treasury of said county the amount for which the same was bid in, together with all subsequent delinquent taxes, penalties, costs, and interest, amounting in all to ..... dollars;

Now, therefore, in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title and interest of the county of ....., state of Montana, acquired in said lands under and by virtue of said sale, to the said ....., his heirs and assigns, forever, together with all the rights, powers, and privileges of the said county of.....

to take steps to receive a deed thereof, or receive payment in case of a redemption, subject, however, to redemption as provided by law.

Witness my hand and official seal of office this ..... day of ....., 19.....

.....

County Treasurer.

History: En. Sec. 1, Ch. 151, L. 1917.

2208. To what sales preceding section applicable—Rights of holder of certificate. The provisions of this act shall apply to any sales of land for which a treasurer's deed shall not at the time of the passage hereof have actually issued, regardless of whether the sale shall have been made at any date heretofore, as well as to future sales for recovery of taxes; and the holder of any such certificate shall therefore have the same rights, powers, and privileges with regard to securing a deed as any purchaser of lands at tax sale may now have.

History: En. Sec. 2, Ch. 151, L. 1917.

2209. Notice of application for tax deed. The purchaser of property sold for delinquent taxes or his assignee, must, thirty days, previous to the expiration of the time for redemption, or thirty days before he applies for a deed, serve upon the owner of the property purchased, if known, and upon the person occupying the property, if said property is occupied, and, if the records in the office of the county clerk and recorder show an unreleased mortgage or mortgages upon the property purchased, upon the mortgagee or mortgagees named in said mortgage or mortgages or, if assigned, upon the assignee or assignees of said mortgage or mortgages, a written notice, stating that said property, or a portion thereof, has been sold for delinquent taxes, giving the date of sale, the amount of property sold, the amount for which it was sold, the amount due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property, or the mortgagee, or the assignee of said mortgagee has the right of redemption indefinitely until such notice has been given and the deed applied for, upon the payment of fees, percentages, penalties and costs required by law. Notice to any owner, mortgagee or assignee of mortgagee shall be given by registered letter addressed to such mortgagee or assignee at the postoffice address of said owner, mortgagee or assignee as disclosed by the mortgage records in the office of the county clerk and recorder. In case of unoccupied property, or a mining claim, such notice must be posted in a conspicuous place upon the property, and personally served upon all owners thereof residing in the county where the property is situated, and deposited in the postoffice addressed to any known owner residing outside of said county with the postage thereon prepaid, at least thirty days before the expiration of the time for redemption, or thirty days before the purchaser applies for such tax deed, in addition to notice to the mortgagee or assignee of mortgagee in the manner, and as hereby is provided; provided, that in all cases where the postoffice address of the owner, mortgagee, or assignee is unknown, the applicant shall publish once a week for two successive weeks in a newspaper published in the county where the property is situated, a notice substantially in the following form:

Notice of Application for Tax Deed.

Notice is hereby given that the undersigned will on the ..... day of....., 19...., apply to the county treasurer of ..... county for a tax deed to the following described property, to-wit:

(Describe property)

Amount due $.....

Date .....

.....

Applicant.

The first publication of such notice must be made at least thirty days before the date of redemption or application for said deed. In all cases due proof of service of notice in whatever manner given, supported by the affidavit required by law, must be filed immediately with the clerk and recorder of the county in which the property is situated, and be kept as a permanent file in his office, and such proof of notice when so filed shall be prima facie evidence of the sufficiency of the notice.

History: En. Sec. 128, p. 114, L. 1891; amd. Sec. 3895, Pol. C. 1895; amd. Sec. 1, Ch. 79, L. 1905; re-en. Sec. 2651, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1917; amd. Sec. 1, Ch. 87, L. 1921.

Provisions similar in character to those contained in this section and section 2212 are a limitation upon the power of the treasurer to issue the tax deed, and render void any deed issued by him without requiring a compliance with them. The affidavit in particular is the basis upon which the treasurer is to act, and the conditions from which his power to issue the deed arises must appear by the affidavit. Cullen v. Western Mortgage & Warranty Title Co., 47 Mont. 513, 527, 134 Pac. 302.

Cited or applied as section 2651, Revised Codes, before amendment, in Horsky v. McKennan, 53 Mont. 50, 58, 162 Pac. 376.

General principles governing tax deeds are set forth in 26 R. C. L. 418.

2210. Redemption from tax sales. In all cases where real estate has been sold for delinquent taxes the purchaser at such tax sale, or his assignee, may, subsequent thereto, pay the subsequent taxes assessed against said land, and upon the redemption of said land from such tax sale, the redemptioner shall, in addition to the amount for which the said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser at such tax sale, or his assignee, with interest thereon at the rate of twelve per cent. per annum from the date of the payment of such taxes, and in all notices of application for tax deed the applicant shall state, in addition to the amount paid at the tax sale, the amount of subsequent taxes paid by the applicant or his assignee upon such land, with interest thereon at the rate of twelve per cent. per annum from the date of such payment, and no redemption shall be made until the amount of such sale, with interest, and such subsequent taxes and interest shall have been paid by the person seeking to redeem such lands.

History: En. Sec. 1, Ch. 98, L. 1913.

2211. Redemption from tax sale or payment of tax by incumbrancer. Whenever any person or corporation shall desire to redeem from a tax sale, or to pay any tax upon any lot, piece, or parcel of real estate which said person or corporation shall own or hold a mortgage or other lien against, or have any interest in, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such

redemption or payment; and in case the said real estate shall have been assessed or sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of the said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, or upon which the taxes are sought to be paid, if the same had been separately assessed. Any personal tax which is a lien upon said real estate shall be likewise computed and apportioned, and upon the payment of the amount ascertained by said computation and apportionment to the said county treasurer, such real estate shall be discharged from the lien of all taxes levied and assessed against the same for the year in which the payment or redemption was made.

History: En. Sec. 1, Ch. 91, L. 1915; amd. Sec. 1, Ch. 73, L. 1919.

2212. No deed to issue under certain circumstances. No deed of the property sold at a delinquent tax sale must be issued by the county treasurer, or any other officer, to the purchaser of the property, until after such purchaser shall have filed with the treasurer, or other officer, an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit must be filed by the treasurer as other files, papers, and records kept by him in his office. Such purchaser is entitled to receive the sum of three dollars for the service of said notice and the making of said affidavit; which sum of three dollars must be paid by the redemptioner at the same time and in the same manner as other costs, percentages, penalties, and fees are paid.

History; En. Sec. 129, p. 114, L. 1891; re-en. Sec. 3896, Pol. C. 1895; re-en. Sec. 2652, Rev. C. 1907.

A tax deed is not even prima facie evidence that the holding of the certificate had, thirty days before applying for such deed, given the written notice in the manner required by this and the preceding section, prior to the amendment of the latter, of his intention to make such application. Cullen v. Western etc. Title Co., 47 Mont. 513, 527, 134 Pac. 302; Horsky v. McKennan, 53 Mont. 50, 58, 162 Pac. 376.

The reception of tax deeds in evidence, without proof of the fact that the holder of the certificates of purchase gave the thirty-day notice of his intention to apply for the deeds, was error. Horsky v. McKennan, 53 Mont. 50, 58, 162 Pac. 376.

2213. Form of tax deed—Deed prima facie evidence of what. The form of a tax deed of an estate in real property, executed by a county treasurer, may be made in substance as follows:

This indenture, made by and between.....(insert name of treasurer), county treasurer of the county of ..... (insert name of county), in the state of Montana, the party of the first part, and ..... (insert name of grantee), the party of the second part, Witnesseth:

Whereas, there was assessed for the year ..... (insert year), in the name of ..... (insert name), that certain tract of land hereinafter described, and the taxes for said year levied against said property amounted to the sum of ..... (insert amount) dollars; and

Whereas, said taxes were not paid and said property was sold for the payment of said taxes to ..... (insert name of grantee), on the ..... (insert day) of ..... (insert month), A. D. ..... (insert year), for the sum of ..... (insert

amount) dollars, and certificates of sale were duly issued and filed as required by law; and

Whereas, no redemption from said sale has been made, and the said grantee has given the necessary notice of application for tax deed as required by law;

Now, therefore, I, ... (insert name of treasurer), county treasurer of the county of ..... (insert name of county), in the state of Montana, for and in consideration of the sum of ..... (insert amount) dollars paid, do grant to ..... (insert name of grantee), all the property situated in ..... (insert name of county) county, state of Montana, described as follows: ..... (here insert description of the land sold for taxes and sought to be conveyed).

Witness my hand this ..... (insert day) day of ..... (insert month), A. D..... (insert year).

.....
County treasurer of ..... county,
state of Montana.

A tax deed executed in the form as provided in this section, when duly acknowledged and proved, is prima facie evidence that:

1. The property was assessed as required by law.
2. The property was equalized as required by law.
3. The taxes were levied in accordance with law.
4. The taxes were not paid.
5. That notice of tax sale was given and published, and property sold at the proper time and place as prescribed by law.
6. The property was not redeemed, and that the proper notice of application for deed has been served or posted as required by law.
7. The person who executed the deed was the proper officer.
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

History: Ap. p. Sec. 1748, 5th Div. Comp. Stat. 1887; amd. Sec. 130, p. 115, L. 1891; re-en. Sec. 3897, Pol. C. 1895; re-en. Sec. 2653, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1919. Cal. Pol. C. Sec. 3786.

Where a tax deed shows on its face that it is void because the county was a competitive bidder at the sale, a grantee of the county cannot rely upon the presumption that official duty has been regularly performed, or that the property was sold as prescribed by law. Rush v. Lewis and Clark County, 36 Mont. 566, 570, 93 Pac. 943.

Cited or applied as section 2653, Revised Codes, before amendment, in Cullen v. Western Mortgage & Warranty Title Co., 47 Mont. 513, 523, 134 Pac. 302.

Effect of recitals in tax deed, see note in 31 A. S. R. 233.

2214. Of what deed is evidence—Actions to annul. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed, and no action can be maintained to set aside or annul a tax deed upon any ground whatever, unless the action is commenced within two years from and after the date of issuance of such tax deed; provided, that any existing right of action to set aside or annul any tax deed, heretofore issued, shall be barred unless

instituted within two years from and after the passage and approval of this act.

History: En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909. Cal. Pol. C. Sec. 3787.

When land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to render it void or voidable, such mistake being in the nature of an informality or irregularity only. Cullen v. Western Mortgage & Warranty Title Co., 47 Mont. 513, 523, 134 Pac. 302.

The clause of this section, making a tax deed conclusive evidence of all proceedings leading up to its execution, refors to acts and proceedings required at the hands of the officers charged with duties in relation to assessment and taxation, and not to something necessary to be done by the applicant for the deed. Cullen v. Western Mortgage & Warranty Title Co., 47 Mont. 513, 527, 134 Pac. 302.

This section is a statute of limitations, and must be pleaded in the answer by one seeking to take advantage of it. Cullen v. Western Mortgage & Warranty Title Co., 47 Mont. 513, 528, 134 Pac. 302.

Where the sole aim of an action is to do away with a tax deed as a claim of title adverse to the plaintiff, it is an action "to set aside or annul" a tax deed so as to make the provision of this section applicable, even though it may be termed one to quiet title. Cullen v. Western Mortgage & Warranty Title Co., 47 Mont. 513, 529, 134 Pac. 302.

As this section presupposes the issuance of a valid instrument, a tax deed which is void on its face, and therefore not a deed but a nullity, does not come within the purview of its provisions. Horsky v. McKennan, 53 Mont. 50, 64, 162 Pac. 376; Lindeman v. Pinson, 54 Mont. 466, 471, 171 Pac. 271.

Power of legislature to make tax deeds conclusive, see note 4 A. S. R. 187.

2215. Title conveyed by deed. The deed conveys to the grantee the absolute title to the lands described therein, as of the date of the expiration of the period for redemption, free of all incumbrances, except the lien for taxes which may have attached subsequent to the sale, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession, accrued as of the date of the expiration of such period for redemption.

History: En. Sec. 132, p. 115, L. 1891; re-en. Sec. 3899, Pol. C. 1895; re-en. Sec. 2655, Rev. C. 1907. Cal. Pol. C. Sec. 3788.

2216. Assessment-books, delinquent-books, etc., prima facie evidence of what. The assessment-book, duplicate assessment-book, or delinquent-list, or a copy thereof certified by the county clerk, showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of such taxes have been complied with.

History: En. Sec. 133, p. 115, L. 1891; re-en. Sec. 3900, Pol. C. 1895; re-en. Sec. 2656, Rev. C. of 1907. Cal. Pol. C. Sec. 3789.

2217. Comparison of delinquent-list with unpaid assessment. The county treasurer must annually, on the third Monday of February, attend at the office of the county clerk with the delinquent-list, and the county clerk must then carefully compare the lists with the assessments of persons and property not marked "paid" on the assessment-book, and when taxes have been paid he must note the fact in the appropriate column in the assessment-book.

History: En. Sec. 141, p. 116, L. 1891; re-en. Sec. 3908, Pol. C. 1895; re-en. Sec. 2664, Rev. C. 1907.

2218. Oath administered to treasurer. The county clerk must then administer to the county treasurer an oath, to be written and subscribed in the delinquent-list, that every person and all property assessed in the delinquent-list on which taxes have been paid has been credited in the list with such payment.

History: En. Sec. 142, p. 117, L. 1891; re-en. Sec. 3909, Pol. C. 1895; re-en. Sec. 2665, Rev. C. 1907. Cal. Pol. C. Sec. 3798.

2219. Final settlement of treasurer with clerk. The county clerk must then foot up the amount of taxes remaining unpaid, and credit the treasurer with the amount, and have a final settlement with him; and the delinquent-list must remain in the county clerk's office.

History: En. Sec. 143, p. 117, L. 1891; re-en. Sec. 3910, Pol. C. 1895; re-en. Sec. 2666, Rev. C. 1907. Cal. Pol. C. Sec. 3799.

2220. Treasurer's affidavit indorsed on list. At the time mentioned in section 2217 the treasurer must make an affidavit, indorsed on the list, that the taxes not marked "paid" have not been paid, and that he has not been able to discover any property belonging to or in possession of the persons liable to pay the sum whereof to collect them.

History: En. Sec. 144, p. 117, L. 1891; re-en. Sec. 3911, Pol. C. 1895; re-en. Sec. 2667, Rev. C. 1907. Cal. Pol. C. Sec. 3800.

2221. Rate of interest on delinquent taxes. Interest at the rate of one per cent. per month must be collected on such delinquent taxes from the time they were first delinquent until paid.

History: En. Sec. 3912, Pol. C. 1895; re-en. Sec. 2668, Rev. C. 1907.

2222. Taxes, etc., illegally collected, to be refunded. Any taxes, per centum, and costs paid more than once or erroneously or illegally collected, may, by order of the board of county commissioners, be refunded by the county treasurer, and the state's portion of such tax, percentage, and costs must be refunded to the county, and the state auditor must draw his warrant therefor in favor of the county.

History: En. Sec. 145, p. 117, L. 1891; re-en. Sec. 3913, Pol. C. 1895; re-en. Sec. 2669, Rev. C. 1907. Cal. Pol. C. Sec. 3804.

Cited and construed as section 2669, Revised Codes, in Anaconda Copper Min. Co. v. Ravalli, 52 Mont. 422, 426, 158 Pac. 682.

Recovery by taxpayer of taxes paid, see notes in 22 Am. Dec. 519; 45 Am. Dec. 164; 94 A. S. R. 425.

2223. When property assessed more than once. When the treasurer discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due and make return of the facts, under affidavit, to the county clerk.

History: En. Sec. 146, p. 117, L. 1891; re-en. Sec. 3914, Pol. C. 1895; re-en. Sec. 2670, Rev. C. 1907. Cal. Pol. C. Sec. 3805.

The provisions contained in the two preceding sections, and others of like import, are intended to secure the collection of lawful revenue, and to protect the owner whose property is made to bear more than its just proportion of the burden of taxation, and were not enacted to secure immunity from taxation to any one. Anaconda Copper Min. Co. v. Ravalli, 52 Mont. 422, 426, 158 Pac. 682.

2224. Land irregularly assessed, etc., not to be sold. If the treasurer discovers before the sale that on account of irregular assessment, or of any other assessment, any land ought not to be sold, he must not offer

the land for sale, and the board of county commissioners must cause the assessor to enter the uncollected taxes upon the assessment-book of the next succeeding year, to be collected as other taxes entered thereon.

History: En. Sec. 147, p. 118, L. 1891; re-en. Sec. 3915, Pol. C. 1895; re-en. Sec. 2671, Rev. C. 1907. Cal. Pol. C. Sec. 3806.

2225. What mistakes do not affect sale of property for taxes. When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof affects the sale or renders it void or voidable.

History: En. Sec. 148, p. 118, L. 1891; re-en. Sec. 3916, Pol. C. 1895; re-en. Sec. 2671, Rev. C. 1907. Cal. Pol. C. Sec. 3807.

This section does not apply to personal property. Birney v. Warren, 28 Mont. 64, 67, 72 Pac. 293.

Where land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to render it void or voidable, such mistake being in the nature of an informality or irregularity only. Cullen v. Western Mortgage & Warranty Title Co., 47 Mont. 513, 524, 134 Pac. 302.

Cited or applied as section 3916, Political Code, in Cobban v. Hinds, 23 Mont. 338, 349, 59 Pac. 1.

Constitutionality and applicability of taxing statutes where sale is irregular, see note in 5 A. L. R. 164.

2226. Collection of taxes from persons assessed, but removed to another county. If any person removes from one county to another after being assessed on personal property, the treasurer of the county in which he was assessed may sue for and collect the same in the name of the county where the assessment was made.

History: En. Sec. 149, p. 118, L. 1891; re-en. Sec. 3917, Pol. C. 1895; re-en. Sec. 2773, Rev. C. 1907. Cal. Pol. C. Sec. 3808.

2227. Evidence on trial of suit for such taxes. On the trial a certified copy of the assessment, signed by the county clerk of the county where the same was made, with the affidavit of the treasurer thereto attached, that the tax has not been paid, describing it as on the assessment-book or delinquent-list, is prima facie evidence that such tax and the per centum are due, and entitles him to judgment, unless the defendant proves that the tax was paid.

History: En. Sec. 150, p. 118, L. 1891; re-en. Sec. 3918, Pol. C. 1895; re-en. Sec. 2674, Rev. C. 1907. Cal. Pol. C. Sec. 3809.

2228. Allowance and payment of expense of such proceeding. The treasurer and county clerk must allow the expenses of collecting such tax, and permit a deduction thereof from the amount collected, if they do not exceed one-third of the amount of the tax collected.

History: En. Sec. 3919, Pol. C. 1895; re-en. Sec. 2675, Rev. C. 1907.

2229. Protest against sale requisite, when assessment void in part, to invalidate sale or grant thereunder. Whenever property is advertised for sale for the non-payment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale must not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, not less than six days before the time at which the property is advertised to be sold, delivers to the treasurer a protest in writing, signed

by the owner or agent, specifying the portion of the tax which he claims to be invalid, and the ground upon which such claim is based.

History: En. Sec. 151, p. 118, L. 1891; re-en. Sec. 3920, Pol. C. 1895; re-en. Sec. 2676, Rev. C. 1907.

2230. Duty of treasurer on delivery of such protest. In case any owner of property advertised to be sold for delinquent taxes, at least six days before the time advertised for the sale to take place, delivers to the county treasurer his protest in writing against such sale, signed by himself or his agent, claiming that the assessment is void in whole or in part, and if in part only, for what portion, and in either case specifying the grounds upon which such claim is founded, it is the duty of the treasurer either:

1. To sell the property assessed for the whole amount appearing upon the duplicate assessment-book; or

2. Withdraw the property from sale, and report the case to the board of county commissioners for its direction in the premises; and in such case the board may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the treasurer to proceed with the sale.

History: En. Sec. 152, p. 119, L. 1891; re-en. Sec. 3921, Pol. C. 1895; re-en. Sec. 2677, Rev. C. 1907.

2231. Assessment of property purchased by county and adjournment of sale thereof. In case property assessed for taxes is purchased by the county, pursuant to provisions of section 2191 of this code, it must be assessed the next year for taxes in the same manner as if it had not been so purchased. But it must not be exposed for sale, and the sale thereof, under such assessment, must be adjourned until the time of redemption under the previous sale shall have expired.

History: En. Sec. 153, p. 119, L. 1891; re-en. Sec. 3922, Pol. C. 1895; re-en. Sec. 2678, Rev. C. 1907. Cal. Pol. C. Sec. 3813.

The fact that the treasurer intends to violate this and the succeeding section, by exposing for sale, for the delinquent taxes of one year, part of the lands purchased by the county at the sale for the taxes of the preceding year, and yet unredeemed, does not entitle the owner of the equity of redemption to an injunction. Cobban v. Hinds, 23 Mont. 338, 350, 59 Pac. 1.

2232. No sale unless directed by board of county commissioners. In case an assessment is made under the provisions of the next preceding section and the lands are not redeemed from a previous sale had under section 2191, as provided by law, no sale must be had under the assessment authorized by the next preceding section unless directed by the board.

History: En. Sec. 154, p. 119, L. 1891; re-en. Sec. 3923, Pol. C. 1895; re-en. Sec. 2679, Rev. C. 1907. Cal. Pol. C. Sec. 3814.

Cited or applied as section 3923, Political Code, in Cobban v. Hinds, 23 Mont. 338, 350, 59 Pac. 1.

2233. Conditions of redemption of property sold to county. In case property is sold to the county as purchaser, pursuant to section 2191 of this code, and is subsequently assessed, pursuant to section 2231 of this code, no person must be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, costs, fees, and interest.

History: En. Sec. 155, p. 120, L. 1891; re-en. Sec. 3924, Pol. C. 1895; re-en. Sec. 2680, Rev. C. 1907. Cal. Pol. C. Sec. 3815.

2234. Distribution of such redemption moneys, accounts, etc. Whenever property sold to the county, pursuant to the provisions of this chapter, is redeemed as herein provided, the moneys received on account of such redemption must be distributed as follows: The original tax and twenty per cent. paid in redemption must be apportioned between the state and county, in the same proportion that the state tax bears to the county tax, and the balance must be paid to the county. The county treasurer must keep an accurate account of all money paid in redemption of property sold to the county, and must, on the first Monday of June in each year, make a detailed report, verified by his affidavit, of each account, year for year, to the state auditor, in such form as the state auditor may desire. Whenever the county receives from the county treasurer any grant of property so sold for taxes, the same shall be recorded, at the request of the county treasurer, free of charge, by the county clerk, and shall be immediately reported by the county treasurer to the board of county commissioners.

History: En. Sec. 156, p. 120, L. 1891; re-en. Sec. 3925, Pol. C. 1895; re-en. Sec. 2681, Rev. C. 1907. Cal. Pol. C. Sec. 3816.

2235. Sale of unredeemed property by county commissioners. Whenever the county has become the purchaser of any real estate sold for delinquent taxes, and the same has not been redeemed by the person entitled so to do, and the time for such redemption has expired, the board of county commissioners may at any time, by an order made and duly entered upon the minutes of its proceedings, sell the same at public auction; provided, however, that no such sale shall be made or confirmed unless the price offered shall be sufficient to discharge all accrued taxes to date of sale, together with interest and costs, but if the price so offered shall be the reasonable market value thereof, in the judgment of said board of county commissioners, then the said board is authorized to accept said price so offered, and the chairman of said board is authorized to execute a title therefor vesting in the purchaser all the title of the state and county to the real estate so sold. The money arising from such sale must be paid into the county treasury, and the treasurer must settle for money so received as other state and county money.

History: En. Sec. 157, p. 120, L. 1891; [illegible] 2682, Rev. C. 1907; amd. Sec. 1, Ch. 123, re-en. Sec. 3926, Pol. C. 1895; re-en. Sec. [illegible] L. 1909; amd. Sec. 1, Ch. 18, L. 1919.

2236. Suspension of taxes on property owned by persons in military or naval service. All taxes, whether on real or personal property, now due or hereafter to become due on property owned by any citizen of the state of Montana in the active military or naval service of the United States, shall be held in abeyance, and no proceedings taken for the collection thereof, and no penalties or interests shall be added thereto, until the expiration of the period of one year from and after the cessation of hostilities or discharge from military or naval service.

History: En. Sec. 1, Ch. 14, Ex. L. 1918.

2237. Affidavit to be filed with county treasurer. To obtain the benefits of this act it shall be necessary for some person, on behalf of such person in the military or naval service, to file with the treasurer of the proper county an affidavit to the effect that the person against whom such taxes are charged is in such active military or naval service, which affidavit

must be filed at or before the time when such taxes would become delinquent, and upon the filing thereof the treasurer shall make a notation upon his records to the effect that the collection of such taxes is suspended on account of the military or naval service of such taxpayer. But nothing in this act shall be so construed as to prevent such county treasurer from receiving payment of any such taxes whenever offered.

History: En. Sec. 2, Ch. 14, Ex. L. 1918.

CHAPTER 174.

COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN ON REAL ESTATE.

Section 2238. Duty of Assessor.
2239. Duty of Treasurer.
2240. Mode of Conducting Seizure and Sale.
2241. Manner of Conducting Sale, etc.
2242. Sale Must Be Made After Notice.
2243. Treasurer's Charges and Mileage for Sale or Seizure.
2244. Title to Such Property Vests in Purchaser on Payment.
2245. Disposition of Excess of Proceeds Over Taxes, Percentage, and Costs.
2246. Unsold Portion to Remain at Risk of Owner.
2247. Rate of Taxation—Where Property Taxable.
2248. Return of Excess Where Lower Rate Fixed for Year of Collection.
2249. Collection of Deficiency Where Higher Rate Is Fixed.
2250. Treasurer's Record.
2251. Assessor to Note Report of Property.
2252. Clerk to Note Excess or Deficiencies in Taxes Paid.

2238. Duty of assessor. It shall be the duty of the assessor, upon discovering any personal property in the county, the taxes upon which are not, in his opinion, a lien upon real property sufficient to secure the payment of such taxes, to immediately make a report to the treasurer setting forth the nature, amount, and assessed valuation of such personal property, where the same is located, and the name and address of the owner, claimant, or other person in possession of the same.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907. Cal. Pol. C. Sec. 3820.

The statutes in force in 1889, regulating taxation, contemplated the assessment of each distinct parcel of real estate separately, and created a direct lien on each parcel only for the tax levied thereon, and the lands of a delinquent taxpayer were not chargeable thereunder with a direct lien for a personalty tax. Ward v. Board of Commrs. of Gallatin County, 12 Mont. 23, 38, 29 Pac. 658.

Personal property of a national bank is not subject to taxation under the state laws. First National Bank v. Province, 20 Mont. 374, 51 Pac. 821.

The legislature has no power to vest any other person than the treasurer with power to collect taxes. Mutual Life Ins. Co. v. Martien, 27 Mont. 437, 440, 71 Pac. 470. See, also, Missouri River Power Co. v. Steele, 32 Mont. 433, 437, 80 Pac. 1093; City of Butte v. Bennetts, 51 Mont. 27, 30, 149 Pac. 92, Ann. Cas. 1918C, 1019; Pohl v. Chicago, Milwaukee & St. Paul Ry. Co., 52 Mont. 572, 577, 160 Pac. 515.

Cited or applied as section 3940, Political Code, before amendment, in Northwestern Mut. Life Ins. Co. v. Lewis and Clark County, 28 Mont. 484, 502, 72 Pac. 982, 98 Am. St. Rep. 572.

2239. Duty of treasurer. The county treasurer must collect the taxes on all personal property, and in the case provided for in the preceding section, it shall be the duty of the treasurer, immediately upon receipt of such report from the assessor, to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. At the time of receiving the assessor's

report, or at any time before November 1st, the treasurer may collect the taxes by seizure and sale of any personal property owned by the person or persons against whom the tax is assessed. The county treasurer and his sureties are liable on his official bond for all taxes on personal property within the county, which, through his wilful failure or neglect, are uncollected.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907. Cal. Pol. C. Sec. 3821.

Note.—This section superseded section 2657, Revised Codes of 1907. The A. B. Averill Machinery Co. v. Freebury Bros. et al., 59 Mont.

Under the statutes in force in 1889, the county treasurer as collector of taxes was not required to seize and sell the personal property of a delinquent taxpayer, or to sue for the tax, before proceeding to sell the real estate assessed to such delinquent. Ward v. Board of Commrs. of Gallatin County, 12 Mont. 23, 38, 29 Pac. 658.

No duty to collect city and county taxes is imposed upon the county assessor by this section. City of Butte v. Bennetts, 51 Mont. 27, 30, 149 Pac. 92, Ann. Cas. 1918C, 1019.

2240. Mode of conducting seizure and sale. The provisions of sections 2241-2246, inclusive, apply to such seizure and sale.

History: En. Sec. 3942, Pol. C. 1895; re-en. Sec. 2685, Rev. C. 1907. Cal. Pol. C. Sec. 3822.

2241. Manner of conducting sale, etc. The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentages, and costs.

History: Sec. 2658, Rev. C. 1907.

Note.—Sections 2241 to 2246 were enacted as sections 135 to 140, p. 116, Laws of 1891; re-en. sections 3902 to 3907, Political Code 1895; re-en. sections 2658 to 2663, Revised Codes 1907.

2242. Sale must be made after notice. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

History: Sec. 2659, Rev. C. 1907. See also history of Sec. 2241.

2243. Treasurer's charges and mileage for sale or seizure. For seizing or selling personal property, the treasurer may charge in each case the sum of three dollars, for the use of the county, and the same mileage as is allowed by law to the sheriff of the county, and reasonable expenses for seizing, handling, keeping, or caring for any property so seized or sold.

History: Sec. 2660, Rev. C. 1907. See also history of Sec. 2241.

2244. Title to such property vests in purchaser on payment. On the payment of the price bid for any property sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

History: Sec. 2661, Rev. C. 1907. See also history of Sec. 2241.

2245. Disposition of excess of proceeds over taxes, percentage, and costs. All excess over the taxes, per cent., and costs of the proceeds of any such sale must be returned to the owner of the property sold, and until claimed must be deposited in the county treasury, subject to the order of the owner, heirs, or assigns.

History: Sec. 2662, Rev. C. 1907. See also history of Sec. 2241.

2246. Unsold portion to remain at risk of owner. The unsold portion of any property may be left at the place of sale at the risk of the owner.

History: Sec. 2663, Rev. C. 1907. See also history of Sec. 2241.

2247. Rate of taxation—Where property taxable. The treasurer shall be governed as to the amount of taxes to be collected by him on said personal property by the state and county rate of the previous year. Personal property which was in the state and subject to taxation on the first Monday in March of any year shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed, or possessed by the person owning, claiming, or possessing it on the first day of March or not; provided, that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes.

History: Ap. p. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907. Cal. Pol. C. Sec. 3823.

Cited or applied as section 3943, Political Code, as amended, in Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 39, 81 Pac. 398, 8 Ann. Cas. 674.

2248. Return of excess where lower rate fixed for year of collection. When the rate is fixed for the year in which such collection is made, then, if the sum in excess of the rate has been collected, such excess shall not be apportioned to the state, but the whole thereof shall remain in the county treasury, and must be repaid by the county treasurer to the person from whom the collection was made, or to his assignee, on demand therefor.

History: En. Sec. 159, p. 121, L. 1891; re-en. Sec. 3944, Pol. C. 1895; re-en. Sec. 2687, Rev. C. 1907. Cal. Pol. C. Sec. 3824.

2249. Collection of deficiency where higher rate is fixed. If a sum less than the rate fixed has been collected, the deficiency must be collected as other taxes on personal property are collected.

History: En. Sec. 160, p. 121, L. 1891; re-en. Sec. 3945, Pol. C. 1895; re-en. Sec. 2688, Rev. C. 1907. Cal. Pol. C. Sec. 3825.

2250. Treasurer's record. The treasurer must, on or before the first day of December of each year, note on the assessment-book, opposite the name of each person from whom taxes have been collected by him in pursuance of such report of the assessor, the amount of taxes received, and the date of the receipt thereof, or in case such taxes have not been collected by him, the reason why such collection was not made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907.

2251. Assessor to note report of property. The assessor must note on the assessment-book opposite the names of each person owning, claiming, or possessing such personal property which may be so reported by him to the treasurer, the fact that such report was made to the treasurer, and the date when the same was so made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907.

2252. Clerk to note excess or deficiencies in taxes paid. As soon as the rate of taxation for the year is fixed, the county clerk must note, in connection with the entry made under the provisions of the preceding section, the amount of the excess or deficiency.

History: En. Sec. 162, p. 121, L. 1891; re-en. Sec. 3948, Pol. C. 1895; re-en. Sec. 2691, Rev. C. 1907. Cal. Pol. C. Sec. 3828.

Cited or applied as section 3948, Political Code, in Mutual Life Ins. Co. v. Martien, 27 Mont. 437, 439, 71 Pac. 470.

CHAPTER 175.

COLLECTION OF TAXES BY SUIT.

Section 2253. Collection of Taxes by Action.
2254. Complaint in Action for Taxes.

2253. Collection of taxes by action. The state auditor may, at any time after a delinquent list has been delivered to a county treasurer, direct such treasurer not to proceed in the collection of any tax on said list amounting to three hundred dollars, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the county treasurer, after offering the property for sale once, and there being no purchaser in good faith, must make out and deliver to the state auditor a certified copy of the entries upon the delinquent list relative to such tax; and the treasurer, or state auditor, in case the treasurer refuses or neglects for fifteen days after being directed to bring suit for collection by the state auditor, may proceed by civil action in the proper court, and in the name of the state of Montana, to collect such tax and costs.

History: En. Sec. 4020, Pol. C. 1895; re-en. Sec. 2738, Rev. C. 1907.

Personal action to recover tax on property, see 41 L. R. A. (N. S.) 730.

2254. Complaint in action for taxes. In such action a complaint in the following form is sufficient:

(Title of Court.)

The State of Montana,
vs.
.....
(naming the defendant).

Plaintiff avers that the defendant is indebted to plaintiff in the sum of ..... dollars, state and county taxes for the fiscal year 19...., with ten per cent. added for the non-payment of such taxes, and ..... dollars, costs of collection to date. Plaintiff demands judgment for said several sums, and prays that a writ of attachment may issue in form as prescribed by law.

(Signed by the county treasurer, or state auditor, or his attorney.)

On the filing of such complaint, the clerk must issue a summons and the writ of attachment prayed for, and such proceedings shall be had thereunder as under writs of attachment issued in civil action. If, in such action, the plaintiff recover judgment, there shall be included in such judgment an attorney's fee of ten per cent. on the amount of the tax. In such action the certified copy mentioned in the preceding section made by the treasurer and delivered to the state auditor is prima facie evidence that the person against whose property the tax was levied is indebted to the state of Montana in the amount of such tax. In case of payment of any such taxes after suit, as above mentioned, shall have been commenced, or after the recovery of judgment therefor, such payment must be made to the county treasurer of the county in which such taxes are due, whereupon the treasurer, after distributing to the several funds of the county the portions belonging to it, and paying to the state auditor or his attorney the portion received as attorney's fees and other costs, must pay the remainder to the state treasurer, at the times and in the manner prescribed by law for the payment of other state taxes.

History: En. Sec. 4021, Pol. C. 1895; re-en. Sec. 2739, Rev. C. 1907.

CHAPTER 176.

SETTLEMENT WITH STATE AUDITOR AND STATE TREASURER.

Section 2255. County Treasurers to Settle With Auditor for and Pay Over to Treasurer Upon Their Order All State Moneys on Hand.
2256. Penalty Imposed on Treasurers Neglecting to Settle.
2257. Report of County Clerk to State Auditor.
2258. County Clerk to Send Report to State Auditor and County Treasurer.
2259. Penalty for Failure of County Clerk to Make or Transmit Report.
2260. Deduction by State Auditor on Settlement.
2261. State Auditor's Statement on County Clerk's Report and Return of Copy Thereof.
2262. County Treasurer to File With County Clerk Such Returned Copy.
2263. County Clerk to Make Certain Entries.
2264. Rate of Mileage Allowed Treasurer.
2265. State Auditor May Examine Books of Any Revenue Officer.
2266. Directing Prosecution of Delinquent Revenue Officer for Fraudulent or Other Misconduct.
2267. Special Counsel May Be Employed—Provision for Expenses.

2255. County treasurers to settle with auditor for and pay over to treasurer upon their order all state moneys on hand. The treasurers of the respective counties must at any time, upon the order of the state auditor and state treasurer, settle with the state auditor, and pay over to the state treasurer all moneys in their possession belonging to the state, and must, without such order, settle and pay over the moneys on the first Mondays of January and July in each year.

History: En. Sec. 3990, Pol. C. 1895; re-en. Sec. 2715, Rev. C. 1907. Cal. Pol. C. Sec. 3865.

2256. Penalty imposed on treasurers neglecting to settle. Every county treasurer who neglects or refuses to appear at the office of the state auditor and state treasurer at the times specified in this title, and then and there to settle and make payment as herein required, forfeits his salary for that quarter and the expenses which would have otherwise been due him on such settlement; and the state auditor is required to withhold such.

History: En. Sec. 3991, Pol. C. 1895; re-en. Sec. 2716, Rev. C. 1907. Cal. Pol. C. Sec. 3867.

2257. Report of county clerk to state auditor. The county clerk of each county, between the first and tenth days of each month in which the treasurer of his county is required to settle with the state auditor, must make a report in duplicate, in such form as the state auditor may desire, showing specifically the amount due the state from each particular source of revenue at the close of business on the last day of the preceding month.

History: En. Sec. 3992, Pol. C. 1895; re-en. Sec. 2717, Rev. C. 1907. Cal. Pol. C. Sec. 3868.

2258. County clerk to send report to state auditor and county treasurer. The county clerk must at once transmit by mail to the state auditor one copy of the report, and must deliver the other copy to the treasurer of his county.

History: En. Sec. 3993, Pol. C. 1895; re-en. Sec. 2718, Rev. C. 1907. Cal. Pol. C. Sec. 3869.

2259. Penalty for failure of county clerk to make or transmit report. Every county clerk who fails to make and transmit the report required by

this chapter, or any other report or statement required by this title, forfeits all salary which would be otherwise due him from the county, and the county commissioners must withhold such compensation.

History: En. Sec. 3994, Pol. C. 1895; re-en. Sec. 2719, Rev. C. 1907. Cal. Pol. C. Sec. 3870.

2260. Deduction by state auditor on settlement. In the settlement, the state auditor must deduct the expenses allowed to the county treasurer for his traveling, the state's portion of the repayments made under section 2248, and any other amounts due the county or the officers thereof.

History: En. Sec. 3995, Pol. C. 1895; re-en. Sec. 2720, Rev. C. 1907. Cal. Pol. C. Sec. 3871.

2261. State auditor's statement on county clerk's report and return of copy thereof. The state auditor must, after the county treasurer has made settlement and payment, enter upon each copy of the county clerk's report a statement showing:

1. The amount of money by the county treasurer paid into the state treasury.
2. The amount deducted for allowances.

And must then return one copy of the report to the county treasurer.

History: En. Sec. 3996, Pol. C. 1895; re-en. Sec. 2721, Rev. C. 1907. Cal. Pol. C. Sec. 3873.

2262. County treasurer to file with county clerk such returned copy. The county treasurer must file with the county clerk of his county the copy returned to him by the state auditor.

History: En. Sec. 3997, Pol. C. 1895; re-en. Sec. 2722, Rev. C. 1907. Cal. Pol. C. Sec. 3874.

2263. County clerk to make certain entries. The county clerk must then make the proper entries in his account with the treasurer.

History: En. Sec. 3998, Pol. C. 1895; re-en. Sec. 2723, Rev. C. 1907. Cal. Pol. C. Sec. 3875.

2264. Rate of mileage allowed treasurer. The state auditor must, in the settlement, allow the county treasurer the actual expenses incurred by him in making such settlement, which expenses must only include the money actually paid out by him in traveling to and from his county seat and the seat of government, and for meals and lodging on the trip, which claim must be presented to and allowed by the board of examiners.

History: En. Sec. 3999, Pol. C. 1895; re-en. Sec. 2724, Rev. C. 1907. Cal. Pol. C. Sec. 3876.

2265. State auditor may examine books of any revenue officer. The state auditor, as well as the state examiner, may examine the books of any officer charged with the collection and receipt of state taxes.

History: En. Sec. 4000, Pol. C. 1895; re-en. Sec. 2725, Rev. C. 1907. Cal. Pol. C. Sec. 3877.

2266. Directing prosecution of delinquent revenue officer for fraudulent or other misconduct. If, on examination, it is found that any officer has been guilty of defrauding the state of revenue, or has neglected or refused to perform any duty relating to the revenue, the state auditor

must direct the attorney-general or other counsel to prosecute the delinquent.

History: En. Sec. 4001, Pol. C. 1895; re-en. Sec. 2726, Rev. C. 1907. Cal. Pol. C. Sec. 3879.

2267. Special counsel may be employed—provision for expenses. The state auditor or attorney-general may employ other counsel, and the expenses must be audited by the board of examiners and be paid out of the state treasury.

History: En. Sec. 4002, Pol. C. 1895; re-en. Sec. 2727, Rev. C. 1907. Cal. Pol. C. Sec. 3880.

CHAPTER 177.

PAYMENT OF TAXES UNDER PROTEST—ACTIONS TO RECOVER.

Section 2268. Injunction Does Not Lie.
2269. Payment of Taxes Under Protest—Action to Recover.
2270. Assessment for Taxation—Increase Over Statement of Owner.
2271. Illegal Tax Refunded.
2272. Other Remedies Superseded.

2268. Injunction does not lie. No injunction must be granted by any court or judge to restrain the collection of any tax or any part thereof, nor to restrain the sale of any property for the non-payment of taxes, except:

1. Where the tax, or the part thereof sought to be enjoined, is illegal, or is not authorized by law. If the payment of a part of a tax is sought to be enjoined, the other part must be paid before an action can be commenced.

2. Where the property is exempt from taxation.

History: En. Sec. 204, p. 128, L. 1891; re-en. Sec. 4023, Pol. C. 1895; re-en. Sec. 2741, Rev. C. 1907.

This and following sections prohibit courts and judges from enjoining the sale of the property for non-payment of any tax, except in those instances where the tax is illegal, or not authorized by law, or where the property is exempt from taxation, and provide the means and remedies whereby the rights of persons who deem the taxes irregularly or improperly demanded of the owners, or sought to be enforced, against the property, may be guarded and protected. Cobban v. Hinds, 23 Mont. 338, 349, 350, 59 Pac. 1. See Montana Ore Purchasing Co. v. Maher, 32 Mont. 480, 490, 491, 81 Pac. 13; Hensley v. City of Butte, 33 Mont. 206, 211, 83 Pac. 482, Cobban v. Meagher, 42 Mont. 399, 411, 113 Pac. 290, and Barnard Realty Co. v. City of Butte, 50 Mont. 159, 167, 168, 145 Pac. 946.

Injunction will lie if the action of the assessor or board of equalization was such that the tax complained of is manifestly void under any circumstances; but, if the error complained of is only an irregularity on the part of the assessor, board of equalization, or treasurer, or where the tax is not necessarily void under all circumstances, the remedy of payment under protest and an action to recover back is exclusive, except in the unusual cases mentioned in section 2272. Montana Ore Purchasing Co. v. Maher, 32 Mont. 480, 490, 81 Pac. 13; Hensley v. City of Butte, 33 Mont. 206, 211, 83 Pac. 482; Cobban v. Meagher, 42 Mont. 399, 411, 113 Pac. 290; Barnard Realty Co. v. City of Butte, 50 Mont. 159, 167, 145 Pac. 946.

The court may not restrain the collection of a tax levied on the surface of an unpatented mining claim having a separate and independent value because of its use for other than mining purposes, on the ground that the assessor failed to set forth in the assessment the fact that the surface ground was assessed for other than mining purposes, but the remedy is by an action at law under section 2269 to recover the taxes paid under protest. Cobban v. Meagher, 42 Mont. 399, 410, 411, 113 Pac. 290.

This section, by necessary implication, provides a remedy by injunction where the tax demanded is illegal or not authorized by law. Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 218, 119 Pac. 554.

Where a portion of an assessment made in a lump sum to plaintiff railway company, was legal and a portion illegal,

and the company was unable to ascertain and pay that which was legal, the remedy by injunction to restrain the threatened issuance of a tax deed was available to it. Northern Pac. Ry. Co. v. Musselshell County, 54 Mont. 96, 108, 109, 169 Pac. 53.

Cited or applied as section 4023, Political Code, in Barrett v. Shannon, 19 Mont. 397, 400, 48 Pac. 746; Deloughrey v. Hinds, 23 Mont. 260, 272, 58 Pac. 709; Western Ranches v. Custer County, 28 Mont. 278, 282, 72 Pac. 659; as section 2741. Revised Codes, in Reilly v. Hatheway, 46 Mont. 1, 11, 125 Pac. 417.

Erroneous or invalid levy or assessment as ground for injunction against collection of tax, see notes in 3 Ann. Cas. 564; 12 Ann. Cas. 764; Ann. Cas. 1915C, 755.

Injunction as remedy for assessment of property disproportionately with other property, see notes in Ann. Cas. 1914D, 916; Ann. Cas. 1917E, 97.

2269. Payment of taxes under protest—Action to recover. In all cases of levy of taxes, licenses, or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may pay under protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect same; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officer to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, to recover such tax or license, or any portion thereof, paid under protest, provided, that any action instituted to recover any tax paid under protest shall be commenced within sixty days after the thirtieth day of November of the year in which such tax was paid. The tax so paid under protest shall be held by the county treasurer, and no part thereof paid to the state treasurer until the determination of any action brought for the recovery thereof.

History: Ap. p. Sec. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909.

Note.—The latter portion of this section as amended in 1909 is omitted from this code, having been held unconstitutional in Dolenty v. Broadwater County, 45 Mont. 261; 122 Pac. 919.

This section, being construed with section 2272, is not restricted to cases brought where an assessment was void, notwithstanding the provisions of section 2268. Western Ranches v. Custer County, 28 Mont. 278, 282, 283, 72 Pac. 659.

If the owner of the surface of an unpatented mining claim objects to its assessment for town-site purposes, he has a remedy by paying the taxes under protest, and then suing for their recovery, under section 2272, in an action at law, and the remedy thus provided is made, by said section 2272, to supersede all others. Cobban v. Meagher, 42 Mont. 399, 410, 113 Pac. 290.

A statute, providing for payment of "taxes, licenses, and other demands for public revenue" under protest, is inapplicable to unauthorized demands by the state auditor. Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 218, 119 Pac. 554.

The provisions of this section, that an action to recover taxes paid under protest must be commenced within sixty days after the thirtieth day of November of the year in which taxes are paid, applies generally to any action instituted to recover any tax paid under protest. Apparently the legislature assumed that taxes might be paid under protest and contested for reasons other than those referred to in section 2269; and it was for the purpose of covering such cases that the amendment to this section was made, and a uniform rule established covering all cases of action to recover taxes paid under protest. Dolenty v. Broadwater County, 45 Mont. 261, 265, 122 Pac. 919.

Whenever a statute grants a right which did not exist at common law, and prescribes the time within which the right must be exercised, the limitation thus imposed does not affect the remedy merely, but is of the essence of the right itself, and one who seeks to enforce such right must show affirmatively that he has brought his action within the time fixed by the statute; and if he fails in this regard, he fails to disclose any right to

relief under the statute. Dolenty v. Broadwater County, 45 Mont. 261, 267, 122 Pac. 919.

An action to recover an unlawful license fee, exacted by a city ordinance, and paid under protest, was held to be properly brought under this section before its amendment, and the plaintiff was not required to resort to the remedy given under the preceding section. Reilly v. Hatheway, 46 Mont. 1, 11, 125 Pac. 417.

An injunction lies to restrain the collection of a tax wholly void. Barnard Realty Co. v. City of Butte, 50 Mont. 159, 167, 168, 145 Pac. 946.

If money paid under protest upon a special improvement assessment is a "tax, license, or other demand for public revenue," within the meaning of this section, suit to recover same is barred sixty days after November 30th of the year in which the tax was paid. If, however, money so paid is not such a "tax, license, or other demand for revenue," it forms the basis of a mere demand against the city, not suable until after presentation to and disallowance by the city council. Leggat v. City of Butte, 54 Mont. 137, 140, 168 Pac. 38.

Cited or applied as section 4024, Political Code, before amendment, in Montana Ore Purchasing Co. v. Maher, 32 Mont. 480, 490, 81 Pac. 13; Hensley v. City of Butte, 33 Mont. 206, 210, 83 Pac. 481; as section 2742, Revised Codes, as amended, in Hill v. County of Lewis and Clark, 54 Mont. 479, 485, 171 Pac. 929; Read v. Lewis and Clark County, 55 Mont. 412, 414, 178 Pac. 177.

Recovery of illegal tax paid "under protest," see notes in 8 Ann. Cas. 669; 10 Ann. Cas. 1050; Ann. Cas. 1915A, 495.

Payment of tax to avoid imposition of penalty as involuntary, see note in Ann. Cas. 1913C, 1052.

Prohibition as remedy against levy and collection of tax, see note in 20 Ann. Cas. 964.

Necessity and sufficiency of statement of grounds in notice of protest required as condition of recovering back payment of an unlawful tax, see note in 36 L. R. A. (N. S.) 476.

2270. Assessment for taxation—Increase over statement of owner. Whenever any person has delivered to the assessor a sworn statement of his property subject to taxation as now provided by law, and given the estimated value of such property, and the assessor shall increase such estimated value, or add other property to such assessment list, he shall, at least ten days prior to the meeting of the county board of equalization, give to such person written notice of such change, which notice shall be substantially in the following form:

(Date) .....

Mr. .....

A change has been made in your assessment list as follows:

Assessor ..... county.

Such person may then appear before the county board of equalization, ascertain the nature of such change, and contest the same; and if the assessment of any such person has been added to or changed, either by the assessor or by the county board of equalization, and such person has not been notified thereof and given an opportunity to contest the same before the county board of equalization, the tax of such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in the preceding section. When any person has appeared before the county board of equalization, and has contested the increase in the estimated value of his property, or the additions of other property to his assessment list, and is aggrieved at the final action of the board in making or allowing such increase or addition, he may, in the action provided for in the preceding section, contest and litigate the payment of taxes on such increased valuation or added property list, on the same grounds and for the same reasons that he has contested the same

before the county board of equalization, and for no other reason and on no other reason and on no other ground; provided, that any action instituted for the purpose of recovering any tax, paid under protest for any of the reasons mentioned in this section, shall be commenced within sixty days after the thirtieth day of November of the year in which such tax was paid; provided, further, that when any action is instituted to recover any tax paid, if the valuation of the property as increased by the board of equalization or assessor is an over-valuation of such property, the jury in the case shall determine the actual value of such property at the time the same became liable for taxes, and if the value as fixed by the jury is in excess of the amount on which taxes were levied, the plaintiff shall be liable in damages equal to the product obtained by multiplying such excess valuation as found by the jury by the rate per cent. at which taxes were levied in the municipality where the property was assessed for the year the protest was made.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909.

This section applies only to actions brought to recover taxes paid under protest for any of the reasons therein mentioned. Dolenty v. Broadwater County, 45 Mont. 261, 265, 122 Pac. 919.

Where the taxing authorities levy a tax not authorized by law or upon property not subject to be taxed, their action is without jurisdiction and wholly void, and the remedy by injunction is available. The right of the owner of property to relief by injunction is not in anywise affected by his failure, either upon notice by the assessor or by the board itself, to make timely objection. The assessment being wholly illegal, because without authority, its validity may be questioned by any available method. Barnard Realty Co. v. City of Butte, 50 Mont. 159, 167, 145 Pac. 946.

The provision found in this section, to the effect that if the assessment has been added to or changed either by the assessor or by the county board of equalization, etc., is, by its terms, available only to the "person who had delivered to the assessor a sworn statement of his property subject to taxation" with "the estimated value" thereof. This means all of his taxable property, according to his best knowledge and belief, and the fact that, notwithstanding such list, the assessor or board may increase the value or add other property implies that an honest controversy must exist between the public and the taxpayer as to what property should have been taxed, or what value should have been placed upon it. Hill v. County of Lewis and Clark, 54 Mont. 479, 485, 486, 171 Pac. 929.

Cited or applied as section 2743, Revised Codes, before amendment, in Merges v. Altenbrand, 45 Mont. 355, 364, 123 Pac. 21; as section 2743, Revised Codes, as amended, in Leggat v. City of Butte, 54 Mont. 137, 139, 168 Pac. 38; Anaconda Copper Min. Co. v. Ravalli County et al., 56 Mont. 530, 186 Pac. 332.

2271. Illegal tax refunded. In case it be determined in such action that said tax or license, or any portion thereof so paid under protest, was unlawfully collected, judgment for recovery thereof and lawful interest thereon, together with cost of action, shall be entered in favor of the plaintiff; and upon being presented with a duly authenticated copy of such judgment, the proper officer or officers of the county or municipality whose officers collected or received such tax shall audit and allow such judgment, and cause a warrant to be drawn on the treasury of that county or municipality for the amount recovered by said judgment in favor of the legal holder thereof; which warrant shall be paid in preference to warrants of any other class drawn on such treasury.

History: En. Sec. 4025, Pol. C. 1895; re-en. Sec. 2744, Rev. C. 1907.

Cited or applied as section 4025, Political Code, in Barrett v. Shannon, 19 Mont. 397, 400, 48 Pac. 746; Cobban v. Hinds, 23 Mont. 338, 350, 59 Pac. 1; Western Ranches v. Custer County, 28 Mont. 278, 284, 72 Pac. 659; Montana Ore Purchasing Co. v. Maher, 32 Mont. 480, 490, 81 Pac. 13; Hensley v. City of Butte, 33 Mont. 206, 210, 83 Pac. 481.

2272. Other remedies superseded. The remedy hereby provided shall supersede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses alleged to be irregularly levied or demanded, except in unusual cases where the remedy hereby provided is deemed by the court to be inadequate.

History: En. Sec. 4026, Pol. C. 1895; re-en. Sec. 2745, Rev. C. 1907.

The publication of the notice of a tax sale three weeks, when the statute required four weeks, does not render the taxes illegal, and authorize the enjoining of the collection of such tax. Nor does the fact that the treasurer intends to violate certain sections of the law, by exposing for sale, for the delinquent taxes of one year a part of the lands purchased by the county at the tax sales of the preceding year, and yet unredeemed, entitle the owner of the equity of redemption to an injunction, since the above section provides that the remedy before the board of equalization shall supersede the remedy of injunction, etc., except in those unusual cases where the remedy thereby provided is deemed by the court inadequate. Cobban v. Hinds, 23 Mont. 338, 350, 59 Pac. 1.

The phrase "irregularly levied or demanded" was used by the legislature advisedly, and as prescribing the limits wherein the statutory remedy is exclusive, as distinguished from those cases of illegal taxes the collection of which may be restrained by injunction. Montana Ore Purchasing Co. v. Maher, 32 Mont. 480, 490, 81 Pac. 13.

Cited or applied as section 4026, Political Code, in Western Ranches v. Custer County, 28 Mont. 278, 282, 72 Pac. 659; Hensley v. City of Butte, 33 Mont. 206, 210, 83 Pac. 481; as section 2745, Revised Codes, in Cobban v. Meagher, 42 Mont. 399, 410, 113 Pac. 290; Barnard Realty Co. v. City of Butte, 50 Mont. 159, 167, 145 Pac. 946.

Right to resort to court to recover taxes paid on erroneous or excessive assessment without previous resort to statutory remedies, see note in 16 L. R. A. (N. S.) 685.

CHAPTER 178.

POLL-TAX.

Section 2273. Persons Liable to Poll-Tax.
2274. When Poll-Tax May Be Collected.
2275. Blank Tax Receipts Furnished.
2276. Style to Be Changed Every Year.
2277. County Treasurer's Duties in Relation to Poll-Tax.
2278. County Clerk to Sign Blanks and Make Entry of Number Signed.
2279. Blanks to Be Delivered and Charged to Assessor.
2280. Poll-Tax May Be Collected by Seizure and Sale of Personal Property.
2281. Seizure and Sale, How Made.
2282. Debtors of Persons Owing Poll-Tax to Pay Tax for Such Person.
2283. Corporations Liable for Poll-Tax.
2284. Assessor May Require Statement.
2285. May Seize Property of Corporation.
2286. Who Are Debtors Under the Preceding Section.
2287. Debtor May Charge Creditor for Poll-Tax Paid.
2288. Receipt of Poll-Tax Delivered to Purchaser.
2289. Receipt Only Evidence of Payment.
2290. Monthly Settlement.
2291. Assessor's Return of Receipts to County Clerk, and Yearly Settlement.
2292. County Clerk to Return to Treasurer Receipts Not Used.
2293. Treasurer to Credit County Clerk With Such Receipts.
2294. Assessor to Keep List of Persons Subject to Poll-Tax.
2295. Disposal of Proceeds.

2273. Persons liable to poll-tax. Every male inhabitant of this state over twenty-one and under sixty years of age except paupers, insane persons, and Indians not taxed, must annually pay a poll-tax of two dollars.

In addition to the foregoing poll-tax of two dollars, every such male inhabitant of this state who is not the head of a family, as hereinafter defined, must annually pay an additional poll-tax of three dollars.

The words "head of a family" shall, for the purpose of this act, be construed to mean any person having wholly dependent upon him for support, a wife, minor child, father, mother, brother, or sister and any such male person actually living with his wife.

History: En. Sec. 163, P. 122, L. 1891; re-en. Sec. 3960, Pol. C. 1895; re-en. Sec. 2692, Rev. C. 1907; amd. Sec. 1, Ch. 261, L. 1921. Cal. Pol. C. Sec. 3839.

The statute imposing the so-called poll-tax is not in conflict with either the constitution of the state or the federal constitution. Pohl v. Chicago, Milwaukee & St. Paul Co., 52 Mont. 572, 575, 160 Pac. 515.

Constitutionality of poll-tax, see notes in 12 Ann. Cas. 317; Ann. Cas. 1917E, 1208.

Constitutionality of poll-tax as affected by exemptions therefrom, see note in 13 L. R. A. (N. S.) 901.

Classification for poll-tax as affected by constitutional requirement of uniformity, see note in 1 Ann. Cas. 639.

Requiring citizen to work on highway as imposing road or poll-tax, see note in Ann. Cas. 1912A, 739.

What are poll-taxes, and levy and collection thereof, see note in 29 L. R. A. 404.

Legislative power to compel employer to pay employee's poll-tax, see note in 9 L. R. A. (N. S.) 306.

2274. When poll-tax may be collected. Poll-tax may be collected by the assessor at any time during the year.

History: En. Sec. 164, p. 122, L. 1891; re-en. Sec. 3961, Pol. C. 1895; re-en. Sec. 2693, Rev. C. 1907.

2275. Blank tax receipts furnished. The county treasurer must, before the first Monday of March of each year, cause to be printed blank poll-tax receipts for the use of the assessor.

History: En. Sec. 165, p. 122, L. 1891; re-en. Sec. 3962, Pol. C. 1895; re-en. Sec. 2694, Rev. C. 1907. Cal. Pol. C. Sec. 3841.

2276. Style to be changed every year. The style of such blanks must be changed every year.

History: En. Sec. 3963, Pol. C. 1895; re-en. Sec. 2695, Rev. C. 1907. Cal. Pol. C. Sec. 3842.

2277. County treasurer's duties in relation to poll-tax. The treasurer must, before the first Monday in March of each year:

1. Number and sign the blank poll-tax receipts.

2. At the time of signing make an entry of the whole number thereof, and of the first and last number placed thereon, in a book by him kept for that purpose.

3. Deliver all such blanks to the county clerk, and charge him therewith.

History: En. Sec. 166, p. 122, L. 1891; re-en. Sec. 3964, Pol. C. 1895; re-en. Sec. 2696, Rev. C. 1907. Cal. Pol. C. Sec. 3843.

2278. County clerks to sign blanks and make entry of number signed. The county clerk upon the receipt thereof must sign the same, and make in a book to be kept by him for that purpose a similar entry to that prescribed in subdivision 2 of the preceding section.

History: En. Sec. 3965, Pol. C. 1895; re-en. Sec. 2697, Rev. C. 1907. Cal. Pol. C. Sec. 3844.

2279. Blanks to be delivered and charged to assessor. The county clerk must, at any time after the first Monday in March, deliver to the assessor the blanks and charge him therewith.

History: En. Sec. 3966, Pol. C. 1895; re-en. Sec. 2698, Rev. C. 1907. Cal. Pol. C. Sec. 3845.

Cited or applied in Cobban v. Hinds, 23 Mont. 338, 350, 59 Pac. 1.

2280. Poll-tax may be collected by seizure and sale of personal property. The assessor must demand payment of poll-tax of every person liable therefor whose name does not appear upon the assessment list, and on the neglect or refusal of such person to pay the same he must collect by seizure and sale of any personal property owned by such person. Poll-tax shall be added upon the assessment list to other taxes of persons liable therefor, paying taxes upon real and personal property, and paid to the county treasurer at the time of the payment of other taxes.

History: En. Sec. 167, p. 122, L. 1891; amd. Sec. 1, p. 65, L. 1893; re-en. Sec. 3967, Pol. C. 1895; re-en. Sec. 2699, Rev. C. 1907. Cal. Pol. C. Sec. 3846.

2281. Seizure and sale, how made. The sale may be made after three hours' verbal notice of time and place, and the provisions of sections 2241, 2243, 2246, inclusive, apply to such seizure and sale.

Note.—Sections 2281 to 2291 were enacted as sections 168 to 178, p. 122 to 124, Laws of 1891; re-enacted as sections 3968 to 3978, Political Code 1895; appearing as sections 2700 to 2710, Revised Codes 1907; section 2700, Revised Codes 1907.

History: Cal. Pol. C. Sec. 3847.

2282. Debtors of persons owing poll-tax to pay tax for such person. Every person indebted to one who neglects or refuses, after demand, to pay a poll-tax, becomes liable therefor, and must pay the same for such other person, after service upon him by the assessor of a notice in writing, stating the name of such person.

History: Sec. 2701, Rev. C. 1907. See also history of Sec. 2281. Cal. Pol. C. Sec. 3848.

2283. Corporations liable for poll-tax. Every person, corporation, or association employing one or more persons subject to poll-tax are liable for any and all poll-taxes that may be due from such employees, and may deduct the amounts paid out for such poll-taxes from any sums due or that may afterwards become due such employees, whether the wages are payable directly to the employees or to other persons who furnish such employees under contract.

History: Sec. 2702, Rev. C. 1907. See also history of Sec. 2281.

2284. Assessor may require statement. The assessor may require the person or his agent or any officer or agent or manager of any association or corporation to make a verified statement showing the number and giving the names of the employees of such person, association, or corporation, and if such statement is not furnished, the assessor must make an estimate of the persons so employed and assess them, and such statement is as valid as if made on a verified statement. The person, association, or corporation refusing to make such verified statement forfeits the sum of five hundred dollars, which may be recovered in an action brought in the name of the county.

History: Sec. 2703, Rev. C. 1907. See also history of Sec. 2281.

It is not the duty of the assessor to offer to swear the person or persons as to the facts he wished to elicit. State v. Owsley, 17 Mont. 94, 42 Pac. 105.

2285. May seize property of corporation. The assessor, in case of a failure of a person, corporation, or association to pay the poll-tax in the manner mentioned in this chapter, must seize so much of the property of

such person, association, or corporation as will be sufficient to pay the poll-tax and costs, and sell the same as provided in this chapter.

History: Sec. 2704, Rev. C. 1907. See also history of Sec. 2281.

2286. Who are debtors under the preceding section. Every officer authorized to draw the warrants for or to pay the salary or fees of any officer is the debtor of such officer within the meaning of the preceding section.

History: Sec. 2705, Rev. C. 1907. See also history of Sec. 2281. Cal. Pol. C. Sec. 3849.

Note.—The "preceding section" seems to refer to section 2282.

2287. Debtor may charge creditor for poll-tax paid. Every person paying the poll-tax of another may deduct the same from any indebtedness of such other person.

History: Sec. 2706, Rev. C. 1907. See also history of Sec. 2281. Cal. Pol. C. Sec. 3850.

2288. Receipt of poll-tax delivered to purchaser. The assessor must deliver the poll-tax receipt, filled out with the name of the person owing the taxes, to the purchaser of property at any such sale; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

History: Sec. 2707, Rev. C. 1907. See also history of Sec. 2281. Cal. Pol. C. Sec. 3851.

2289. Receipt only evidence of payment. The receipt so delivered is the only evidence of payment.

History: Sec. 2708, Rev. C. 1907. See also history of Sec. 2281. Cal. Pol. C. Sec. 3852.

2290. Monthly settlement. On the first Monday in each month the assessor must make oath before the county clerk of the total amount of poll-taxes collected by him during the last preceding month, and must, at the same time, settle with the county clerk for the same, and pay into the county treasurer's office the total amount of poll-taxes collected.

History: Sec. 2709, Rev. C. 1907. See also history of Sec. 2281. Cal. Pol. C. Sec. 3853.

2291. Assessor's return of receipts to county clerk, and yearly settlement. On the first Monday in December of each year the assessor must return to the county clerk all the poll-tax receipts received by him and not used, and must make final settlement with the county clerk and treasurer therefor.

History: Sec. 2710, Rev. C. 1907. See also history of Sec. 2281. Cal. Pol. C. Sec. 3854.

2292. County clerk to return to treasurer receipts not used. The county clerk must, as soon as the settlement is made, return to the treasurer the receipts not used.

History: En. Sec. 3979, Pol. C. 1895; re-en. Sec. 2711, Rev. C. 1907. Cal. Pol. C. Sec. 3855.

2293. Treasurer to credit county clerk with such receipts. The treasurer must credit the county clerk with the receipts so returned, and must thereupon seal them up securely and deposit them in his office.

History: En. Sec. 3980, Pol. C. 1895; re-en. Sec. 2712, Rev. C. 1907. Cal. Pol. C. Sec. 3856.

2294. Assessor to keep list of persons subject to poll-tax. The assessor must keep a roll of the names and local residence, or place of business, of all persons subject to or liable to poll-tax, and if paid, date and amount of each payment, and if not paid, cause of non-payment.

History: En. Sec. 179, p. 124, L. 1891; re-en. Sec. 3981, Pol. C. 1895; re-en. Sec. 2713, Rev. C. 1907. Cal. Pol. C. Sec. 3857.

2295. Disposal of proceeds. Proceeds of the poll-tax must be paid to the county treasurer as provided by law for the exclusive use of the poor fund of the county.

History: En. Sec. 182, p. 125, L. 1891; re-en. Sec. 3982, Pol. C. 1895; re-en Sec. 2714, Rev. C. 1907; amd. Sec. 2, Ch. 261, L. 1921. Cal. Pol. C. Sec. 3861.

The state, in the exercise of its police power, has authority to care for its poor, sick, and infirm, who are public charges, and it may delegate that authority to the counties; moreover, an exaction imposed by it in so caring for such persons is not invalid merely because it may be called a poll-tax; such an exaction is not a "tax" as that term is used in the constitution and revenue measures generally, and it is not subject to the uniformity rule or to other restrictions that hedge about measures relating to taxation. Pohl v. Chicago, Milwaukee & St. Paul Ry. Co., 52 Mont. 572, 577, 160 Pac. 515. See, also, Hilger v. Moore, 56 Mont. 146, 169, 182 Pac. 477.

CHAPTER 179.

CORPORATION LICENSE TAX.

Section 2296. Corporation License Tax—Organizations Not Liable for Same.
2297. Method of Ascertaining Net Income of Corporation Doing Business Wholly Within State.
2298. Method of Ascertaining Net Income of Corporations Doing Business Partly Within the State.
2299. Upon What Income License Tax to Be Computed—Return of Annual Net Income.
2300. Assessment of License Fee—Notice and Payment.
2301. Penalty for Refusal to Make Return or Rendering False or Fraudulent Return.
2302. Filing Returns and Corrections—To Be Open to Inspection, When.
2303. Understatement of Returns—Proceedings.
2304. Invalidity of Portion of Law Does Not Affect Remainder.

2296. Corporation license tax—Organizations not liable for same. Every corporation, except as hereinafter provided, organized and existing under the laws of the state of Montana, and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, one per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations whose net income is taxable under this title; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of one per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends an capital stock, or from net earnings of resident corporations,

joint-stock companies, or associations whose net income is taxable under this title; provided, however, that in the case of a corporation engaged in interstate commerce, the license fee shall be based upon the net earnings of said corporation derived from its intrastate business in the state of Montana only.

There shall not be taxed under this title any income received by any—

First. Labor, agricultural, or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary society, order, or association operating under the lodge system, or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

Fourth. Domestic building and loan associations or co-operative bank without capital stock, organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Farmers', fruit growers', or like associations, organized and operated as a sales agent for the purpose of marketing the products of its members, and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

Twelfth. Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; or

Thirteenth. Federal land banks and national farm-loan associations, as provided in section 26 of the act of congress approved July 17, 1916, entitled "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm-loans, to furnish a market for United States

bonds, to create government depositaries and financial agents for the United States, and for other purposes."

Fourteenth. Joint-stock land banks as to income derived from bonds or debentures of other joint-stock land banks, or any federal land bank belonging to such joint-stock land bank;

Fifteenth. In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function;

Sixteenth. Corporations which pay licenses under the provisions of section 2770 of the Revised Codes of Montana of 1907, including acts amendatory thereof (2436 of this code).

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921.

The purpose of this act being the imposition of a license fee of one per cent. upon the net income of every corporation in the state for the privilege of doing business as such, without regard to the character of the business, insurance corporations were intended to be within its purview. Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 84, 173 Pac. 1062.

This act did not operate to repeal section 6112, requiring insurance corporations to pay certain license fees before commencing to do business in this state. Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 86, 88, 173 Pac. 1062.

The license fee required of insurance corporations by this act and section 6112 do not constitute a case of double taxation, the impositions, though upon the same persons, not being for the same thing. Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 86, 173 Pac. 1062.

This act is not unconstitutional because of alleged discrimination between corporations whose business is and those whose business is not wholly within this state, such discrimination being necessary to attain reasonable equality of burdens between the two. Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 89, 173 Pac. 1062.

Taxability of corporate franchises, see notes in 131 A. S. R. 867; 57 L. R. A. 34.

What property is part of the franchise of a corporation for purpose of taxation, see note in 17 L. R. A. 92.

Place of taxation of corporate franchise, see note in 7 Ann. Cas. 518.

Propriety of using mileage basis in assessing value of a common carrier franchise, see note in Ann. Cas. 1914B, 199.

Corporate franchise as realty or personalty for purpose of taxation, see note in 19 Ann. Cas. 167.

2297. Method of ascertaining net income of corporation doing business wholly within state. In the case of a corporation engaged in business wholly within the state of Montana, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources.

First. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

Third. The amount of interest paid within the year on its indebtedness to an amount of such indebtedness, not in excess of a sum of (a) the entire amount of the paid-up capital stock, outstanding at the close of the year, or if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding. For the purpose of this act preferred capital stock shall not be considered interest-bearing indebtedness and interest or dividends paid upon this stock shall not be deductible from gross income. In cases wherein shares of capital stock are issued without par or normal value the amount of paid-up capital stock within the meaning of this section as represented by such shares will be the amount of cash or its equivalent paid or transferred to the corporation as a consideration for such shares. In the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of the corporation, as a dealer only in the property constituting such collateral or in loaning the funds thereby procured, the total interest paid by such corporation within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness in excess of the actual value of the property collateral. In the case of bonds or other indebtedness which have been issued with a guarantee that the interest payable thereon shall be free from taxation, no deduction for the payment of the license fee herein imposed or any other tax or license fee paid pursuant to such guarantee shall be allowed. In the case of a bank interest paid within the year on deposits of any moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank shall be allowed.

Fourth. Taxes and license fees paid within the year imposed by authority of the United States or its territories or possessions, or any foreign country, or under the authority of this state or any county, school district, or municipality or other taxing subdivision of this state, not including those assessed against local benefits.

Fifth. In the case of insurance companies, in addition to the above; the net addition required by law to be made within the year to reserve funds, and within the year on policy and annuity contracts.

Sixth. And in addition to the foregoing deductions, every such corporation shall also have the right and privilege of making an additional arbitrary deduction of the sum of two thousand five hundred dollars.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921.

Cited or applied as section 2, chapter 79, Laws of 1917, before amendment, in Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 81, 173 Pac. 1062.

2298. Method of ascertaining net income of corporations doing business partly within the state. In the case of a corporation engaged partly in business within the state of Montana and partly within any other state or territory of the United States or any foreign country, the net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources within the state of Montana, other than the income derived from interstate commerce.

First. All the ordinary and necessary expenses actually paid within

the year out of earnings in the maintenance and operation of its business and property within the state of Montana, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity.

Second. All losses actually sustained within the year in business or trade conducted by it within the state of Montana, and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade within the state of Montana. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

Third. The amount of interest paid within the year on its indebtedness in the business carried on in the state of Montana to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid up capital stock outstanding at the close of the year, or if no capital stock, the entire amount of the capital employed in the business at the close of the year and but one-half of its interest-bearing indebtedness then outstanding which the gross amount of its income for the year from business transacted and capital invested within the state of Montana bears to the gross amount of its income derived from all sources within and without the state of Montana. In case of bonds or other indebtedness which have been issued with a guarantee that the interest payable thereon shall be free from taxation, no deduction for the payment of the license fee herein imposed or any other tax paid pursuant to such guarantee shall be allowed.

Fourth. Taxes paid within the year imposed by the state of Montana or by any county, school district or municipality or other taxing subdivision of the state of Montana not including those assessed against local benefits.

Fifth. In the case of insurance companies, in addition to the above: (a) The net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies, the actual deposit of sums with state or territorial officers pursuant to law as additions to guarantee of reserve funds); and (b) the sums other than dividends paid within the taxable year on policy and annuity contracts.

Sixth. And in addition to the foregoing deductions every such corporation shall also have the right and privilege of making an additional arbitrary deduction of the sum of two thousand five hundred dollars.

Provided, however, that as to any corporation engaged in both intrastate and interstate commerce, the net earnings from intrastate business in Montana, so far as expenses of maintenance and operation are concerned, shall be determined by deducting from the gross earnings from intrastate business in Montana such portion thereof as the total expenses of such corporation for maintenance and operation, both within and without the state of Montana, are of the gross earnings of such corporation from all sources both within and without the state; provided, further, that as to

any such corporation the deduction for interest shall be such portion of all interest paid on the entire indebtedness of such corporation as the gross intrastate earnings of such corporation from all sources, both within and without the state, and the deduction for taxes shall be such portion of all taxes paid by such corporation in Montana as the gross intrastate earnings of such corporation in Montana are of the gross earnings of such corporation from all sources within the state, and otherwise the foregoing provisions with reference to deduction shall apply.

History: En. Sec. 3, Ch. 79, L. 1917; amd. Sec. 2, Ch. 69, L. 1919; the 5th subdivision was also amended by Sec. 1, Ch. 208, L. 1919; amd. Sec. 2, Ch. 258, L. 1921.

Cited or applied as section 3, chapter 79, Laws of 1917, before amendment, in Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 81, 173 Pac. 1062.

2299. Upon what income license tax to be computed—Return of annual net income. The license fee shall be computed upon the total net income of the corporation received within each preceding calendar year ending December 31st; provided, that any corporation subject to this license fee may designate the last day of any month in the year as the day of the close of its fiscal year, and shall be entitled to have the license fee payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment, instead of upon the basis of the net income for the calendar year preceding the date of assessment, and it shall give notice to the state treasurer of the day it has thus designated as the close of its fiscal year, at any time not less than thirty days after the first day of January of the year in which its return would be filed if made upon the basis of the calendar year.

Every corporation subject to the license fee herein imposed shall, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof, in each year hereafter, beginning with the year 1917, render a true and accurate return of its annual net income, in the manner and form to be prescribed by the state treasurer with the approval of the state board of equalization, and containing such facts, data, and information as are appropriate, and in the opinion of the state treasurer necessary to determine the correctness of the net income returned, and to carry out the provisions of this act. For the purpose of fixing the license fee to be paid for the year 1917, every corporation subject to the license fee herein imposed shall make the required return as to its annual net income for the year 1916, on or before the first day of May, 1917. The return shall be sworn to by the president, vice-president, or other principal officer, and by the treasurer or assistant treasurer, and shall be filed with the state treasurer on or before the first day of March in each year except the year 1917, when it shall be filed on or before the first day of May. In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this act, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or

property they have custody and control, and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders.

History: En. Sec. 4, Ch. 79, L. 1917.

2300. Assessment of license fee—Notice and payment. All assessments shall be made by the state treasurer, and the several corporations shall be notified of the amounts for which they are respectively liable, on or before the first day of June of each successive year, and said assessments shall be paid on or before the fifteenth day of June; provided, that every corporation computing its license fee upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the fee due under its assessment within thirty days after the date upon which it is required to file its list or return of income for assessment. In cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, the state treasurer shall, upon the discovery thereof at any time within three years after said return is due, make a return upon information obtained as provided for in this act, and the assessment made by him shall be paid by such corporation immediately upon notification of the amount of such assessment. If the license fee assessed thereunder shall not be paid by any corporation liable to pay the same under the provisions of this act on or before the fifteenth day of June in any year, or within thirty days from the date on which the return of income is required to be made by the corporation, there shall be added the sum of ten per cent. on the amount of the license fee unpaid, and interest at the rate of one per cent. per month upon said license fee from the time the same becomes due, and the state shall have a lien for the payment of such license fee, penalty, and interest, which said lien shall attach to any and all property owned or possessed within the state by such corporation, which lien may be enforced in the same manner as liens are enforced at law.

History: En. Sec. 5, Ch. 79, L. 1917.

2301. Penalty for refusal to make return or rendering false or fraudulent return. If any corporation shall refuse or neglect to make a return at the time hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation shall be liable to a penalty of not exceeding five thousand dollars, and may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state of Montana as such corporation until the license fee, together with all penalties and costs, shall be paid, which forfeiture may be enforced by the attorney-general by proper proceedings in court.

History: En. Sec. 6, Ch. 79, L. 1917.

2302. Filing returns and corrections—To be open to inspection, when. When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the state treasurer, shall be filed in the office of the state board of equalization, and shall constitute public records and be open to inspection as such only upon the order of the governor, and under rules and regulations to be prescribed by the state board of equalization.

History: En. Sec. 7, Ch. 79, L. 1917.

2303. Understatement of returns—Proceedings. If the state treasurer has reason to believe that the amount of any income returned is understated, he should give notice in writing of not less than five days to the corporation making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. Such corporation may furnish sworn testimony to prove any relevant fact, and, if dissatisfied with the decision of the state treasurer, may appeal to the state board of equalization for decision under such rules of procedure as may be prescribed by the state board of equalization. The state treasurer, with the approval of the state board of equalization, shall have power to prescribe forms for return and notices, and such other regulations as may from time to time be found to be necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel the attendance of witnesses to testify before the state board of equalization, together with the production of books and such other testimony by appropriate process.

History: En. Sec. 8, Ch. 79, L. 1917.

2304. Invalidity of portion of law does not affect remainder. If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act, so long as sufficient remains of the act to render the same operative and reasonably effective for carrying out the main purpose and intention of the legislature in enacting the same, as such purpose and intention may be disclosed by this act.

History: En. Sec. 9, Ch. 79, L. 1917.

CHAPTER 180.

EXPRESS COMPANIES—LICENSE TAX.

Section 2305. Definition of Express Companies.
2306. Statements to Be Filed With State Board of Equalization.
2307. Gross Receipts—How Ascertained.
2308. Procedure in Case of Failure to Make Statement.
2309. Penalty for Failure to Make Statement—Duty of Attorney-General to Institute Action.
2310. State Board of Equalization Authorized to Require Production of Books.
2311. Amount and Collection of License Tax.
2312. Collection of License Fee by Suit on Failure of Company to Pay.
2313. Exemption From Payment of Other Tax.

2305. Definition of express companies. That any person or persons, joint-stock association or corporation, wherever organized or incorporated, engaged in the business of conveying to, from, or through this state or any part thereof, money, packages, gold, silver plate, or any articles by express service, as distinguished from the ordinary freight lines of transportation of merchandise and property in this state shall be deemed to be an express company.

History: En. Sec. 1, Ch. 87, L. 1917.

2306. Statements to be filed with state board of equalization. Any express company as defined in the preceding section, doing business in this state, shall annually, between the first and thirtieth day of April, after the approval of this act, under oath of the person constituting such company, if a person, or under oath of the president, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the state board of equalization, a statement in such form as the board may prescribe, containing the following facts:

First. The name of the person or persons, association or corporation;

Second. Under the laws of what state or country organized;

Third. The location of its principal office;

Fourth. The name and postoffice address of the president, secretary, auditor, treasurer, superintendent and general manager;

Fifth. The name and postoffice address of the chief officer or managing agent of the company in this state;

Sixth. The entire receipts (including all sums entered or charged whether actually received or not) for business done by such company within this state, including its proportion of gross receipts for business done by such company within the state in connection with other companies;

Seventh. Such other facts and information as the said board may require in the form of return prescribed by it.

History: En. Sec. 2, Ch. 87, L. 1917.

2307. Gross receipts—How ascertained. The state board of equalization shall proceed to ascertain and determine on or before the first Monday of August in each year the entire gross receipts of each of said express companies for business done within the state of Montana for the year next preceding the first day of April, and the amount so ascertained by the said board shall be held and deemed to be the gross receipts of such express company for business done within the state of Montana for the year under consideration.

History: En. Sec. 3, Ch. 87, L. 1917.

2308. Procedure in case of failure to make statement. In case of failure or refusal of any express company to make the statement required by law or furnish the board any information required by it, the board shall inform itself as best it may on the matters necessary to be known in order to discharge its duty, and at any time after the meeting of the board and before the gross receipts of any express company for business done within the state are determined, any person, company or corporation interested shall have the right, on written application, to appear before the board and be heard on the matter of such determination. After the determination of the amount of the gross receipts of any express company for business done in the state and before the certification of such amount by such board, the board may, on the application of any person, company or corporation interested, or on its own motion, review and correct its findings in such manner as may seem to it to be just and proper.

History: En. Sec. 4, Ch. 87, L. 1917.

2309. Penalty for failure to make statement—Duty of attorney-general to institute action. In case any express company shall refuse, fail or neglect to make and file the statement or schedule as provided for in this act, such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after the thirtieth day of April to file its statement, said penalty to be recovered by action in the name of the state and on collection paid into the state treasury to the credit of the general fund of the state. The attorney-general, on request of the state board of equalization, shall institute such action against any such person or persons, joint-stock company or corporation so delinquent in any court of competent jurisdiction in this state.

History: En. Sec. 5, Ch. 87, L. 1917.

2310. State board of equalization authorized to require production of books. The state board of equalization shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent, or other officer or employee or agent of any express company engaged in an express company business to attend before the board and bring with him for inspection any books or papers of such company in his possession or under his control and to testify under oath on any matter relating to the organization or business of such express company. Any member of the board is authorized and empowered to administer such oath. Any person who shall refuse to attend before the board when subpoenaed so to do, or shall refuse to bring with him and submit for the inspection of the board any books or papers in his possession, custody or control, or shall refuse to answer any questions put to him by the board affecting the organization or business of the express company under investigation shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars nor less than one hundred dollars.

History: En. Sec. 6, Ch. 87, L. 1917.

2311. Amount and collection of license tax. The state board of equalization shall, on the first Monday of August, annually, enter in a book provided for that purpose the amount of gross receipts of express companies doing business in this state for the year next preceding the first day of April, as determined by the provisions of this act. It shall be the duty of the state treasurer annually to collect from each such express company doing business in this state, a sum in the nature of a license tax to be computed by taking four per centum of the amount fixed by the state board of equalization as the gross receipts of such express company for business done within the state for the year next preceding the first day of April as determined and certified by the state board of equalization; provided, however, that nothing contained in this act shall exempt or relieve any express company from the assessment and taxation of its tangible property in the manner authorized and provided by law. All licenses collected under the provisions of this act shall be credited to the general fund of the state.

History: En. Sec. 7, Ch. 87, L. 1917; amd. Sec. 1, Ch. 150, L. 1921.

Taxation of receipts of express companies, see note in 57 L. R. A. 64.

Effect of commerce clause of federal constitution on taxation of express companies, see note in 60 L. R. A. 687.

2312. Collection of license fee by suit on failure of company to pay. If any express company fails or refuses to pay the license fee as provided for in this act before the thirtieth day of September annually, the state treasurer shall proceed to collect the taxes, together with interest, at the rate of twelve per cent. per annum by suit instituted by the attorney-general, whose duty it shall be to prosecute any and all proceedings for the collection of such taxes.

History: En. Sec. 8, Ch. 87, L. 1917.

2313. Exemption from payment of other tax. No other license or franchise tax shall be levied against any express company except the license tax provided by this act.

History: En. Sec. 9, Ch. 87, L. 1917.

CHAPTER 181.

SLEEPING-CAR LICENSE TAX.

Section 2314. License on Sleeping-Car Company.
2315. Statement to Be Filed by Company.

2314. License on sleeping-car company. Every person, association, or corporation engaged in the business of operating sleeping-cars carrying passengers from one point to another within the state of Montana shall pay into the state treasury, on or before the first day of January of each year, a license tax of one hundred dollars for each car used by it in the conduct of such business.

History: En. Sec. 1, Ch. 141, L. 1911.

Note.—The attorney-general of Montana in volume 4, p. 352, Opinions of the Attorney-General, holds that this and the following section apply only to sleeping-cars used in purely local or intrastate commerce, and as authority for that position cites the case of State v. Rocky Mountain Bell Tel. Co., 27 Mont. 394, 71 Pac. 311, in which it was held under a similar statute providing that telephone companies doing business in this state must pay a license in each county for each instrument in use, that it will not be implied that the legislature intended to go beyond its lawful powers and that as to instruments used in interstate business the act was intended to have no application whatever.

2315. Statement to be filed by company. Every such person, association, or corporation shall annually, on the thirty-first day of December of each year, file in the office of the state treasurer a statement of the number of such cars used by it during the year preceding in the conduct of such business, and the names of such cars, so far as the same have names, which statement shall be verified by the oath of some officer of the corporation, testifying of his own knowledge as to the facts therein stated.

History: En. Sec. 2, Ch. 141, L. 1911.

CHAPTER 182.

COAL MINES AND DEALERS' LICENSE TAX.

Section 2316. "Person" Defined.
2317. Coal Mines License Tax—Amount—Exceptions.
2318. Payment of Annual License Tax.
2319. Mine Operators to File Statements.
2320. Records to Be Kept by Mine Operators.
2321. Quarterly Statements of Mine Operators—Payment License Tax.
2322. Penalty for Neglect or False Statement.

2323. Procedure to Determine Tax in Absence of Statement—Penalty.
2324. Disposal of License Taxes.
2325. Penalty for Violation of Act.
2326. License Taxes Supplemental.
2327. "Person" and "Mine Operators" Defined.
2328. License to Retail Coal—Fees.
2329. Retailers to File Statements—Contents.
2330. Payment of License Fees.
2331. Record of Coal Sold for Retail.
2332. Statement of Coal Sold—Form and Filing.
2333. Penalty for Failure to File Statement.
2334. Procedure to Determine Tax on Failure Statement—Penalty.
2335. Expiration of License.
2336. Full Weight of Coal.
2337. Misrepresentation in Sale Forbidden.
2338. Revocation of License.
2339. Invoice of Coal.
2340. State Treasurer to Issue License.
2341. Disposal of License Fees.
2342. Penalty for Violation of Act.
2343. Fees Additional to Other Taxes.

2316. "Person" defined. The term "person," as used in this act, shall mean and include any individual, firm, co-partnership, and every corporation, joint-stock company and association.

History: En. Sec. 1, Ch. 155, L. 1921.

2317. Coal mines license tax — Amount — Exceptions. Every person engaging in or carrying on the business of coal mining, or engaged in the business of working or operating any mine or mining property, in the state of Montana, from which marketable or merchantable coal of any kind is mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must, for the year 1921, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work and operations, in an amount equal to five cents per ton for each and every ton of two thousand pounds of marketable or merchantable coal mined, extracted or produced by such person in the state of Montana and shipped by such person during such year, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed, by any person to mine coal, or to work in or about, or in connection with any coal mine or coal property or business, to pay such license taxes, nor shall any work required to be done in prospecting for, or in developing, or opening up any coal mine or mining property, be deemed to be the carrying on of a coal mining business, or the engaging in the business of working or operating of a coal mine; provided further, that if during any such work of developing or opening up any coal mine or coal mining property, any marketable or merchantable coal shall be mined, extracted or produced and sold, then the same shall be deemed the carry-

ing on of a coal mining business and the engaging in the business of working and operating a coal mine.

History: En. Sec. 2, Ch. 155, L. 1921.

Classification of coal for purpose of taxation, see note in L. R. A. 1916F, 164.

Coal as real estate for purposes of taxation, see note in 15 L. R. A. 297.

2318. Payment of annual license tax. Such annual license tax shall be paid in quarterly instalments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 155, L. 1921.

2319. Mine operators to file statements. Each and every person engaged in or carrying on the business of coal mining, or engaged in the business of working or operating any mine or mining property in the state of Montana, from which coal of any kind is mined, at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of coal mining or engage in working or operating any mine or mining property in the state of Montana, from which coal of any kind is mined, must, immediately upon engaging in such business, work or operations, file with the state board of equalization, a certificate and statement, on forms prescribed by such state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the mine or mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 4, Ch. 155, L. 1921.

2320. Records to be kept by mine operators. Every such person shall keep a record, in such form as the state board of equalization may require, of all coal mined, extracted or produced, and of all coal sold or otherwise disposed of by such person, and such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents and employees.

History: En. Sec. 5, Ch. 155, L. 1921.

2321. Quarterly statements of mine operators—Payment license tax. Each and every such person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of tons, of two thousand pounds each, of marketable or merchantable coal mined, extracted, or produced by such person during such quarter, from all coal mines or coal mining property worked or oper-

ated by such person, and shipped by such person, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person, together with the total amount due to the state as license tax for such quarter; and must within such thirty days, and at the time of delivering such duplicate statement to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana, for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state, of the association, joint-stock company, or corporation making the same. Any person engaged in working or operating more than one coal mine may include all coal mines worked or operated by him in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 155, L. 1921.

2322. Penalty for neglect or false statement. It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 7, Ch. 155, L. 1921.

2323. Procedure to determine tax in absence of statement—Penalty. If any person shall fail, neglect or refuse to file any statement required by section 2321 of this code, within the time therein required, the state board of equalization, shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of tons of marketable or merchantable coal mined, extracted or produced by such person, during such quarter and shipped or used by such person, or delivered by such person to any other person for shipment, sale or use by such other person, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall make out a statement in duplicate, showing the same, and shall add to the amount of such license taxes, twenty-five per cent. thereof as a penalty, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof, at the rate of twelve per cent. per annum from the date of the making of such statement by the state board of equalization, until paid. Upon request of the state treasurer, it shall be the duty of the attorney-general or any county attorney to commence, and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

History: En. Sec. 8, Ch. 155, L. 1921.

2324. Disposal of license taxes. All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 155, L. 1921.

2325. Penalty for violation of act. Any violation of any of the provisions of the act shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 155, L. 1921.

2326. License taxes supplemental. The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 11, Ch. 155, L. 1921.

2327. "Person" and "Mine Operators" defined. The term "Person," as used in this act means and includes every individual, firm, association, joint-stock company, syndicate, and corporation; and the term "Mine Operator" as used in this act means every person who engages in the business in this state of working or operating any mine or mining property from which coal of any kind is mined, extracted or produced, whether such person shall engage in such business as owner, lessee, trustee, receiver, or in any other capacity, but shall not mean or include a laborer or employee employed to work in or about any such mine or mining property.

History: En. Sec. 1, Ch. 3, Ex. L. 1921.

2328. License to retail coal—Fees. Every person who engages in or carries on the occupation or business in this state of retailing, or selling at retail coal of any kind must, for the year 1921, and annually each year thereafter when engaged in such occupation or business, procure from the state treasurer a license to engage in and carry on such occupation or business in this state, and shall annually pay to the state treasurer for such license a fee of one dollar, together with an additional sum or amount equal to five cents a ton for each and every ton of coal containing two thousand pounds sold by such person during such year and for the mining of which coal no "Mine Operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state.

History: En. Sec. 2, Ch. 3, Ex. L. 1921.

2329. Retailers to file statements—Contents. Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the 30th day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if an association, joint-stock company, syndicate, or corporation; or, if a firm or co-partnership the names and addresses of the persons composing the same; if an association, joint-stock company,

syndicate, or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state board of equalization may require.

History: En. Sec. 3, Ch. 3, Ex. L. 1921.

2330. Payment of license fees. The said license fee of one dollar shall be paid by each person within thirty days after the end of the quarter ending March 31st in each year, and such additional license fee of five cents per ton shall be paid in quarterly instalments for the quarters ending March 31st, June 30th, September 30th and December 31st in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license fees becoming due for any quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 3, Ex. L. 1921.

2331. Record of coal sold for retail. Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "Mine Operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents, or employees.

History: En. Sec. 5, Ch. 3, Ex. L. 1921.

2332. Statement of coal sold—Form and filing. Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of tons of coal sold by such person during such quarter for the mining of which no "Mine Operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license fees from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license fees shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate, or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 3, Ex. L. 1921.

2333. Penalty for failure to file statement. It shall be unlawful for any person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time required, or to make any such statement or certificate false in any particular.

History: En. Sec. 7, Ch. 3, Ex. L. 1921.

2334. Procedure to determine tax on failure statement — Penalty. If any person shall fail, neglect, or refuse to make or file the statement required by section 2332 of this code, within the time required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license fees due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license fees, and shall add to the amount of such license fees twenty-five per centum thereof as a penalty, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license fees, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per centum per annum from the date of the making of such statement by the state board of equalization until paid. Upon the request of the state treasurer it shall be the duty of the attorney-general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 3, Ex. L. 1921.

2335. Expiration of license. All licenses issued under the provisions of this act shall expire on the 31st day of December following the date of issuance.

History: En. Sec. 9, Ch. 3, Ex. L. 1921.

2336. Full weight of coal. In all sales of coal the person selling the same must give to the purchaser full weight at the rate of two thousand pounds to the ton.

History: En. Sec. 10, Ch. 3, Ex. L. 1921.

2337. Misrepresentation in sale forbidden. No person, association, firm, joint-stock company, syndicate or corporation shall misrepresent to the public respecting any coal offered for sale, nor sell coal of any particular name or from any particular mine under the name or designation of another coal or mine.

History: En. Sec. 11, Ch. 3, Ex. L. 1921.

2338. Revocation of license. The state board of equalization shall have the power to revoke the license of any person upon the conviction of such person of the violation of any of the provisions contained in the two preceding sections, but no revocation shall be made until due notice of the intention of the state board of equalization so to do shall have been given to such person and such person afforded an opportunity to appear before such state board of equalization and show cause why such license should not be revoked.

History: En. Sec. 12, Ch. 3, Ex. L. 1921.

2339. Invoice of coal. Every "Mine Operator" shall make out and deliver to every person to whom any coal is sold or delivered by such "Mine Operator" an invoice covering the coal so sold or delivered, on which invoice shall be stated whether or not such "Mine Operator" has paid, or assumes liability for the payment of the license fee for mining the same, to the state of Montana, under any law of this state.

History: En. Sec. 13, Ch. 3, Ex. L. 1921.

2340. State treasurer to issue license. Upon payment of the license fee for the first quarter in each year by any person engaging in or carrying on the occupation of selling coal at retail in this state, the state treasurer shall issue to the person paying the same a license which shall recite therein that the same shall be and remain in full force and effect for the whole of such year, provided the person to whom it is issued shall thereafter make all payments of quarterly instalments of license fees as the same may become due, and such license shall be kept conspicuously posted in the place of business of such person.

History: En. Sec. 14, Ch. 3, Ex. L. 1921.

2341. Disposal of license fees. All license fees collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 15, Ch. 3, Ex. L. 1921.

2342. Penalty for violation of act. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 3, Ex. L. 1921.

2343. Fees additional to other taxes. The license fees herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 17, Ch. 3, Ex. L. 1921.

CHAPTER 183.

METALLIFEROUS MINES LICENSE TAX.

Section 2344. "Person" Defined.
2345. License Tax for Metalliferous Mine Operators.
2346. Amount of Tax.
2347. Net Proceeds—Computation of.
2348. Computation and Notice of Tax.
2349. Delinquent Taxes—Penalty.
2350. Penalty for Failure to Make Statement.
2351. State Board of Equalization May Compel Production of Evidence—Penalty—Collection of Tax.
2352. Rehearing on Determination of Tax—Procedure.
2353. Lien of License Tax.
2354. Disposal of License Tax.
2355. Licenses Supplemental to Existing Taxes.

2344. "Person" defined. The term "person," as used in this act, shall mean and include any individual, firm, co-partnership, association, and every joint-stock company, syndicate and corporation.

History: En. Sec. 1, Ch. 200, L. 1921.

2345. License tax for metalliferous mine operators. Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana, from which gold, silver, copper, lead, or any other metal or metals, or precious or semi-precious gems or stones of any kind shall be mined, extracted or produced, whether such person shall carry on such business, or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must, for the year 1921, and annually each year thereafter when engaged in or carrying on such business, work or operations, procure from the state treasurer a license to engage in and carry on such business, work or operations in this state, and shall pay to the state treasurer for such annual license the taxes hereinafter prescribed; provided, however, that nothing contained in this act shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property, to procure such license or to pay license tax, nor shall any discovery work required to be done in prospecting for or locating any mining claim, or any annual assessment work, or work required in the obtaining of title to mining property from the United States, or required by the laws of the United States or of this state in order to hold possessory title to any mining claim, be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

Any person, or persons, firm, co-partnership or corporation, who shall lease or rent any mining property in consideration of a royalty or percentage of the yield thereof, or of the value of the yield thereof, shall be considered as engaged in and carrying on the business of working and operating such mine or mining property.

History: En. Sec. 2, Ch. 200, L. 1921.

2346. Amount of tax. The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any such mine or mining property in this state, shall be one dollar, together with an additional sum or amount equal to one and one-half per cent. of the net proceeds which may have been derived by such person from such business, work or operations within this state during the year ending May 31st.

History: En. Sec. 3, Ch. 200, L. 1921.

2347. Net proceeds—Computation of. The net proceeds derived by such person from such business shall be reported to the state board of equalization, in the same manner, and shall be calculated and computed in the same manner and upon the same basis as the net proceeds of mines are determined for purposes of general taxation, as provided by law in this state. The state board of equalization shall require reports upon forms to be by them prepared, on the same basis and within the same time for the same period of time, and in the same manner as net proceeds of mines are reported. Such statement and return shall be sworn to by the individual, or

by the president, vice-president, or treasurer or assistant treasurer of the association, company, syndicate or corporation making the same.

History: En. Sec. 4, Ch. 200, L. 1921.

2348. Computation and notice of tax. The state board of equalization shall examine each such statement and return filed with it and determine and ascertain therefrom, and compute and assess the amount of the license to be paid by the person making and filing the same, and shall not later than the tenth day of July certify to the state treasurer the name of each person subject to the payment of a license tax under the provisions of this act, and the amount of such license tax to be paid by such person. The said board shall at the same time mail to each person, making and filing the statement and return, a written notice of the amount of the license tax to be paid by each respectively, and that the same is due and payable to the state treasurer, and will become delinquent at five o'clock p. m. on the thirtieth day of November following, and that if the same becomes delinquent a penalty of ten per cent. will be added, and, that the whole amount of such license tax, with penalty added, shall bear interest at the rate of twelve per cent. per annum from the date the same becomes delinquent until paid.

History: En. Sec. 5, Ch. 200, L. 1921.

2349. Delinquent taxes—Penalty. All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock p. m. on the thirtieth day of November following the date when the same are assessed and certified to the state treasurer, and as same become delinquent a penalty of ten per cent. shall be added thereto, and the whole amount of said license tax and penalty shall bear interest from the date of becoming delinquent until paid at the rate of twelve per cent. per annum.

History: En. Sec. 6, Ch. 200, L. 1921.

2350. Penalty for failure to make statement. If any person shall fail, refuse, or neglect to make and file such statement and return within the time prescribed by this act, the state board of equalization shall immediately after such time has expired, ascertain and determine as nearly as possible from any returns or reports filed with any state or county board or officer under any law of this state, and from any other information which the board may be able to obtain, the total net revenue of such person from such business during the year ending May 31st immediately preceding the year in which the license tax is to be paid, and license issued, and shall make and file a statement and return showing the amount of such net revenue, and shall ascertain and determine and compute and assess the amount of the license tax due from, and to be paid by such person, and shall immediately certify the same to the state treasurer, and give notice to such person in in the same manner as though such statement had been filed within time, and the state treasurer shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided herein for other delinquencies; and, provided further, that the determination of the board in such case shall be final and conclusive, and such person shall have no right to maintain any action to

review, revise or change the same in any particular whatever, or to enjoin the collection thereof, or any part thereof, or to pay the same or any part thereof under protest, and maintain any action to recover the same.

History: En. Sec. 7, Ch. 200, L. 1921.

2351. State board of equalization may compel production of evidence—Penalty—Collection of tax. Should the state board of equalization, have reason to believe that any such statement and return is wilfully false in any particular, it may require the person or persons, or if made by an association, joint-stock company, or corporation, the officers thereof, and the employees of any such person, association or corporation, to appear before the board and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such person, or officers or agents of such association, joint-stock company or corporation, or the employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn and testify, or refusing to answer any material question propounded by the board, or any of its members, or refusing to permit the board, or its members, employees, accountants or agents to examine such books, papers, records and documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the board, after hearing such testimony and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the board shall change and correct the same so as to show the true net proceeds, and shall re-assess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty per cent., and shall thereupon immediately certify the amount of such license with the penalty added thereto, to the state treasurer and shall at the same time mail to such person a written notice of corrections and changes made in such statement and return and the amount of the license tax and penalty certified to the state treasurer. The state treasurer shall collect such license tax with penalty added, and if the same has become delinquent, he shall also collect interest thereon from the date of delinquency until paid at the rate of twelve per cent. per annum.

History: En. Sec. 8, Ch. 200, L. 1921.

2352. Rehearing on determination of tax—Procedure. Every person whose license tax has been determined and assessed by the state board of equalization, under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the board to the amount of net proceeds, or as to the amount of the license tax assessed, may, at any time within ten days after the date of the notice thereof required to be given such person, file with the board a petition for a rehearing, in which

petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of net proceeds or amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the board therefrom that the board has erred in any manner in ascertaining and determining the amount of net revenue of such person, or in assessing the amount of the license tax, or both, the board shall immediately correct such error, and if such correction shall be in conformity with the request contained in the petition for a rehearing, the board shall take no further steps in connection with such petition, other than to certify to the state treasurer the amount of the license tax due from such person after the making of such correction. If, from such examination, it does not appear to the satisfaction of the board that it has erred in any manner in determining the net proceeds of such person or in assessing the amount of license tax to be paid, the board shall grant such rehearing, fix a day when the board will take up and hear such matter, and give such notice to such person of such date of hearing as the board may deem reasonable. On such hearing such person, any taxpayer interested, and the board may introduce witnesses, and take testimony on any material matters connected with such return and license tax, and after considering the same, the board shall fix and determine the net proceeds of such person, and re-assess the amount of the license tax to be paid by such person, certifying the same to the state treasurer and giving such person notice thereof in the manner as required by section 2348.

History: En. Sec. 9, Ch. 200, L. 1921.

2353. Lien of license tax. The license tax assessed against any person under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state, and used by him in connection with such business, which lien shall attach to such property on the date when the license tax is certified to the state treasurer by the board, and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 10, Ch. 200, L. 1921.

2354. Disposal of license tax. All license taxes, penalties and interest collected by the state treasurer under the provisions of this act shall be by him paid into and deposited to the credit of the general fund of the state, and whenever a license tax is paid under the provisions of this act, the state treasurer shall issue to the person paying the same, a license authorizing such person to engage in and carry on such business until the first day of June immediately following the year for which such license tax is paid and such license issued.

History: En. Sec. 11, Ch. 200, L. 1921.

2355. Licenses supplemental to existing taxes. The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by persons subject to the provisions of this act.

History: En. Sec. 12, Ch. 200, L. 1921.

CHAPTER 184.

CEMENT PRODUCERS' AND DEALERS' LICENSE TAX.

Section 2356. "Person" Defined.
2357. License Tax on Manufacturers of Cement, etc.
2358. Quarterly Payment of Tax.
2359. Statements to Be Filed With Board of Equalization.
2360. Manufacturers to Keep Records.
2361. Quarterly Statement and Payment of Tax.
2362. Duty to File Statement.
2363. Procedure to Ascertain Tax on Failure of Statement—Penalty.
2364. Disposal of Taxes.
2365. Penalty for Violation of Act.
2366. License Tax Supplemental.
2367. "Person" Defined.
2368. License Tax on Sales of Cement, etc.
2369. Statement to Be Filed With Board of Equalization.
2370. Quarterly Payment of License Fee.
2371. Record of Cement Received.
2372. Quarterly Statement of Produce Sold on Which No Tax Paid—Payment of Tax.
2373. Duty to File Statement.
2374. Procedure to Ascertain Tax on Failure of Statement—Penalty.
2375. Expiration of Licenses.
2376. Invoice to State Whether Tax Paid.
2377. Issuance and Term of License.
2378. Disposal of License Taxes.
2379. Penalty for Violation of Act.
2380. License Tax Supplemental.

2356. "Person" defined. The term "person," as used in this act, shall mean and include any individual, firm, co-partnership, and every corporation, joint-stock company and association.

History: En. Sec. 1, Ch. 15, Ex. L. 1921.

2357. License tax on manufacturers of cement, etc. Every person engaged in or carrying on the business of producing or manufacturing cement, cement plaster, or gypsum plaster in this state, must, for the year 1921, and each year thereafter, when engaged in or carrying on such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, in an amount equal to four cents per barrel for each and every barrel of cement, containing three hundred and seventy-six pounds and twenty cents per ton of two thousand pounds on cement plaster or gypsum manufactured or produced during such year by such person within the state of Montana.

History: En. Sec. 2, Ch. 15, Ex. L. 1921.

2358. Quarterly payment of tax. Such annual license tax shall be paid in quarterly instalments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st, of each year, beginning with the quarter ending March 31, 1921, and the amount of such license tax due for each such quarter shall be paid to the state treasurer within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 15, Ex. L. 1921.

2359. Statements to be filed with board of equalization. Each and every person engaged in or carrying on such business at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921,

and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants or factories within this state; the name and address of the managing agent in this state; if a corporation, joint-stock company or association, or if a firm or co-partnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal place of business and the name and addresses of its principal officers; and such other information as the state board of equalization may deem necessary.

History: En. Sec. 4, Ch. 15, Ex. L. 1921.

2360. Manufacturers to keep records. Every such person shall keep a record in such form as the state board of equalization may require, of all cement, cement plaster or gypsum plaster manufactured or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 15, Ex. L. 1921.

2361. Quarterly statement and payment of tax. Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of barrels of cement, tons of plaster or gypsum plaster manufactured or produced by such person in the state of Montana, during each month of such quarter and during the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state, may include all thereof in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other thereof to the state board of equalization.

History: En. Sec. 6, Ch. 15, Ex. L. 1921.

2362. Duty to file statement. It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 7, Ch. 15, Ex. L. 1921.

2363. Procedure to ascertain tax on failure of statement—Penalty. If any such person shall fail, neglect or refuse to file any statement required by section 2361 within the time therein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may, regarding the number of barrels of cement, tons of cement plaster or gypsum plaster manufactured or produced by such person within this state during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent. thereof as a penalty, and deliver one copy of such statement to the state treasurer, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent. per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney-general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same.

History: En. Sec. 8, Ch. 15, Ex. L. 1921.

2364. Disposal of taxes. All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 15, Ex. L. 1921.

2365. Penalty for violation of act. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 15, Ex. L. 1921.

2366. License tax supplemental The license taxes herein provided for shall be in addition to all taxes and fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 11, Ch. 15, Ex. L. 1921.

2367. "Person" defined. The term "person," as used in this act means and includes every individual, firm, association, joint-stock company, syndicate and corporation.

History: En. Sec. 1, Ch. 16, Ex. L. 1921.

2368. License tax on sales of cement, etc. Every person who engages in or carries on the occupation or business in this state of retailing, or selling at retail, cement, cement plaster, gypsum plaster or other by-products of cement, must for the year 1921, and annually each year thereafter when engaged in such occupation or business, procure from the state treasurer a license to engage in and carry on such occupation or business in this state, and shall annually pay to the state treasurer for such license a tax of one dollar, together with an additional sum or amount equal to four cents per barrel of three hundred seventy-six pounds of cement, and twenty cents per ton of two thousand pounds on cement plaster, gypsum plaster or

other by-product of cement, sold by such person during such year and for the manufacturing or producing of which no person has paid, or assumed liability for the payment of any license tax to the state of Montana under any law of this state.

History: En. Sec. 2, Ch. 16, Ex. L. 1921.

2369. Statement to be filed with board of equalization. Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the thirtieth day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if any association, joint-stock company, syndicate or corporation, or if a firm or co-partnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state board of equalization may require.

History: En. Sec. 3, Ch. 16, Ex. L. 1921.

2370. Quarterly payment of license fee. The said license tax of one dollar shall be paid by each person within thirty days after the end of the quarter ending March 31st in each year, and such additional license tax of four cents per barrel and twenty cents per ton shall be paid in quarterly instalments for the quarters ending March 31st, June 30th, September 30th, and December 30th, in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license tax becoming due for any quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 16, Ex. L. 1921.

2371. Record of cement received. Each and every person engaging in or carrying on such occupation in this state shall keep a record showing all cement, cement plaster, gypsum plaster and other by-products of cement purchased or received by or delivered to such person for sale by such persons at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster or other by-products of cement, no person has paid, or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 16, Ex. L. 1921.

2372. Quarterly statement of produce sold on which no tax paid—Payment of tax. Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of the following quarter, make out in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid, or assumed liability for the payment of, any license tax to the state of Montana under any laws of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 16, Ex. L. 1921.

2373. Duty to file statement. It shall be unlawful for any person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time required, or to make any such statement or certificate false in any particular.

History: En. Sec. 7, Ch. 16, Ex. L. 1921.

2374. Procedure to ascertain tax on failure of statement — Penalty. If any person shall fail, neglect or refuse to make or file the statement required by section 2372 within the time required, the state board of equalization shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license taxes due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license taxes and shall add to the amount of such license taxes twenty-five per cent. thereof as a penalty, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per cent. per annum, from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer it shall be the duty of the attorney-general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 16, Ex. L. 1921.

2375. Expiration of licenses. All licenses issued under the provisions of this act shall expire on the thirty-first day of December following the date of issuance.

History: En. Sec. 9, Ch. 16, Ex. L. 1921.

2376. Invoice to state whether tax paid. Every person engaged in the business in this state of manufacturing or producing cement, cement plaster, gypsum plaster or other by-product of cement shall make out and deliver to every person to whom any of such commodities are sold or delivered by such person, an invoice covering the commodity or commodities so sold or delivered on which invoice shall be stated whether or not such person has paid, or assumes liability for the payment of the license tax for manufacturing or producing the same, to the state of Montana, under any laws of this state.

History: En. Sec. 10, Ch. 16, Ex. L. 1921.

2377. Issuance and term of license. Upon payment of the license tax for the first quarter in each year by any person engaging in or carrying on the occupation of selling cement, cement plaster, gypsum plaster or other by-products of cement at retail in this state, the state treasurer shall issue to the person paying the same a license which shall recite therein that the same shall be and remain in full force and effect for the whole of such year, provided the person to whom it is issued shall thereafter make all payments of quarterly instalments of license taxes as the same may become due, and such license shall be kept conspicuously posted in the place of business of such person.

History: En. Sec. 11, Ch. 16, Ex. L. 1921.

2378. Disposal of license taxes. All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 12, Ch. 16, Ex. L. 1921.

2379. Penalty for violation of act. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 13, Ch. 16, Ex. L. 1921.

2380. License tax supplemental. The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 14, Ch. 16, Ex. L. 1921.

CHAPTER 185.

GASOLINE DISTRIBUTORS' AND DEALERS' LICENSE TAX.

Section 2381. "Person," "Distributor," and "Dealer" Defined.
2382. License Tax—Distributors of Gasoline—Exception.
2383. License Tax—Dealers in Gasoline—Exceptions.
2384. Quarterly Payment of License Tax.
2385. Distributors Record of Gasoline Produced or Sold.
2386. Quarterly Reports Distributors of Gasoline.
2387. Payment of License Tax.
2388. Penalty for Neglect or False Statement.
2389. Procedure to Collect License Tax in Absence of Statement—Penalty.
2390. Invoice on Sales Gasoline in Original Package.
2391. Export Sales Excepted.
2392. Gasoline License Tax Fund.
2393. Statement by County Superintendent as to Teaching Positions.
2394. Apportionment Gasoline Tax Fund.
2395. Penalty for Violation of Act.
2396. License Tax Supplemental.

2381. "Person," "distributor" and "dealer" defined. As used in this act: The term "person" means and includes every individual, firm, association, joint-stock company, syndicate, and corporation.

The term "distributor" means and includes every person who engages in the business in the state of refining, manufacturing, producing, or compounding gasoline or distillate, and selling the same in this state; and also every person who engages in the business in this state of shipping, transporting or importing any gasoline or distillate into, and making original sales of the same, in this state.

The term "dealer" means and includes every person, other than a distributor, who engages in the business in this state, of distributing or selling gasoline or distillate within the state.

History: En. Sec. 1, Ch. 156, L. 1921.

2382. License tax—Distributors of gasoline—Exception. Every distributor shall, for the year 1921, and each year thereafter, when engaged in such business in this state, pay to the state treasurer a license tax for engaging in and carrying on such business in this state, in an amount equal to one cent for each gallon of gasoline, and one cent for each gallon of distillate refined, manufactured, produced or compounded by such distributor and sold by him in this state, or shipped, transported or imported by such distributor into, and distributed or sold by him within this state, during such year; provided, however, that no gasoline or distillate distributed or sold by any such distributor in the original packages in which the same was shipped, transported or imported into this state, shall be included or considered in determining the amount of such license tax, but only such gasoline and distillate as has been sold or distributed by such distributor, after the breaking of the original packages in which the same was shipped, transported or imported into this state shall be included or considered in computing the amount of the license tax to be paid by such distributor; provided, further, that all gasoline and distillate distributed by any distributor to any of its service stations in this state shall be deemed to have been sold, and shall be treated and considered, in computing such license tax in the same manner as though the same had been sold to dealers or other persons.

History: En. Sec. 2, Ch. 156, L. 1921.

2383. License tax — Dealers in gasoline — Exceptions. Every dealer shall for the year 1921, and each year thereafter, when engaged in such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in such business in this state, equal to one cent for each gallon of gasoline and one cent for each gallon of distillate sold or distributed by such dealer in this state during such year; provided, however, that no gasoline or distillate sold or distributed by such dealer, and which was refined, manufactured, produced or compounded and sold by a distributor in this state, and no gasoline or distillate sold by such dealer which, when purchased by him, was contained in containers or packages other than the original containers or packages in which the same was shipped, transported or imported into this state, shall be included or considered in determining the amount of such license tax to be paid by such dealer, but only such gasoline and distillate

as was shipped, transported or imported into this state and purchased by such dealer in the original packages in which so shipped, transported or imported into this state, and then resold by such dealer after the breaking of such original packages by him, shall be included or considered for the purpose of computing the amount of such license tax.

History: En. Sec. 3, Ch. 156, L. 1921.

2384. Quarterly payment of license tax. Such license tax shall be paid in quarterly instalments for the quarters ending, respectively, March 31st, June 30th, September 30th and December 31st, in each year, beginning with the quarter ending March 31, 1921, and the amount of such license tax becoming due for each quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 156, L. 1921.

2385. Distributor's record of gasoline produced or sold. Each distributor shall keep a record in such form as the state board of equalization shall require, showing the total number of gallons of gasoline and distillate refined, manufactured, produced, or compounded and sold by such distributor within this state during each quarter; or showing the total number of gallons of gasoline and distillate shipped, transported or imported into this state by such distributor; the number of gallons thereof sold in this state in the original packages in which shipped, transported, or imported into this state; the number of gallons thereof sold in this state by such distributor, after breaking the original packages in which the same was shipped, imported or transported into this state.

Each dealer shall keep a like record showing the total number of gallons of gasoline and distillate sold by him; the number of gallons of gasoline and distillate so purchased, contained in the original containers or packages in which the same was shipped, transported or imported into this state; the number of gallons so purchased contained in containers or packages other than the original packages in which imported, transported or shipped into this state; and the number of gallons, so purchased, refined, manufactured, produced or compounded and sold in this state, and such other information as the state board of equalization may require. All such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 156, L. 1921.

2386. Quarterly reports distributors of gasoline. Each and every distributor must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of gallons of gasoline and distillate refined, manufactured or compounded, and sold by him within this state, or the total number of gallons of gasoline or distillate shipped, transported or imported into this state by such distributor during such quarter; the number of gallons sold in the original package in which shipped, transported or imported into this state; the

number of gallons sold in containers or packages other than the original packages in which the same was shipped, transported or imported into this state and such other information as the state board of equalization may require; and the total amount due to the state of Montana as license taxes for such quarter.

Each and every dealer must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the ending of each following quarter, make out in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of gallons of gasoline and distillate sold by such dealer during the quarter, which was purchased by him in the original packages in which the same was shipped, transported or imported into this state; and the total amount due to the state of Montana as license taxes for such quarter. Such statement shall be signed and verified by the oath of the individual, or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the joint-stock company, association, syndicate or corporation making the same.

Any distributor or dealer engaged in or carrying on his business at more than one place or location in this state, may include all such places of business and locations in one statement.

The treasurer shall file one of such statements in his office and shall deliver the duplicate copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 156, L. 1921.

2387. Payment of license tax. Each distributor and each dealer must, within thirty days after the end of each such quarter, and at the same time the statement required by the preceding section is delivered to the state treasurer, pay to the state treasurer, the amount of the license tax shown by such statement to be due for the quarter for which the statement is made and filed.

History: En. Sec. 7, Ch. 156, L. 1921.

2388. Penalty for neglect or false statement. It shall be unlawful for any distributor or dealer to fail, neglect or refuse to make and file any statement required by the provisions of section 2386 of this code, in the manner, or within the time therein provided, or to make any such statement false in any particular.

History: En. Sec. 8, Ch. 156, L. 1921.

2389. Procedure to collect license tax in absence of statement—Penalty. If any distributor or dealer shall fail, neglect, or refuse to make any statement required by section 2386 within the time therein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may, regarding the matters and things required to be set forth in such statement, and from such information as it may be able to obtain, to make a statement showing such matters and things, and determine and fix the amount of the license tax due the state from such delinquent distributor or dealer for such quarter, adding to the amount of such license tax a penalty of not exceeding fifty per cent. thereof, and deliver such statement to the state treasurer, who shall proceed to collect the amount of such license tax with penalty added thereto, and interest on the whole thereof, at the rate of twelve per cent. per

annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer it shall be the duty of the attorney-general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law to collect the same. No action shall be maintained by any such distributor or dealer to review, revise or change such statement in any particular, or to enjoin the collection of the license tax, or any part thereof, and such distributor or dealer shall have no right to pay such license tax, or any part thereof, under protest, and maintain any action to recover the same.

History: En. Sec. 9, Ch. 156, L. 1921.

2390. Invoice on sales gasoline in original package. Every distributor selling any gasoline or distillate in this state, in the original package in which shipped, transported or imported into this state by such distributor shall, at the time of making such sale, make out and deliver to the purchaser thereof, an invoice, in which invoice shall be stated the number of gallons of gasoline or distillate covered by such invoice, and that the same has been sold in the original packages in which the same was shipped, transported or imported into this state.

History: En. Sec. 10, Ch. 156, L. 1921.

2391. Export sales excepted. None of the provisions of this act shall apply to the sales of gasoline or distillate when sold for, and exported out of the state.

History: En. Sec. 11, Ch. 156, L. 1921.

2392. Gasoline license tax fund. All money received by the state treasurer in payment of license taxes under the provisions of this act, shall be by him deposited in, and credited to, a special fund to be known as "Gasoline License Tax Fund."

History: En. Sec. 12, Ch. 156, L. 1921.

2393. Statement by county superintendent as to teaching positions. The county superintendent of schools of each county in the state, must, between the 15th day of April and the 1st day of May in each year, make and file with the state treasurer, a statement and certificate showing the total number of teaching positions in which teachers were employed for a period of at least six months during the calendar year ending December 31st immediately preceding, in all of the public schools in such county, including kindergarten, primary, grade, district high and county high schools; provided, however, that, if during such calendar year, or thereafter and before the making of such statement and certificate, any portion of a county has been detached from such county, and attached to another county, or has been detached from such county and included in a new county, the number of such teaching positions within that portion of such county so detached, shall not be included in the statement and certificate of the county superintendent of schools of such county, but the same shall be included in the statement and certificate of the county superintendent of schools of the county to which the portion of such county has been attached, or in the statement and certificate of the county superintendent of schools of the new county.

History: En. Sec. 13, Ch. 156, L. 1921.

2394. Apportionment gasoline tax fund. The state treasurer must, immediately after the first day of February, May, August and November, in each year, beginning with the first day of May, 1921, apportion and distribute all funds then in the "gasoline license tax fund" in the following manner, to-wit: Sixty-six and two-thirds per cent. thereof shall be distributed to, paid over, and deposited to the credit of the general fund of the state, and thirty-three and one-third per cent. thereof shall be apportioned between, and distributed and paid over to the several counties of the state, in proportion to the total number of teaching positions, in which teachers were employed for a period of at least six months during the preceding calendar year in each county in all of the public schools of the county, as shown by the statements and certificates of the county superintendent of schools of the several counties filed with the state treasurer, and said state treasurer must, at the time of making such apportionment, notify the county superintendent of schools of each county, of the amount of such fund which has been apportioned and distributed to his respective county. Within ten days after receiving such notice, each county superintendent of schools must apportion such amount in the following manner, to-wit: Sixty per cent. thereof shall be apportioned to each school district, district high school, and county high school, in proportion to the total number of teaching positions in which teachers were employed for a period of not less than six months during the last calendar year, for which the statement and certificate was last made and filed with the state treasurer by such county superintendent, in each such school district, district high school, and county high school; thirty-five per cent. thereof shall be apportioned to each school district, district high school and county high school, in proportion to the aggregate number of day's attendance of all pupils who attended for a period of not less than six weeks during the aforesaid calendar year in each and every school district, district high school, and county high school; and five per cent. thereof to be apportioned to each district high school and county high school in proportion to the aggregate number of years of accredited high school work of each district high school and county high school, during the last preceding calendar year aforesaid, in each such district high school and county high school. Immediately after making such apportionment, the county superintendent of schools must file with the county treasurer a statement and certificate showing the total amount apportioned to each school district, district high school and county high school, and the county treasurer must, immediately after receiving such statement and certificate, deposit to the credit of each district school, district high school, and county high school fund, the amount to which each is entitled as shown by such statement and certificate.

History: En. Sec. 14, Ch. 156, L. 1921.

2395. Penalty for violation of act. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 156, L. 1921.

2396. License tax supplemental. The license taxes herein provided for, shall be in addition to any and all taxes and other fees now required to be paid by all persons subject to the provisions of this act.

History: En. Sec. 16, Ch. 156, L. 1921.

CHAPTER 186.

OIL PRODUCERS LICENSE TAX.

Section 2397. "Person" Defined.
2398. Oil License Tax.
2399. Tax, When Payable.
2400. Gross Value of Product, How Determined.
2401. Producers to File Reports.
2402. Record of Product.
2403. Statement of Quarterly Product—Verification.
2404. Unlawful, Failure to Make Statement.
2405. Procedure to Compute and Collect Tax in Absence of Statement.
2406. Disposal of License Tax.
2407. Penalty for Violation of Act.
2408. License Tax Supplemental.

2397. "Person" defined. The term "person," as used in this act, shall mean and include any individual, firm, co-partnership, and every corporation, joint-stock company, syndicate and association.

History: En. Sec. 1, Ch. 266, L. 1921.

2398. Oil license tax. Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating, within this state, any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year 1921, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, license tax for engaging in and carrying on such business, in an amount equal to one per centum of the total gross value of all petroleum and other mineral or crude oil produced by such person within this state during such year; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, and merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting,

exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

History: En. Sec. 2, Ch. 266, L. 1921.

2399. Tax, when payable. Such license tax shall be paid in quarterly instalments for the quarters ending, respectively, March 31st, June 30th, September 30th and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax for each such quarter shall be paid to the state treasurer within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 266, L. 1921.

2400. Gross value of product, how determined. The total gross value of all petroleum and other mineral and crude oil produced each year shall be determined by taking the total number of barrels thereof produced each month during such year at the average market value thereof during the month the same is produced; provided, however, that in computing the total number of barrels of petroleum and other mineral and crude oil produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil is produced, or for pumping said petroleum, mineral and crude oil from the said well to a tank or pipe line.

History: En. Sec. 4, Ch. 266, L. 1921.

2401. Producers to file reports. Each and every person engaged in such business in the state of Montana at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall engage in such business at any time after the date when this act becomes effective, must, immediately upon engaging in such business, file with the state board of equalization, a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business in this state, giving the place or places of business and location of the well or wells owned, leased, controlled or operated by such person; the name and address of the managing agent in this state, if an association, corporation, joint-stock company, or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation, or syndicate, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 5, Ch. 266, L. 1921.

2402. Record of product. Every such person shall keep a record in such form as the state board of equalization may require, of all petroleum and other mineral or crude oil extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 6, Ch. 266, L. 1921.

2403. Statement of quarterly product—Verification. Each and every such person must, within thirty days after the quarter ending March 31,

1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average market value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer, the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling or operating more than one oil well in this state, may include all thereof in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 7, Ch. 266, L. 1921.

2404. Unlawful—Failure to make statement. It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 8, Ch. 266, L. 1921.

2405. Procedure to compute and collect tax in absence of statement. If any such person shall fail, neglect or refuse to file any statement required by section 2403 of this code, within the time therein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average market value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent. thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent. per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney-general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same. No action shall be maintained by such person to review, revise or change the statement so made by the state board of equalization in any particular whatever, or to enjoin the collection of the license tax, or any part thereof,

and such person shall have no right to pay such license tax, or any part thereof, under protest and maintain any action to recover the same.

History: En. Sec. 9, Ch. 266, L. 1921.

2406. Disposal of license tax. All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 10, Ch. 266, L. 1921.

2407. Penalty for violation of act. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 11, Ch. 266, L. 1921.

2408. License tax supplemental. The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 12, Ch. 266, L. 1921.

CHAPTER 187.

PROTEST LICENSE FUND.

Section 2409. Protest License Fund.

2409. Protest license fund. Whenever any license fee is demanded of any person for the use and benefit of the state of Montana, and the same is deemed unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be deemed unlawful, under protest to the state treasurer, who shall deposit the same in a special fund to be designated "Protest License Fund"; and thereupon the person paying, or his legal representatives, may bring an action in a court of competent jurisdiction against the state treasurer to recover the same, without interest; provided, that any action instituted to recover any license paid under protest shall be commenced within sixty days after the date of payment thereof to the state treasurer. If no action be commenced within such sixty days, or if any action be so commenced and shall be finally decided in favor of the state treasurer the amount of the license fee shall be by the state treasurer taken from such "protest license fund" and deposited to the credit of the fund to which the same belongs, but if such action be finally decided adversely to the state treasurer, he shall, upon receiving a copy of the final judgment in said action, refund such license fee to the person in whose favor such judgment is rendered.

History: En. Sec. 1, Ch. 188, L. 1921.

CHAPTER 188.

LICENSES—GENERAL PROVISIONS CONCERNING.

Section 2410. License to Be Prepared and Printed.
2411. County Clerk to Number, Sign, and Deliver.
2412. County Clerk to Keep License Account.
2413. When License to Be Procured.
2414. Prosecution of Persons Failing to Take Out License.
2415. County Treasurer—Duties.
2416. Proof on Trial.
2417. Settlements, When Made.
2418. Fee for Licenses.
2419. Lien of License.
2420. Disposal of License Moneys.

2410. Licenses to be prepared and printed. The county clerk must prepare and have printed blank licenses of all classes mentioned in this chapter, with the blank receipt attached for the signature of the county treasurer when sold. The printer shall deliver to the clerk of the court all the license blanks ordered, with bill for same, showing forms and numbers. The clerk of the court shall verify same, record in book the forms and numbers, then deliver said licenses to the county clerk, taking his receipt for same in the record book. The county clerk shall keep all license blanks delivered to him under lock and key, and be accountable for same.

History: En. Sec. 4040, Pol. C. 1895; re-en. Sec. 2746, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1909. Cal. Pol. C. Sec. 3356.

Cited or applied as section 2746, Revised Codes, in State ex rel. Carter v. Kall, 53 Mont. 162, 165, 162 Pac. 385, 5 A. L. R. 1309.

2411. County clerk to number, sign, and deliver. The county clerk must affix his official seal to, number, and sign all licenses, and from time to time deliver them to the county treasurer in such quantity as may be required, taking his receipt therefor, and charge him therewith, giving in the entry the numbers, classes, and amount thereof.

History: En. Sec. 4041, Pol. C. 1895; re-en. Sec. 2747, Rev. C. 1907. Cal. Pol. C. Sec. 3357.

2412. County clerk to keep license account. The county clerk must keep in his office the stubs of all licenses by him delivered to the county treasurer, and a ledger in which he must keep the county treasurer's account for all licenses delivered to him, sold or returned unsold by him.

History: En. Sec. 4042, Pol. C. 1895; re-en. Sec. 2748, Rev. C. 1907. Cal. Pol. C. Sec. 3358.

2413. When license to be procured. A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city, or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person, in addition to the license provided by this chapter, also procures the license required by the ordinance or orders of such city or town.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907. Cal. Pol. C. Sec. 3359.

This section requires that a license shall be obtained as a condition precedent to the right to do business. State v. Northern Pac. Ex. Co., 27 Mont. 419, 421, 71 Pac. 404, 94 Am. St. Rep. 824.

Cited and applied as section 2749, Revised Codes, with other sections, in State ex rel. Carter v. Kall, 53 Mont. 162, 165, 162 Pac. 385, 5 A. L. R. 1309.

2414. Prosecution of persons failing to take out license. Against any person required to take out a license who fails, neglects, or refuses to take out such license, or who carries on or attempts to carry on business without such license, the county treasurer must direct suit, in the name of the state of Montana as plaintiff, to be brought for the recovery of the license tax; and in such case either the treasurer or the county attorney must make the

necessary affidavit for the writ of attachment, and such writ of attachment may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, fifteen dollars damages must be added to the judgment and costs to be collected from the defendant. It shall be the duty of the board of county commissioners or the state examiner, when examining the treasurer's report, to investigate if any persons are doing business in the county without a license, or if the amount of the license is sufficient. In either event the treasurer shall be officially notified, and thereafter shall be personally liable for such license or increase unless he promptly proceeds under this section or under section 2419 of this code to collect the same.

History: Ap. p. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907. Cal. Pol. C. Sec. 3360.

The words "any person required to take out a license" mean any person engaged in a profession, trade, or occupation for which a license tax is required and a person engaged in any such business, upon the payment of the required fee, can demand a license as a matter of right. In the enactment of the section, the legislature intended nothing more than to provide means for the collection of a license fee from one entitled to a license as a matter of right upon payment of the fee. State ex rel. Carter v. Kall, 53 Mont. 162, 166, 162 Pac. 385, 5 A. L. R. 1309.

2415. County treasurer—Duties. The county treasurer must make diligent inquiry as to all persons in his county liable to pay license as provided in this chapter, and must require, where the rate of license is divided into classes, each person to state, under oath or affirmation, the probable amount of business which he or the firm of which he is a member, or for which he is an agent or attorney, or the association or corporation of which he is the president, secretary, or managing agent, will do in the next succeeding three months; and thereupon such person, agent, president, secretary or other officer must procure a license from the county treasurer for the term desired, and the class for which such party is liable to pay; and in all cases where an underestimate has been made by the party applying, the party making such underestimate, or the company he represented, is required to pay for a license for the next quarter double the sum otherwise required.

History: En. Sec. 4045, Pol. C. 1895; re-en. Sec. 2751, Rev. C. 1907. Cal. Pol. C. Sec. 3361.

2416. Proof on trial. Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with damages and costs.

History: En. Sec. 4046, Pol. C. 1895; re-en. Sec. 2752, Rev. C. 1907. Cal. Pol. C. Sec. 3362.

Cited or applied as section 2752, Revised Codes, in State ex rel. Carter v. Kall, 53 Mont. 162, 165, 162 Pac. 385, 5 A. L. R. 1309.

2417. Settlements, when made. On the first Monday in each month the county treasurer must return to the county clerk all licenses unsold, and show that he has paid into the county treasury all moneys collected for licenses sold during the preceding month.

History: En. Sec. 4047, Pol. C. 1895; re-en. Sec. 2753, Rev. C. 1907. Cal. Pol. C. Sec. 3363.

2418. Fee for licenses. For each license issued, the county treasurer must collect a fee of one dollar, which must be paid into the general fund of the county.

History: En. Sec. 4048, Pol. C. 1895; re-en. Sec. 2754, Rev. C. 1907. Cal. Pol. C. Sec. 3364.

Note.—Section 8, house bill 162, Laws of 1897, p. 201, purports to repeal this section, but the title of the act does not enumerate same.

Cited or applied as section 4048, Political Code, in State v. Courtney, 27 Mont. 378, 387, 71 Pac. 308.

Power to tax occupations as affected by constitutional requirement that taxes be uniform, see notes in 2 Ann. Cas. 325; 15 Ann. Cas. 986.

2419. Lien of license. All property held or used in any trade, occupation, or profession, for which a license is required by the provisions of this chapter, is liable for such license and subject to a lien for the amount thereof, which lien has precedence of any other lien, claim, or other demand; and if any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property, or any other property belonging to such person, and sell the same in the manner provided in sections 2241 to 2246, inclusive, of this code.

History: En. Sec. 4049, Pol. C. 1895; re-en. Sec. 2755, Rev. C. 1907.

As to the validity of a statute similar to the above section, which authorized the summary seizure and sale of property belonging to another, but in use by a person from whom a license was due, and creating a lien thereon, see Chauvin v. Valiton, 8 Mont. 451, 457, 20 Pac. 658, 3 L. R. A. 194.

Property which is held or used in any trade, occupation, or profession for which a license is required, is liable for license, and the lien for the amount of license has precedence over any mortgage upon the same. Burfiend v. Hamilton, 20 Mont. 343, 346, 51 Pac. 161.

Cited as section 2755, Revised Codes, in State ex rel. Carter v. Kall, 53 Mont. 162, 165, 162 Pac. 385, 5 A. L. R. 1309.

2420. Disposal of license moneys. All moneys collected for licenses must be paid into the treasury of the county in which the same are collected. The county treasurer shall retain fifty per cent. thereof for the use of the county, he shall pay over forty-five per cent. thereof to the state treasurer for the use of the general fund of the state and he shall pay over five per cent. thereof to the state treasurer for the use of the state bounty fund.

History: En. Sec. 1, Ch. 76, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921.

CHAPTER 189.

ITINERANT VENDORS' LICENSE.

Section 2421. Itinerant Vendors to Obtain License.
2422. Definition of Terms.
2423. Amount of License.
2424. Application for License.
2425. Issuance of License—Indorsement and Filing of Application.
2426. Penalty for Failure to Exhibit License.
2427. Penalty for Doing Business Without License.
2428. Interpretation of Provisions of Law.
2429. License of Itinerant Vendor.

2421. Itinerant vendors to obtain license. Every person, company, or corporation, who, at temporary quarters, sells or offers or exhibits for sale any goods, wares, or merchandise, and every person who travels about from place to place and transports by any mode of conveyance and sells, offers, or

exhibits for sale any goods, wares, or merchandise, and every person who personally solicits orders for the future delivery of any goods, wares, or merchandise, either by or without sample, including peddlers and hawkers, is an itinerant vendor with the meaning of this act; provided, however, that this section shall not apply to wholesale dealers selling to dealers or merchants, nor shall it apply to any person, or the representative of any person, company or corporation, doing business at a fixed place of business and taking orders for the future delivery of any goods, wares, or merchandise, kept at or in connection with and handled through such fixed place of business, nor shall it apply to the sale of books, papers, or school supplies, or the sale of any fruits, vegetables, meats, or other farm produce, when sold by the grower or producer thereof.

History: En. Sec. 1, Ch. 110, L. 1911. Cal. Pol. C. Sec. 3384.

The representative or agent of a company or corporation which is doing business at a fixed place, who takes orders for future delivery of goods kept by his principal in connection with and handled through its fixed place of business, prices at which they are sold being fixed by it, title to the goods remaining in it, and undelivered goods to be returned to it, is not an itinerant vendor within the meaning of this section, and is therefore not required to procure the license provided for by this act. State v. Tuffs, 54 Mont. 20, 23, 165 Pac. 1107.

This act is penal in character, and its provisions are not to be extended by implication; hence, to subject an accused person to the penalty of the statute, it must appear clearly that his acts were within the letter as well as the spirit of the act. State v. Tuffs, 54 Mont. 20, 26, 165 Pac. 1107.

Act cited or applied as chapter 110, Laws of 1911, in State v. Turnmire, 52 Mont. 331, 332, 157 Pac. 579.

Licensing itinerant physicians or vendors of drugs, see note in Ann. Cas. 1913D, 1242; Ann. Cas. 1917A, 1093.

Validity of tax or fee on hawkers and peddlers as regards uniformity, see note in Ann. Cas. 1918E, 109.

Who is hawker or peddler within licensing statute, see notes in Ann. Cas. 1912D, 1289; L. R. A. 1916B, 1293.

State regulation of transient merchants, see note in Ann. Cas. 1917E, 505.

2422. Definition of terms. A "person, company, or corporation doing business at a fixed place of business," within the meaning of this act, is any person, company, or corporation who keeps, offers, or exposes for sale to the general public, in a building of permanent nature, any goods, wares or merchandise of any description; provided, however, that this definition must not be construed as including any person, company, or corporation keeping any goods, wares, or merchandise, or transacting any such business in any rented apartment or apartments, in any hotel, boarding-house, lodging-house, or private residence, or in any other building or structure not designated for or commonly used as a store or shop.

History: En. Sec. 2, Ch. 110, L. 1911.

2423. Amount of license. Every person, company, or corporation desiring to do business in any county in this state as an itinerant vendor must, before commencing such business, obtain a license from the treasurer of such county for which he shall pay as follows:

If such itinerant vendor travels on foot and sells, offers, or exhibits for sale only such goods, wares, or merchandise as he carries upon his person, the sum of twelve dollars and fifty cents per quarter.

If such itinerant vendor travels or carries and sells, or offers or exhibits for sale any goods, wares, or merchandise, by any other mode than walking

and carrying such goods, wares, or merchandise upon his person, the sum of one hundred dollars per quarter.

History: En. Sec. 3, Ch. 110, L. 1911.

Complaint in an action to recover a license fee, held sufficient. State v. Turnmire, 52 Mont. 331, 332, 157 Pac. 579.

2424. Application for license. Any person, company, or corporation, desiring to obtain a license under the provisions of this act, must file with the county treasurer of each county in which he desires to do business an application in writing, subscribed and sworn to by such applicant before an officer in this state authorized to take oaths, which application shall set forth the name of the applicant, his residence and principal place of doing business, the business for which he asks the license; whether he is acting as principal or as agent, and if acting as agent, the name and place of business of his principal, and such applicant must, at the time of filing such application as above provided, pay to the county treasurer with whom such application is filed, the sum specified in the preceding section as a quarterly license for conducting and transacting such business.

History: En. Sec. 4, Ch. 110, L. 1911.

2425. Issuance of license—Indorsement and filing of application. Upon filing of the application required by the preceding section, in proper form, and upon the payment to him of the sum required by section 2423 of this code, the county treasurer shall issue to such applicant a license to carry on the business described in such application, in the county in which such license is so issued, for the period of three months from and after the first day of the month in which such license is so issued, which license shall be non-transferable, and shall have printed across the face thereof, in large letters, the words "Non-transferable."

The county treasurer shall indorse upon each application the date of issuance of the license, and shall file such application with the county clerk and recorder of his county, who shall file the same and keep an appropriate index thereof, which shall show the date filed, the name of the applicant, his address, and the business for which the license is issued, and an appropriate reference to the file number and the number of the file box in which said application may be found. Such index and such application shall be open to the inspection of any person during the regular office hours in the county clerk's office.

History: En. Sec. 5, Ch. 110, L. 1911.

2426. Penalty for failure to exhibit license. Every such itinerant vendor doing business under the provisions of this act must, upon demand of any citizen of this state, exhibit his license, and permit the same to be then and there read by the citizen making such demand; and any such itinerant vendor who shall wilfully refuse or fail to exhibit his license, as above provided, is guilty of a misdemeanor, and shall be fined not less than ten dollars, nor more than twenty-five dollars for each offense.

History: En. Sec. 6, Ch. 110, L. 1911.

2427. Penalty for doing business without license. Every itinerant vendor as herein defined, doing business without first obtaining a license

in any case where a license is required by this act, is guilty of a misdemeanor, and shall be punished as provided in the Penal Code.

History: En. Sec. 7, Ch. 110, L. 1911.

2428. Interpretation of provisions of law. Nothing in this act contained is intended to operate so as to interfere with the power of the congress of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: En. Sec. 8, Ch. 110, L. 1911.

2429. License of itinerant vendor of drugs, etc. Any itinerant vendor of any drug, poison, ointment, or appliance of any kind intended for treatment of any disease or injury, who shall, by writing or printing, or any other method, publicly profess to cure or treat disease or injury, or deformity, by any drug, nostrum, or manipulation or other expedient, shall pay a license of fifty dollars per annum in each county in which he may offer to do business, or according to the usual laws in force for that purpose.

History: En. Sec. 655, Pol. C. 1895; re-en. Sec. 1637, Rev. C. 1907.

CHAPTER 190.

LICENSES FOR PREMIUMS OR BONUSES FOR SALE OF MERCHANDISE.

Section 2430. License Required for Furnishing Premiums or Bonuses for Sale of Merchandise.
2431. Issuance of License and Fee for Same.
2432. Contents of License.
2433. Penalty for Violation of Law.

2430. License required for furnishing premiums or bonuses for sale of merchandise. Every person, firm, or corporation who shall use, and every person, firm, or corporation who shall furnish to any other person, firm, or corporation to use, as a gift or bonus, or otherwise, in, with, or for the sale of any goods, wares, or merchandise, any premium or bonus, including stamps, coupons, tickets, certificates, cards, or other similar devices which shall entitle the purchaser receiving the same with such sale of goods, wares, or merchandise to procure from any person, firm, or corporation, any premium or bonus, including goods, wares, or merchandise, free of charge or for less than the retail market price thereof upon the production of any number of said stamps, coupons, tickets, certificates, cards, or other similar device; and every person, firm, or corporation placing premiums or bonuses of goods, wares, or merchandise, including such as crockery, chinaware, aluminumware, tinware, graniteware, or anything else that may be included or contained or delivered with packages of any kind of merchandise of any description, shall, before so furnishing, selling, or using the same, obtain a separate license therefor from the county treasurer of each county wherein such furnishing or selling or using of such premiums or bonuses shall take place, for each and every store or place of business in that county from which such furnishing or selling of premiums or bonuses as herein enumerated, or in which such shall take place.

History: En. Sec. 1, Ch. 17, L. 1917.

The use of trading stamps which are redeemable in cash only is not prohibited. State v. Lutey Bros., 55 Mont. 545, 179 Pac. 457; see, also, Lutey Bros. v. Jackson, 55 Mont. 556, 557, 179 Pac. 459.

Right to impose license tax on use of trading stamps, see notes in 2 L. R. A. (N. S.) 592; 49 L. R. A. (N. S.) 1123; L. R. A. 1917A, 433.

2431. Issuance of license and fee for same. In order to obtain such license, the person, firm, or corporation applying therefore shall pay to the county treasurer of the county for which such license is sought the sum of six thousand dollars, and upon such payment being made, the county treasurer shall issue to such person, firm, or corporation so paying, a license to, for the period of one year, give or furnish or include in or with sales of goods, wares, or merchandise, premiums or bonuses, or other similar devices, as described in the preceding section, or to pack such premiums or bonuses in or deliver same in connection with packages of merchandise, as premiums or bonuses.

History: En. Sec. 2, Ch. 17, L. 1917.

2432. Contents of license. Such license shall contain the name of the grantee thereof, the date of its issuance and expiration, and name of the town or city or place in which the same shall be used, and shall only operate to license retail sales made in such town, city, or place.

History: En. Sec. 3, Ch. 17, L. 1917.

2433. Penalty for violation of law. Any person, firm, or corporation violating any of the provisions of this act shall, for each single offense, be deemed guilty of a misdemeanor, and punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 17, L. 1917.

CHAPTER 191.

MISCELLANEOUS LICENSES.

Section 2434. Billiard Tables—Pawn-brokers—Theaters—Intelligence Offices—Shooting Gallery.
2435. Oleomargarine—Cigarettes—Warehouses.
2436. License of Manufacturer of Soft Drinks.
2437. Keeper of Stallions.
2438. Keeper of Skating-Rink or Merry-Go-Round.
2439. Moving-Picture Shows—Amount of License.
2440. Laundries.
2441. Architects, Builders, Contractors, Manufacturers.
2442. Manufacturers of Malt.
2443. Penalty for Failure to Procure License.

2434. Billiard-tables — Pawn-brokers — Theaters—Intelligence offices—Shooting-gallery. License must be obtained for the purposes hereinafter named, for which the county treasurer must require payment as follows:

1. Each proprietor of a billiard, pool, or bagatelle table not kept exclusively for family use, for each table three dollars and seventy cents per quarter; and for a bowling-alley, five dollars per quarter for each alley; but no license must be granted for a term less than three months.

2. The manager or lessee of every theater (not a variety or concert theater), one hundred dollars per annum; except that in towns of a population of three thousand five hundred or less, in cases where no monthly license is paid, a license of two dollars for each single performance must be paid; for each single exhibition of opera or concert singer (not exhibited in any theater where a yearly license is paid), three dollars; for min-

strels, legerdemain, or shows not herein provided for, five dollars for each single performance (when not in a theater where a yearly license is paid); for each variety or concert theater, whether an admittance fee is charged or not, seventy-five dollars per month; for every circus or menagerie, including side-shows, one hundred and twenty-five dollars per day; but no license must be collected from any amateur exhibition or concert for school or charitable or religious purposes.

3. For each pawnbroker, fifty-five dollars per quarter.

4. For each keeper of an intelligence office, ten dollars per quarter.

5. For each keeper of a shooting-gallery, for gain, fifteen dollars per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907. Cal. Pol. C. Sec. 3380.

Cited or applied as section 2758, Revised Codes, in Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 84, 173 Pac. 1062.

Power to license billiard and pool tables, see notes in 11 Ann. Cas. 66; Ann. Cas. 1913D, 1054.

Validity of taxation of employment agencies by license fees, see notes in 5 Ann. Cas. 326; 2 L. R. A. (N. S.) 859; 21 L. R. A. (N. S.) 263; L. R. A. 1916E, 1150.

2435. Oleomargarine—Cigarettes—Warehouses. Every person, company, or corporation selling oleomargarine, butterine, or imitation of cheese, shall pay a license of one cent per pound for all these articles sold.

Every person, or persons, who is engaged in the business of selling cigarettes, cigarette paper, or the material used in the making of cigarettes, except tobacco, shall pay a license of twenty-five dollars per annum.

Each railway company acting in the capacity of a warehouse for the purpose of storing and distributing goods, except any other than the capacity of common carriers, shall pay a license of ten dollars per quarter in each county in which said business may be carried on.

History: En. Sec. 1, Ch. 22, L. 1907; Sec. 2763, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1917.

The second paragraph of the above section is evidently a police regulation, as well as a revenue measure. State v. Hammond Packing Co., 45 Mont. 343, 352, 123 Pac. 407.

The first paragraph of this section is not repugnant to either the state constitution or the interstate commerce clause of the federal constitution. State v. Hammond Packing Co., 45 Mont. 343, 353, 354, 123 Pac. 407.

This section does not violate the due process or equal protection provisions of the fourteenth amendment. Hammond Packing Co. v. State of Montana, 233 U. S. 331, 58 L. Ed. 985, 34 Sup. Ct. 596.

Cited or applied as section 2763, Revised Codes, in Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 84, 173 Pac. 1062.

2436. License of manufacturer of soft drinks. Every manufacturer of non-intoxicating beverages, pop, soda waters, or other light drinks put up in bottles or other containers, in all cities having a population of ten thousand people or over, shall pay a license of sixty dollars semi-annually; in all cities or towns of more than five thousand and less than ten thousand in population, shall pay a license of forty dollars semi-annually; and in all cities or towns with a population of less than five thousand, shall pay a license of twenty-five dollars semi-annually.

History: En. Sec. 3, p. 199, L. 1897; re-en. Sec. 2770, Rev. C. 1907; amd. Sec. 1, Ch. 26, L. 1921.

Cited or applied as section 4068, Political Code, before amendment, in State v. Courtney, 27 Mont. 378, 382, 71 Pac. 308; as section 2770, Revised Codes, in Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 81, 173 Pac. 1062.

2437. Keeper of stallions. Every person who keeps a stallion, jack, or bull, and who permits the same to be used for the purpose of propagation for hire, must annually obtain a license therefor from the county treasurer, and pay therefor as follows:

1. Horses that are hired for the purpose of propagation by the season, at one hundred dollars or more, constitute the first class, and require a license of seventy-five dollars.

2. At seventy-five dollars, and less than one hundred dollars, constitute the second class, and require a license of sixty dollars.

3. At fifty dollars, and less than seventy-five dollars, constitute the third class, and require a license of forty dollars.

4. At thirty dollars, and less than fifty dollars, constitute the fourth class, and require a license of twenty-five dollars.

5. At fifteen dollars, and less than thirty dollars, constitute the fifth class, and require a license of fifteen dollars.

6. All at less than fifteen dollars constitute the sixth class, and require a license of ten dollars.

7. For each jack, ten dollars.

8. For each bull, ten dollars.

A license so obtained from the county treasurer, under the provisions of this chapter, entitles the owner of the animal so licensed to take the animal so licensed into any county of this state for the purpose of propagation, without further license or expense.

History: En. Sec. 4070, Pol. C. 1895; re-en. Sec. 2772, Rev. C. 1907.

Note.—Section 8, house bill 162, p. 201, Laws of 1897, purports to repeal this section, but the title of the act does not mention same.

Cited or applied as section 4070, Political Code, in State v. Courtney, 27 Mont. 378, 387, 71 Pac. 308.

2438. Keeper of skating-rink or merry-go-round. Every keeper of a roller or ice-skating rink or merry-go-round in cities or towns of three thousand people and upward must procure a license and pay therefor the sum of fifty dollars per quarter; and in towns of one thousand, and less than three thousand people, thirty dollars per quarter; and in towns of less than one thousand inhabitants, ten dollars per quarter.

History: En. Sec. 4077, Pol. C. 1895; re-en. Sec. 2775, Rev. C. 1907.

2439. Moving picture shows—Amount of license. No license shall be required for the operation or exhibition of moving picture shows in any city, town, or village where the population does not exceed one thousand five hundred. In all other cities the license shall be twenty-five dollars per year.

History: En. Sec. 1, Ch. 81, L. 1913.

Power to license moving picture shows, see notes in Ann. Cas. 1913E, 1306; Ann. Cas. 1916C, 303.

2440. Laundries. Every person engaged in laundry business, other than the steam-laundry business, shall pay a license of ten dollars per quarter; provided, that this act shall not apply to the women engaged in the laundry business, where not more than two women are engaged or employed or kept at work, and said license shall be for one place of business only.

History: En. Sec. 4, p. 200, L. 1897; re-en. Sec. 2776, Rev. C. 1907.

Validity of license tax upon laundries upheld. State ex rel. Sam Toi v. French,

17 Mont. 54, 41 Pac. 1078, 30 L. R. A. 415; State v. Camp Sing, 18 Mont. 128, 44 Pac. 516, 56 Am. St. Rep. 551, 32 L. R. A. 635.

The legislature is not required to tax all occupations equally or uniformly; hence it had power to single out proprietors of hand laundries and compel them to pay a license; and so long as the law was uniform as to all persons operating such laundries, there was no denial of the equal protection of the laws. Quong Wing v. Kirkendall, 39 Mont. 64, 69, 101 Pac. 250; affirmed in 223 U. S. 59, 63, 56 L. Ed. 350, 32 Sup. Ct. 192.

Assuming that this section classifies laundries for license purposes, into steam laundries and laundries operated by hand, such classification is not arbitrary or unreasonable. Quong Wing v. Kirkendall, 39 Mont. 64, 68, 101 Pac. 250; affirmed in 223 U. S. 59, 63, 56 L. Ed. 350, 32 Sup. Ct. 192.

This section is not, because of the exemptions therein contained, an unconstitutional denial of the equal protection of the laws. Quong Wing v. Kirkendall, 223 U. S. 59, 56 L. Ed. 350, 32 Sup. Ct. 192.

Cited or applied as section 2776, Revised Codes, in Quong Wing v. Kirkendall, 47 Mont. 16, 17, 130 Pac. 2.

Validity of license fee regulations with respect to laundries, see note in 21 Ann. Cas. 978.

2441. Architects, builders, contractors, manufacturers. Every architect, builder, contractor, or manufacturer, doing a business of more than fifteen thousand dollars per year, must pay a license of ten dollars per quarter.

History: En. Sec. 4082, Pol. C. 1895; re-en. Sec. 2778, Rev. C. 1907.

A merchant tailor is not a manufacturer within the meaning of this section. State v. Johnson, 20 Mont. 367, 369, 51 Pac. 820.

Cited or applied as section 2778, Revised Codes, in Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 84, 173 Pac. 1062.

License regulations with respect to architects, see notes in Ann. Cas. 1914B, 1226; 36 L. R. A. (N. S.) 1203.

2442. Manufacturers of malt. Every manufacturer of malt, when not engaged in the manufacture of malt liquors in the state of Montana, must pay a license of one hundred dollars per annum.

History: En. Sec. 5, p. 200, L. 1897; re-en. Sec. 2779, Rev. C. 1907.

Cited or applied as section 4083, Political Code, in State v. Courtney, 27 Mont. 378, 382, 71 Pac. 308; as section 2779, Revised Codes, in Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 84, 173 Pac. 1062.

2443. Penalty for failure to procure license. Every person who commences or carries on a business, trade, profession, or calling, for the transaction or carrying on of which a license is required by the provisions of any of the license laws of the state of Montana, without taking out or procuring such license is guilty of a misdemeanor, and shall, unless specific punishment is prescribed by some other law of this state, be punishable as in the case of other misdemeanors and in addition thereto shall be liable to a penalty of ten per cent. of the amount of said license, which said penalty must be added to the amount of said license, and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from prosecution for such misdemeanor.

History: En. Sec. 6, p. 200, L. 1897; re-en. Sec. 2780, Rev. C. 1907; amd. Sec. 1, Ch. 25, L. 1921.

This section does not authorize an action to collect a license tax, but merely imposes a penalty for doing business without the license required. State ex rel. Carter v. Kall, 53 Mont. 162, 165, 162 Pac. 385, 5 A. L. R. 1309.

GENERAL POLICE OF THE STATE. CHAPTERS 192 TO 280.

EMBRACING THE LAWS RELATING TO THE PUBLIC HEALTH AND SAFETY AND THE REGULATION OF LABOR, PROFESSIONS, INDUSTRIES, OCCUPATIONS, AND TRADE.

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209. Fire Protection—State Fire Marshal.
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216. Vocational Rehabilitation and Education.
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238. Inspection of Horses and Cattle Before Removal From the State.
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240. Inspection of Livestock Markets.
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242. Hides of Slaughtered Cattle.
243. Improvement of Livestock.
244. Stallions and Jacks—Stallion Registration Board.
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247. Animals Running at Lage.
248. Bounties for Killing Wild Animals.
249. Regulation of Quartz Mining Industry.
250. Sampling and Assaying Ore.
251. Payment for Consignment of Ore—Purchasers From Leased Mines.
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253. Casing of Oil and Gas Wells—Wasteful Use of Gas.
254. The Department of Agriculture, Labor, and Industry. Regulation of Agriculture, Horticulture, Apiculture, Poultry Husbandry, Dairying, Grain Grading and Inspection, Statistical Data, and the State Fair.
255. Fish and Game Laws—Commission and Warden.
256. Fish and Game Laws—Licenses—Protection and Propagation of Fish and Game.
257. Regulation of Railroads—Board of Railroad Commissioners.
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INDUSTRIES—(Continued).

261. Regulation of Public Mills—Montana Trade Commission.
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OCCUPATIONS

Chapter 264. Regulation of Stock-Brokers and Investment Companies (Blue Sky Laws).
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Chapter 275. Standard Weights and Measures—State Sealer of Weights and Measures.
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CHAPTER 192.

STATE, LOCAL, AND COUNTY BOARDS OF HEALTH.

Section 2444. Creation of State Board of Health.
2445. Appointment, Qualifications, and Terms of Office of Members—Vacancies.
2446. Secretary—Election, Qualifications, and Salary.
2447. Duties of Secretary.
2448. Powers and Duties of Board.
2449. Meetings of Board.
2450. Power to Make and Enforce Rules and Regulations.
2451. Compensation of Members of Board.
2452. Corporations to Furnish Information When Requested by Board.
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2456. Rules and Regulations for Transportation of Dead Bodies.
2457. Definition of "Communicable Disease."
2458. Quarantine Measures.
2459. Secretary Authorized to Act for State Board in Emergency Cases.
2460. Penalties.
2461. Disposal of Indigent Lepers.
2462. Sewer System to Be Approved by Board of Health—Appeal to District Court.
2463. Adulterated and Misbranded Foods, Drugs, etc., Publication of List.
2464. Local Boards of Health.

2465. Salaries of Local Health Officer.
2466. Meetings of Local Board of Health.
2467. Duties of Local Health Officer.
2468. Penalties for Failure to Comply With Orders of Board.
2469. Powers of Local Boards of Health.
2470. Expenses of Local and County Boards.
2471. Police Officer Must Assist Health Officer When Requested.
2472. Interference With Health Officer—Penalty.
2473. County Boards of Health.
2474. Appointment of County Health Officer.
2475. Duties of County Boards of Health.
2476. Duty of County Health Officer.
2477. Failure of County Health Officer to Perform Duty.
2478. Duty of Householder to Notify Board of Health of Presence of Communicable Disease.
2479. Duty of Physicians.
2480. Duty of Health Officer to File Complaint of Violation of Act.
2481. Compulsory Vaccination of School Children.
2482. Diseased Prisoners.
2483. Same.
2484. Penalties. for Putting Dead Animals Into Streets, Highways, etc.

2444. Creation of state board of health. There is hereby created and established a board to be known under the name and style of the "State Board of Health of Montana." Said board shall be composed of five members, all of whom shall be experienced physicians, legally authorized to practice medicine and surgery in the state of Montana, to be appointed by the governor from a list of not less than ten names submitted therefor by the Montana medical association.

History: Ap. p. Sec. 1, Ch. 110, L. 1907; Sec. 1474, Rev. C. 1907; en. Sec. 1, Ch. 157, L. 1919. Cal. Pol. C. Sec. 2978.

405, 413, 102 Pac. 696, 25 L. R. A. (N. S.) 589.

Cited or applied as sec. 1474, Revised Codes, before amendment, in City of Miles City v. State Board of Health, 39 Mont.

Authorities on the subject of public health regulations are collated in 12 R. C. L. 1263.

2445. Appointment, qualifications, terms of office of members—Vacancies. The governor shall, within thirty days after the passage and approval of this act, appoint five members, who shall possess the qualifications specified in section 2444, to constitute the members of said board. Said members shall be so classified by the governor that the term of office of one shall expire in one year, one in two years, one in three years, one in four years, and one in five years. Annually thereafter the governor shall appoint one member, who shall possess the qualifications specified in the preceding section, from a list of not less than five names submitted by the Montana medical association, to serve for a period of five years. All vacancies in said board caused by death or otherwise shall be filled by appointment by the governor from a list of not less than five names submitted by said Montana medical association.

History: En. Sec. 2, Ch. 157, L. 1919.

2446. Secretary—Election, qualifications, and salary. At the first meeting of the state board of health, or as soon thereafter as a suitable and competent person can be secured, the board shall elect a secretary, who shall be an educated physician, experienced in sanitary science and qualified to practice medicine in the state of Montana, who by virtue of such election shall be the executive officer and the state health officer. The secretary so elected shall receive in monthly payments an annual salary

of five thousand dollars, to be paid out of the general fund of the state. The board may elect one of its own number secretary, in which case the governor shall appoint another member to complete the full number of the said board.

History: En. Sec. 3, Ch. 157, L. 1919. Cal. Pol. C. Sec. 2982.

2447. Duties of secretary. The secretary shall hold office for four years, but he may be removed for cause at any duly organized meeting of the board upon a majority vote of the members present; he shall perform all the duties required by law or by the rules and regulations of the board; he shall keep a record of the transactions of the board, and shall have custody of the books, records, documents, and other property belonging to the board; he shall, as far as practicable, communicate with other state boards of health and with local and county boards of health within the state; he shall keep on file all reports received from such local and county boards of health, and all corespondence of the office appertaining to the business of the board. He shall prepare blank forms of return and such instructions as shall be necesary, and forward them to the local and county boards of health throughout the state; he shall supervise the work of all local and county health officers, and when any local or county health officer shall fail to properly perform the duties required of him, the secretary of the state board of health shall notify such local or county board of health, and he may file complaint against such delinquent health officer with a justice of the peace, as the exigencies of the case may demand; he shall inspect the records of each local and county health officer at least once in each year; he shall, whenever requested by any local or county health officer, or when he may deem it necessary, visit any district to investigate the cause of any existing disease or sanitary condition; he shall, through an annual report, and otherwise, as the board may direct, disseminate such information as he may collect, and general instructions regarding sanitary measures and means of preventing the spread of communicable diseases.

History: En. Sec. 6, Ch. 110, L. 1907; Sec. 1479, Rev. C. 1907.

Note.—The latter portion of the original section is omitted in this code to conform to later enactments.

2448. Powers and duties of board. The state board of health shall have general supervision of the interests and health and life of the citizens of the state. They shall study the vital statistics of the state, and endeavor to make intelligent use of the records of deaths and sickness among the people; they shall make sanitary investigations and inquiries regarding the causes of disease, and especially communicable diseases and epidemics; the causes of mortality, and the effects of localities, employments, conditions, ingesta, habits, and circumstances of the health of the people; they shall gather such information in respect to all these matters as they may deem proper for diffusion among the people; they shall make an inspection once in each year, and at such other times as they may be directed to do so by the governor, of all public institutions, and make a report as to their sanitary conditions, with suggestions and recommendations to their respective boards of directors or trustees; and it shall be the duty of the official in the immediate charge of such institutions to fur-

nish all the facilities necessary for a thorough investigation; they shall, when requested, or when they shall deem it best, advise officers of the government, or other boards within the state, in regard to location, drainage, water-supply, disposal of excreta, heating, and ventilation of any public institution or building; they shall have general oversight and direction of the enforcement of the statutes respecting the preservation of the health and the prevention of the spread of communicable diseases; they shall have general supervision of the work of local and county boards of health, hereinafter defined, and they shall, at each session of the legislature, submit through the governor a full report of their investigations, and such suggestions and recommendations as they may deem proper.

History: Ap. p. Sec. 2, p. 81, L. 1901; amd. Sec. 2, Ch. 110, L. 1907; Sec. 1475, Rev. C. 1907. Cal. Pol. C. Sec. 2979.

Powers which may be delegated to boards of health, see note in 80 A. S. R. 212.

2449. Meetings of board. The state board of health shall meet semi-annually at Helena, and at such other times and places as they may deem expedient. Suitable accommodations for the meetings of said board and office room for the secretary shall be provided at the state capitol. A majority shall be a quorum for the transaction of business. They shall choose one of their members to be president, and may adopt all necessary rules and by-laws subject to the provisions of this act. Special meetings of the board may be called at any time by the president, through the secretary, upon five days' notice in writing.

History: En. Sec. 3, Ch. 110, L. 1907; Sec. 1476, Rev. C. 1907. Cal. Pol. C. Sec. 2981.

2450. Power to make and enforce rules and regulations. The state board of health shall have power to promulgate and enforce such rules and regulations for the better preservation of the public health in contagious and epidemic diseases as it shall deem necessary, and also regarding the causes and prevention of diseases, and their development and spread; and any person or corporation refusing, after notice in writing from the secretary of the state board of health, or from any local or county board of health, of such rules and regulations, to comply therewith, within a reasonable time, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than ten nor more than one hundred dollars, with costs of prosecution; and it shall be the duty of the secretary of the state board of health to prepare and distribute to local boards of health, physicians, and other persons requesting them, such printed circulars as the board may direct, and such rules and regulations as the board may promulgate as aforesaid.

History: En. Sec. 4, Ch. 110, L. 1907; Sec. 1477, Rev. C. 1907. Cal. Pol. C. Sec. 2984.

2451. Compensation of members of board. Each member of the state board of health, except the secretary and ex-officio members, shall receive the sum of five dollars per day for each day's attendance at the meetings of the board, and his necessary traveling expenses. The claims of the members for such per diem and traveling expenses shall be presented to and audited and allowed by the state board of examiners, in the manner now provided by law for the allowance of similar claims of other state

officers; provided, such expenses in the aggregate shall not exceed the annual sum of two thousand dollars.

History: En. Sec. 7, Ch. 110, L. 1907; Sec. 1480, Rev. C. 1907.

2452. Corporations to furnish information when requested by board. In order to afford the better advantage for obtaining knowledge to be incorporated with that collected through special investigations and other sources, all officers of the state, the physician of all incorporated companies, and the president or agent of any company chartered, organized, or transacting business under the laws of this state, as far as it is practicable, shall furnish to the state board of health any information bearing upon public health which may be requested by said board, for the purpose of enabling it better to perform its duties of collecting and distributing useful information on this subject.

History: En. Sec. 8, Ch. 110, L. 1907; Sec. 1481, Rev. C. 1907.

2453. Inspection and regulation of schoolhouses, churches, and places of public resort. The state board of health shall prepare and issue to the local and county boards of health regulations for the lighting, heating, and ventilating of schoolhouses, and shall cause sanitary inspection to be made of schoolhouses, churches, and all places of public resort, in towns or cities of one thousand or more inhabitants, and make such regulations concerning the same as it may deem necesary for the safety of the persons who may attend school or services therein or resort thereto. And all schoolhouses, churches, or public buildings hereafter erected in such towns or cities shall conform to the regulations of the state board of health in respect to all sanitary conditions; and all persons, corporations, or committees intending to erect any public building hereinbefore named, in towns or cities of one thousand or more inhabitants, shall submit plans thereof, so far as to show the method of heating, ventilating, plumbing, and sanitary arrangements, to the secretary of the state board of health, and secure his approval thereof, or the approval of the state board of health on appeal from the decision of its secretary, before erecting said building, and shall conform strictly to all the requirements of the said board in the respects aforesaid, and any person, corporation, or committee that shall erect any such building without such approval, and without complying with such requirements, shall be guilty of a misdemeanor; and shall also make such building conform to the requirements of said board, before the same shall be used for any of the purposes above mentioned; and any such use of said building until such requirements have been complied with shall be a misdemeanor.

History: En. Sec. 9, Ch. 110, L. 1907; Sec. 1482, Rev. C. 1907.

The state board of health has authority, by virtue of this and the next succeeding section, to compel the school board in a thickly settled community, in which the school buildings are not provided with adequate toilet facilities, whereby the health of the entire community is endangered, to furnish proper sanitary means by installing proper toilets and either connecting the same with public sewers or with a private sewer system. City of Kalispell v. School District, 45 Mont. 221, 229, 122 Pac. 742, Ann. Cas. 1913D, 1101.

2454. Public buildings found in unsanitary condition may be declared a public nuisance. When any schoolhouse, church, theater or other public building in the state shall, on inspection by a local, county, or state health

officer, be found to be in such unsanitary condition as to endanger the health of those who may frequent the same, such health officer shall give to the owner, or those in charge of such building, notice to place the same in proper sanitary condition in such manner as he shall direct, and within a reasonable time; and should the owner, agent or other person in charge of such building fail, neglect, or refuse to place the said building in proper sanitary condition, in such manner as shall be directed, and within the time specified in said notice, then such building shall be deemed a public nuisance, and the local or county health officer or the secretary of the state board of health shall institute action against the same, in the manner now provided by law for the abating of a public nuisance.

History: En. Sec. 10, Ch. 110, L. 1907; Sec. 1483, Rev. C. 1907.

2455. Contagious disease—Restrictions of travelers. The state board of health shall have the power and it shall be their duty to issue and enforce reasonable rules for the restriction and prohibition of any person or persons suffering from a communicable, infectious, or contagious disease, traveling on public conveyances, and shall issue reasonable rules and regulations for the disinfection of passenger cars or any other public conveyance in which any person or persons, suffering from contagious, infectious, or communicable disease, has been traveling.

History: En. Sec. 25, Ch. 110, L. 1907; Sec. 1498, Rev. C. 1907.

General delegation of power to guard against spread of contagious disease, see note in 8 A. L. R. 836.

Authority of municipalities to prevent the spread of contagious diseases, see note in 92 Am. Dec. 79.

2456. Rules and regulations for transportation of dead bodies. The state board of health shall make all needful rules and regulations for the transportation of dead bodies, and such rules and regulations shall, so far as shall be deemed practicable, be in conformity with similar rules and regulations now in force in other North American states and countries, and to this end they may establish a system of licensing embalmers and undertakers.

History: En. Sec. 26, Ch. 110, L. 1907; Sec. 1499, Rev. C. 1907.

2457. Definition of "communicable disease." The term "communicable disease" as used in this act, shall be understood to include the following diseases: Smallpox, diphtheria, membraneous croup, so-called scarlet fever, "spotted" or "tick" fever, typhus fever, enteric or typhoid fever, cerebrospinal meningitis, measles, whooping-cough, mumps, anterior-poliomyelitis, or infantile paraylsis, and tuberculosis and other diseases as the state board of health may hereafter designate.

History: En. Sec. 27, Ch. 110, L. 1907; Sec. 1500, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1913.

2458. Quarantine measures. The state board of health, in case of danger of infection from smallpox, or any other infectious or contagious disease, dangerous to the public health, may institute and enforce quarantine measures against any state as it may deem necessary, and they shall enforce such quarantine measures against any city or county as they may deem necessary in order to prevent the spread of dangerous, infectious, or contagious diseases, and if any person or corporation refuse

or neglects to comply with such quarantine regulations, he shall, upon conviction, pay to the treasurer of the state a fine of not less than ten dollars or more than one hundred dollars.

History: En. Sec. 32, Ch. 110, L. 1907; Sec. 1505, Rev. C. 1907.

Quarantine and health laws and regulations and their validity, see note in 47 A. S. R. 533.

Right of one detained pursuant to quarantine to habeas corpus, see note in 2 A. L. R. 1542.

Liability of board or officer for enforcement of quarantine regulations, see notes in 9 Ann. Cas. 814; 16 Ann. Cas. 737; L. R. A. 1918E, 437.

Authority of legislature to make punishable failure to comply with rule of health board, see note in 6 L. R. A. (N. S.) 143.

Responsibility for violation of quarantine by children or others under one's control, see note in 45 L. R. A. (N. S.) 580.

2459. Secretary authorized to act for state board in emergency cases. In case of imminent danger from infectious or contagious disease, where the health of the people would be endangered from the delay of action necessary to call a meeting of the state board of health, the secretary of the state board of health shall have the full power of the state board of health to act in such matter, until such time as a meeting of the state board of health may be duly called.

History: En. Sec. 37, Ch. 110, L. 1907; Sec. 1510, Rev. C. 1907.

2460. Penalties. Whoever shall knowingly violate any of the provisions of this act, or any rule or regulation of any county, city, or state board of health, made in accordance with the provisions of this act, the penalty for which is not herein specifically provided, shall be guilty of a misdemeanor.

History: En. Sec. 38, Ch. 110, L. 1907; Sec. 1511, Rev. C. 1907.

2461. Disposal of indigent lepers. When a case of leprosy occurs in an indigent person in the state of Montana, it shall be the duty of the state board of health, through its secretary, to communicate with the United States public health service, for the purpose of getting such case admitted to the federal home for lepers at Carville, Louisiana. If it is found that the case can be admitted, the state board of health shall have authority, and is empowered, to send the case to such institution at the expense of the county in which the case occurred and such case shall be transported in accordance with the rules and regulations of the United States public health service, relative to the interstate transportation of lepers.

History: En. Sec. 1, Ch. 124, L. 1921.

2462. Sewer system to be approved by board of health—Appeal to district court. Whenever any city, town, or corporation or person shall hereafter contemplate the construction of any sewer system that will empty into any stream or source of water-supply in this state, they shall submit a plan of such proposed system to the state board of health, and said board shall cause a thorough investigation to be made, and if after such an investigation they shall determine that such sewerage will so pollute the waters of any stream or source of water-supply as to endanger the health or lives of the citizens of this state, or any of them, they shall submit to the judge of the district court of the district in which such proposed sewerage system is located, the evidence on which their findings are based, and if said judge, upon that evidence, and such other evidence as

the judge may receive on a hearing at which all parties in interest may be heard and present evidence, if they desire, shall find that the action of the state board of health is just and unbiased, he shall issue an order preventing the construction of such sewerage system, except under such conditions as the state board of health may designate.

A city or town may appeal to the district court of the county in which such city or town may be located, from any order of the state board of health affecting such city or town, at any time within thirty days after the service on the city or town council of such order. Such appeal may be taken by filing notice thereof in such court either before or after serving a copy of such notice on any member of the state board of health. The court may order pleadings to be filed to present the issues, and such case shall be tried de novo the same as an appeal from a justice court.

History: En. Sec. 36, Ch. 110, L. 1907; Sec. 1509, Rev. C. 1907; amd. Sec. 1, Ch. 66, L. 1911.

Validity of statute regulating disposal of sewage, see note in Ann. Cas. 1913D, 61.

2463. Adulterated and misbranded foods, drugs, etc., publication of list. It shall be the duty of the state board of health to furnish to the clerk of each county in the state a certified list of the adulterated and misbranded foods and products entering into the preparation of foods, beverages, candies, drugs, and all other products and preparations under the jurisdiction of said board of health, as found by the analysis and investigation of said board. Said list shall show the brand and name of the article, the manufacturer or jobber, and the reason for classing the same as illegal, together with any necessary comments thereon. The county clerk of each county, where said misbranded food is found, shall cause the said list to be printed in the official papers of such county. Such publication shall be made not more than four times each year, and shall be paid for by such county at the rate allowed by law for publishing the proceedings of the board of county commissioners; provided, that whenever the board of health, or their assistants, shall discover any foods, beverages, candies, drugs, or other products or preparations under the jurisdiction of said board, to be adulterated or misbranded, the said board of health shall immediately notify the party responsible for placing the same upon the market, and said party shall have ten days in which to show cause why the results of said investigation or analysis should not be published.

History: En. Sec. 1, Ch. 103, L. 1917.

Statute empowering board of health to regulate food production and distribution as invalid delegation of legislative power, see note in Ann. Cas. 1913E, 1000.

2464. Local boards of health. Each incorporated city or town in the state shall have a local board of health, the same being designated in this act as the "local board." Said local board shall consist of three members, to be appointed by the municipal authorities of the town or city and removable at their pleasure, one of whom shall be a physician, legally qualified to practice medicine and surgery in the state; the board shall elect one of its members as secretary; provided, that any incorporated town of less than five thousand inhabitants may, by written notice to the state board of health, and to the county board of health of the county in which said town is located, place itself under the care of the county board of health, in which case the county health officer, as hereinafter provided

for, shall have the same authority within the corporate limits of such town as he has in the county outside of corporate limits; provided, that such incorporated town shall pay all expenses incurred in enforcing sanitary measures and quarantines within its corporate limits. If the municipal authorities of any incorporated city or town shall fail to appoint a board of health as required above, within thirty days after having been notified of such requirement by the secretary of the state board of health, then the state board of health may appoint a health officer for such town or city, and the health officer thus appointed by the state board of health shall have all the powers, receive all the emoluments, and perform all the duties required of a local health officer appointed by the municipal authorities.

History: En. Sec. 11, Ch. 110, L. 1907; Sec. 1484, Rev. C. 1907. Cal. Pol. C. Secs. 3059-3064. Local Boards of Health.

2465. Salaries of local health officers. The salary of each local health officer shall be determined by the municipal authorities of the respective city or town; provided, that such salaries shall not exceed, in counties of the first, second, and third classes, two thousand dollars per annum, and in counties of the fourth and fifth classes, twelve hundred dollars per annum, and in counties of the sixth, seventh, and eighth classes, not to exceed six hundred dollars per annum; and provided, further, that in all cases the state board of health shall have supervisory control over the action of all local county, city, or district health officers, who shall in all respects be subject to the direction of the state board.

History: En. Sec. 12, Ch. 110, L. 1907; Sec. 1485, Rev. C. 1907.

2466. Meetings of local boards of health. Each local board of health shall hold regular quarterly meetings, and such other meetings as may be deemed expedient. The secretary shall keep accurate records, in a book provided therefor, of the proceedings of such meetings. He shall keep accurate records of all communicable diseases reported to him, and for this purpose each local board of health shall provide, at the expense of the city or town, a book printed in proper blank form for the notation of such facts and data as may be prescribed by the regulations of the state board of health. These records shall be the property of the city or town, and must be turned over by the secretary to his successor in office.

History: En. Sec. 13, Ch. 110, L. 1907; Sec. 1486, Rev. C. 1907.

2467. Duties of local health officer. The local health officer shall make sanitary inspection whenever and wherever he has reason to suspect that anything exists that may be detrimental to the public health. He shall, as secretary of the local board of health, by a written instrument under his hand, order the destruction, prevention, and removal, within a specified time, of all nuisances, sources of filth, or causes of sickness, as directed by the local board of health, or order all public buildings, such as schoolhouses, churches, theaters, or other places where people congregate in considerable numbers, to be closed in time of epidemic or in the face of serious or unusual sickness, whenever, in his judgment and upon approval in writing by the secretary of the state board of health, safety may require the same, and may forbid and prevent the assembling of the people in any place when the public health and safety demand the same.

History: En. Sec. 14, Ch. 110, L. 1907; Sec. 1487, Rev. C. 1907.

2468. Penalties for failure to comply with orders of board. If any person or corporation shall neglect or refuse to comply with any written order of a local, county, or state health officer, made and promulgated by either of them under this act, within a reasonable time, to be designated in the notice, such person or corporation shall be guilty of a misdemeanor. In case of such neglect or refusal to comply with such order, the local, county, or state board of health may cause it to be complied with at the expense of the town, city, or county, and such expenses shall be recovered from the person or corporation whose legal duty it was to comply with such order, by a civil action brought in the name of such town, city, or county.

History: En. Sec. 15, Ch. 110, L. 1907; Sec. 1488, Rev. C. 1907.

2469. Powers of local board of health. The local or county board of health shall have power to abate all nuisances affecting the public health; to destroy, prevent, and remove all sources of filth and causes of sickness or disease, and to guard against the introduction of communicable diseases by the exercise of proper and vigilant medical inspection and control of all persons and things in their respective districts, which, for any reason, are liable to communicate contagious diseases. They shall also have authority to establish and maintain, at the expense of their respective city, town, or county, isolation hospitals, where patients suffering from smallpox or other very dangerous, contagious, or infectious disease may be properly quarantined and cared for, when, in their judgment, they cannot be properly quarantined and cared for elsewhere. Towns, cities, and counties must establish and maintain such isolation hospitals when directed so to do by the state board of health, and for this purpose they may secure, by purchase or otherwise, suitable building sites, and cities, towns, and counties may combine for the purpose of building, equipping, and maintaining such hospitals. The local or county boards of health shall also have power and authority to require the isolation of persons or things infected with or exposed to infectious or contagious diseases, provide suitable places for the reception thereof, and, if necessary, furnish medical treatment and care for such sick persons at the expense of the city, town, or county; to prohibit and prevent all intercourse or communication with, or use of infected premises, places, or things, and require and provide means for the thorough fumigation, purification, disinfection, and cleansing of the same before intercourse therewith or use thereof shall be allowed when any contagious or infectious disease exists or is believed to exist on any premises within his jurisdiction, the local or county health officer shall immediately place such premises under quarantine, in accordance with the rules and regulations of the state board of health, and shall maintain such quarantine in accordance with such rules and regulations. At the expiration of the period of quarantine, the local or county health officer shall personally supervise the disinfection, fumigation, and cleansing of all persons or things which have been exposed to the contagion, and all disinfecting, fumigating, and cleansing shall be done in accordance with the rules and regulations of the state board of health, and at the expense of the city, town, or county.

History: En. Sec. 16, Ch. 110, L. 1907; Sec. 1489, Rev. C. 1907.

2470. Expenses of local and county boards. All necessary expenses incurred by any local board of health, and the salary of each local health officer, shall be paid from the treasury of the respective city or town, on presentation of an itemized and verified account; and all expenses incurred by a county board of health in the enforcement of the provisions of this act, shall be paid from the general fund of the respective counties, on presentation of an itemized and verified account. The city or town shall be liable for all expenses incurred with reference to residents of such city or town, except paupers, and the county shall be liable for all expenses incurred with reference to persons who are not residents of such city or town; provided, that persons who are merely sojourning in such city or town, or delayed by the authorities, or transients therein, or temporarily stopping therein without employment, shall not be deemed residents of such city or town. The county shall be liable for all expenses necessarily incurred by any local board of health with respect to any person not a resident of the city or town, and the city shall be liable for all expenses necessarily incurred by any county board of health with reference to any person, except paupers, who is a resident of such city or town. No county, city, or town shall escape any such liability for such expenses by transporting any person infected with, or known to have been exposed to, any communicable disease to any other county, city, or town, or by persuading or inducing such person to go to such other city, town, or county.

History: En. Sec. 24, Ch. 110, L. 1907; Sec. 1497, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1909.

2471. Police officer must assist health officer when requested. Any local, county, or state health officer may call upon all sheriffs, constables, or other public officers to assist them in the discharge of their duties, and if any such officer, so called upon, shall neglect or refuse to render such service, he shall be guilty of a misdemeanor, and subject to removal from office.

History: En. Sec. 17, Ch. 110, L. 1907; Sec. 1490, Rev. C. 1907.

2472. Interference with health officer—Penalty. Any person who shall attempt to hinder, or who shall hinder the work of a local, county, or state health officer, or who shall remove, deface, or obscure any placard or notice posted under the authority or by the direction of such officer, or who shall violate any quarantine regulation, is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 110, L. 1907; Sec. 1490, Rev. C. 1907.

2473. County boards of health. There is hereby established in each county a board of health which is designated in this act as the "County Board of Health," which shall consist of the board of county commissioners and one physician legally authorized to practice medicine and surgery in this state, who must be appointed by the board of county commissioners. Said physician when so appointed shall be ex-officio secretary of the county board of health and the county health officer, and shall hold office at the pleasure of the board. The county health officer shall have the same powers and perform the same duties in the county of his appointment, outside of the limits of incorporated towns or cities, as are hereinabove provided for a local health officer within the corporate limits of a

town or city, and his salary shall be fixed by the board of county commissioners at an amount commensurate to the work devolving upon him, and when such county health officer, in the actual discharge of his official duties, is required to travel greater than two miles from the county-seat of the county he represents, he shall receive his actual traveling expenses.

History: En. Sec. 19, Ch. 110, L. 1907; Sec. 1492, Rev. C. 1907.

Note.—For early acts see sections 163 to 167, 5th Division Compiled Statutes 1887.

2474. Appointment of county health officer. Should any board of county commissioners fail, neglect, or refuse to appoint a county health officer, as herein provided, for a period of thirty days after having been notified in writing by the secretary of the state board of health so to do, then, and in that event, the state board of health may appoint such health officer, and he shall have the same powers and perform the same duties, and receive the same emoluments as though appointed by the action of the board of county commissioners.

History: En. Sec. 20, Ch. 110, L. 1907; Sec. 1493, Rev. C. 1907.

2475. Duties of county boards of health. Each county board of health shall hold regular quarterly meetings, immediately after the adjournment of each regular quarterly meeting of the board of county commissioners, and at such other times as they may deem necessary, and may adopt all needful rules and regulations for the government of their respective bodies, subject to the provisions of this act; they shall establish such sanitary rules and regulations for their county for the prevention of the spread of disease as they may deem necessary; provided, that no such rule shall conflict with the rules and regulations of the state board of health, and any person who shall fail, neglect, or refuse to comply with such rules and regulations shall be guilty of a misdemeanor, and shall, on conviction, be fined not less than ten dollars and not more than fifty dollars for such offense.

History: En. Sec. 21, Ch. 110, L. 1907; Sec. 1494, Rev. C. 1907.

2476. Duty of county health officer. It shall be the duty of each local and county health officer, immediately upon appointment, to transmit to the secretary of the state board of health his name, date of appointment, postoffice address, together with the names and postoffice addresses of the members of the board of health of which he is secretary. He shall, on or before the fifth day of each month, transmit to the secretary of the state board of health, on blanks provided therefor, a complete report of all communicable diseases reported to him during the previous month, giving all the details regarding each case as indicated by the blank forms provided by the state board of health. He shall, on or before the first day of December of each year, make a report to the local or county board of health of which he is secretary, setting forth the general sanitary conditions within his district during the year ending the last day of November, and such other information as the state board of health may call for; and a copy of this report must be transmitted immediately to the secretary of the state board of health. Any local or county health officer who shall fail, neglect, or refuse to make either the above-mentioned monthly or annual reports, within the time specified in this section, shall forfeit the sum of two dollars for each day he is delinquent, which amount shall be

deducted from his salary; and the secretary of the state board of health shall notify the chairman of the local or county board of health of the number of days its secretary is delinquent.

History: En. Sec. 22, Ch. 110, L. 1907; Sec. 1495, Rev. C. 1907.

2477. Failure of county health officer to perform duty—Penalty. Any local or county health officer who shall fail, neglect, or refuse to comply with any of the requirements of this act, or of the rules and regulations of the state board of health, shall be subject to a fine of not more than two hundred dollars.

History: En. Sec. 23, Ch. 110, L. 1907; Sec. 1496, Rev. C. 1907.

2478. Duty of householder to notify board of health of presence of communicable disease. Whenever any householder knows or has reason to believe that any person within his family or household has any communicable disease, he shall immediately give notice thereof to the health officer of the town or city in which he resides, if within the corporate limits of a town or city, or to the county health officer if without the corporate limits of a town or city; and such notice shall be given at the office of the local or county health officer, within the shortest possible time and by the most direct means of communication.

History: En. Sec. 28, Ch. 110, L. 1907; Sec. 1501, Rev. C. 1907.

2479. Duty of physicians. Whenever any physician knows that any person whom he is called upon to visit is infected with any communicable disease, such physician shall immediately give notice of such disease to the local health officer, if within the corporate limits of a town or city, or to the county health officer if without the corporate limits of a town or city.

History: En. Sec. 29, Ch. 110, L. 1907; Sec. 1502, Rev. C. 1907.

2480. Duty of health officer to file complaint of violation of act. It shall be the duty of each local or county health officer in the state, who shall have knowledge of any violation of this act, occurring within his district, to forthwith file a complaint with a justice or magistrate having jurisdiction.

History: En. Sec. 30, Ch. 110, L. 1907; Sec. 1503, Rev. C. 1907.

2481. Compulsory vaccination of school children. Whenever smallpox exists or is threatened in any part of the state, the state board of health shall have authority to require all persons frequenting any schoolhouse within the infected or threatened district to be vaccinated, or to present evidence of a successful vaccination with cowpox, and no person shall be permitted to enter any schoolhouse within the district included in the order of the state board of health unless such requirements are complied with.

History: En. Sec. 31, Ch. 110, L. 1907; Sec. 1504, Rev. C. 1907.

Compulsory vaccination of school children, see notes in 103 A. S. R. 864; 1 Ann. Cas. 336; 10 Ann. Cas. 882; 14 Ann. Cas. 945.

Right to suspend pupil from school because not vaccinated, see notes in Ann. Cas. 1912A, 375; 25 L. R. A. 152; 17 L. R. A. (N. S.) 710.

Right to require vaccination under general delegation of power to guard against spread of contagious disease, see note in 8 A. L. R. 841.

2482. Diseased prisoners. Whenever any person in any jail shall be attacked with any disease which, in the opinion of the local or county health officer, shall be considered dangerous to the health of the other prisoners, the health officer may, by his order in writing, direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until his further orders, and if such prisoner shall recover from such disease he shall be returned to such jail.

History: En. Sec. 33, Ch. 110, L. 1907; Sec. 1506, Rev. C. 1907.

2483. Same. If any person removed from any jail by any health officer shall have been committed by order of any court or under any judicial process, the order for his removal, or a copy thereof, attested by the health officer issuing such order, shall be returned to him, with the proceedings indorsed thereon, to the office of the clerk of the district court of the county, and no prisoner removed as aforesaid shall be considered as thereby having committed an escape.

History: En. Sec. 34, Ch. 110, L. 1907; Sec. 1507, Rev. C. 1907.

2484. Penalties for putting dead animals into streets, highways, etc. If any person or person shall put any dead animal, or part of the carcass of any dead animal, into any lake, river, creek, pond, reservoir, road, street, alley, lot, field, or meadow or common, or in any place within one mile of the residence of any person or persons, except the same and every part thereof be burned, or buried at least two feet under ground, or who, being the owner, shall knowingly permit the same to remain in any of the aforesaid places to the injury of the health, or to the annoyance of the citizens of this state, or any of them, every person so offending shall be guilty of a misdemeanor, and every twenty-four hours that said person shall permit the same to remain shall be deemed an additional offense under the provisions of this act.

History: En. Sec. 35, Ch. 110, L. 1907; Sec. 1508, Rev. C. 1907.
Related sections: 2649, 1739, 11235.

CHAPTER 193.

HOTEL AND TENEMENT-HOUSE SANITATION—CONTROL BY BOARDS OF HEALTH.

Section 2485. Hotel Defined—Must Maintain Office and Register.
2486. Regulations of Hotels as to Sanitation, Plumbing, and Washroom Supplies.
2487. Bedrooms and Bedding, Regulation of.
2488. Regulation of Cooking Utensils, Kitchens, and Dining-Rooms.
2489. Ashes.
2490. Fumigation of Rooms.
2491. State Board of Health to Adopt Rules for Enforcement of Act.
2492. Appointment of Assistant by State Board of Health—Qualifications.
2493. Certificate of Inspection—Posting.
2494. Inspector to File Complaints for Violation of Act—Preliminary Notice.
2495. Disposal of Fines.
2496. Transfer of Board of Health Hotel Fund.
2497. Drinking Water.
2498. Definition of Misdemeanor and Penalty.
2499. Cleansing Walls Before Putting on New Paper.
2500. Duty in Case of Contagious or Infectious Disease.
2501. County and City Boards of Health to Enforce Act.
2502. Violation of Act a Misdemeanor.

2485. Hotel defined—Must maintain office and register. Every building or structure kept, used, or maintained as, or advertised as, or held out to the public to be an inn, hotel or public lodging house or place where sleeping accommodations are furnished for hire to transient guests, whether with or without meals, in which five or more rooms are used for the accommodation of such transient guests, shall maintain an office and register and for the purpose of this act shall be deemed to be a hotel, and whenever the word hotel shall occur in this act, it shall be construed to mean every such structure as described in this section.

History: En. Sec. 1, Ch. 36, L. 1919.

Validity and construction of statutes providing for inspection of hotels, see note in Ann. Cas. 1912B, 827.

Validity of statute regulating licensing hotels, see note in Ann. Cas. 1916C, 290.

2486. Regulation of hotels as to sanitation, plumbing, and washroom supplies. Every hotel shall be well constructed, plumbed and drained according to established sanitary principles; shall be kept clean and in a sanitary condition, free from effluvia arising from any sewer, drain, privy, or other source within control of owner, manager, agent, or other person in charge. All hotels in cities, towns, and villages where a system of water-works and sewers is maintained for public use, shall be equipped with suitable lavatories and toilet facilities, within the building, for the accommodation of its guests. The sewer must be connected with the public sewer system. Public washrooms must be supplied with clean individual towels or paper towels. Use of the common roller towel is absolutely prohibited. All hotels in cities, towns, or villages not having a public sewer system or water works, shall have properly constructed privies, vaults, or other sanitary devices, which shall always be kept clean, properly ventilated, and well screened from insects and rodents, and shall be provided with tight-fitting self-closing doors. All toilets or privies shall be lighted. The wall or partition between the apartments must be tight. A separate apartment with separate entrance, properly designated and screened from public view, must be provided for each sex. Where septic tanks are installed, they must be constructed according to plans approved by the state board of health.

History: En. Sec. 2, Ch. 36, L. 1919.

2487. Bedrooms and bedding, regulation of. All bedrooms shall be kept free from vermin, and the bedding shall be clean and sufficient in quantity and quality; all sheets shall be at least eight feet long; each guest shall at all times be furnished with two clean towels; in case bedrooms are carpeted, the carpet or carpets thereon shall be taken up and thoroughly cleaned at least once each year; and in all hotels where fifty cents or more per night is charged for lodging, the sheets and pillow cases shall be changed after the departure of each guest.

History: En. Sec. 3, Ch. 36, L. 1919.

2488. Regulation of cooking utensils, kitchens, and dining-rooms. No rusted tin or iron vessel or utensil shall be used in cooking food, and all food stuffs shall be kept in a clean and suitable place, free from dampness and contamination; the closets, cupboards, refrigerators and the floors

and walls of all kitchens and dining-rooms shall be, at all times, kept free from dirt, and no dust or greases shall be allowed to collect thereon.

History: En. Sec. 4, Ch. 36, L. 1919.

2489. Ashes. No ashes from any hotel shall be dumped or kept in or adjacent thereto, or in any outhouse connected with any hotel unless the same be placed in a tight metal container with a tight metal lid kept thereon, or be disposed of in such manner as to eliminate any possibility of fire and public nuisances.

History: En. Sec. 5, Ch. 36, L. 1919.

2490. Fumigation of rooms. Whenever any room in any hotel shall have been occupied by any person having a contagious or infectious disease, the said room shall be thoroughly fumigated under the direction of the health officer, and all bedding therein thoroughly disinfected, before said room shall be occupied by any other person; but, in any event, such room shall not be let to any person for at least twenty-four hours after such fumigation, or disinfection.

History: En. Sec. 6, Ch. 36, L. 1919.

2491. State board of health to adopt rules for enforcement of act. The state board of health shall adopt all needful rules and regulations for the thorough and uniform enforcement of the provisions of this act throughout the state.

History: En. Sec. 7, Ch. 36, L. 1919.

2492. Appointment of assistant by state board of health—Qualifications. It shall be the duty of the state board of health and it shall have power, jurisdiction, and authority to engage or appoint such assistants or inspectors as may be needed in enforcing the provisions of this act and the rules and regulations as provided for under the preceding section. Such inspectors or appointees shall possess such qualifications as the state board of health may determine are necessary to successfully carry on the work. The state board of health shall also fix their compensation and shall assign to them their duties.

History: En. Sec. 8, Ch. 36, L. 1919.

2493. Certificate of inspection—Posting. If the inspector shall find, after the examination of any hotel that the provisions of this act and the rules and regulations of the state board of health adopted in conformity therewith have been fully complied with he shall issue a certificate to the effect to the person operating the same, and said certificate shall be posted in a conspicuous place in said inspected building.

History: En. Sec. 9, Ch. 36, L. 1919.

2494. Inspector to file complaints for violation of act—Preliminary notice. It shall be the duty of the inspector, upon ascertaining by inspection or otherwise, that any hotel or other place or thing required or allowed by this act to be inspected, is being carried on contrary to the provisions of this act, to make complaint and cause the arrest of the person so violating the same, and it shall be the duty of the county attorney in such case to prepare all necessary papers and conduct such prosecution; provided, however, that no prosecution shall follow until such

time as the person conducting or operating such hotel, public inn or lodging house, has been notified wherein such hotel, public inn or lodging house fails to meet the requirements of this act or the rules and regulations of the state board of health, and such time to remedy the failure as the state board of health or its representatives may rule.

History: En. Sec. 10, Ch. 36, L. 1919.

2495. Disposal of fines. All moneys collected for fines under this act shall be turned over to the state treasurer, who shall deposit them to the credit of the general fund.

History: En. Sec. 11, Ch. 36, L. 1919; amd. Sec. 1, Ch. 84, L. 1921.

2496. Transfer of board of health hotel fund. All moneys now standing to the credit of the "state board of health hotel fund," in the office of the state treasurer, are hereby transferred to the general fund, and the state treasurer and the state auditor are hereby directed to make such entries upon their books of account as will effectuate such transfer.

History: En. Sec. 2, Ch. 84, L. 1921.

2497. Drinking water. It shall be the duty of every person conducting or operating a hotel, public inn or lodging house to have available at all times in the lobby, office, or other convenient place, an ample supply of drinking water, pure and free from contamination. The source of supply must be far enough removed from privy vaults or other means of contamination to prevent drainage from said vaults to the wells or other source of supply, and the water supply shall be subject to examination by the state board of health and when found unfit for drinking purposes, its use must be discontinued forthwith.

History: En. Sec. 12, Ch. 36, L. 1919.

2498. Definition of misdemeanor and penalty. Each owner, manager, agent, or person in charge of a hotel, or other business mentioned in this act, who violates any provisions of this act shall be deemed guilty of a misdemeanor and shall be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned in the county jail for not less than ten days, nor more than three months, or both, and every day that such hotel is carried on in violation of this act shall constitute a separate offense.

History: En. Sec. 13, Ch. 36, L. 1919.

2499. Cleansing walls before putting on new paper. Whenever the paper or substitute wall covering on the ceiling or walls of a room in any dwelling, tenement, or apartment house, or house owned or maintained for rental purposes, has become loosened so as to be in danger of collecting and retaining dust, germs, vermin, or filth, the same shall be removed, and the walls and ceilings thoroughly cleaned before new wall-paper or substitute wall covering shall be put thereon.

History: En. Sec. 1, Ch. 160, L. 1917.

2500. Duty in case of contagious or infectious disease. No wall-paper or substitute wall covering shall be placed upon the walls or ceiling of any room where there has been a case of contagious or infectious disease, until all wall-paper and substitute wall covering thereon has been entirely

removed, and the walls and ceiling thoroughly cleansed, oil-painted walls and ceilings excepted.

History: En. Sec. 2, Ch. 160, L. 1917.

2501. County and city boards of health to enforce act. The county board of health in each county of this state shall have power to examine into the enforcement of this act in any city, town, or elsewhere within its respective county; provided, that in cities or towns where a board of health is established, then such city board of health shall have such power to examine into the enforcement of this act within the boundaries of such city or town.

History: En. Sec. 3, Ch. 160, L. 1917.

2502. Violation of act a misdemeanor. That any person or persons who violates any of the provisions of this act, or who shall cause any person or persons to violate any section of this act, shall be deemed guilty of a misdemeanor.

History: En. Sec. 4, Ch. 160, L. 1917.

CHAPTER 194.

CHILD WELFARE DIVISION OF STATE BOARD OF HEALTH: MONTANA ORTHOPEDIC COMMISSION.

Section 2503. Child Welfare Division Created.
2504. Duties of Division.
2505. Employment of School Nurses.
2506. Employment of County Nurses.
2507. Rules and Regulations Governing Work of Nurses.
2508. Report Blanks—Preparation and Distribution.
2509. Employment of Officers to Enforce Act.
2510. Interference With Religious Belief of Child or Parent Prohibited.
2511. Appropriation for Care of Indigent Crippled Children.
2512. Montana Orthopedic Commission—Creation—Expenses.
2513. Duty of Commission—Employment and Salary Field Investigator.
2514. Commission May Order Special Care and Operations—Claims.

2503. Child welfare division created. That a child welfare division be and the same is hereby created, which shall be under the direct supervision of the state board of health.

History: En. Sec. 1, Ch. 121, L. 1917.

2504. Duties of division. The duties of this division shall be to make and enforce regulations, to carry on a campaign of public health education, and to take all possible steps for the better protection of the health of the children of the state.

History: En. Sec. 2, Ch. 121, L. 1917.

2505. Employment of school nurses. School boards may employ, in their discretion, regularly qualified nurses, duly registered in the state of Montana, to act as school nurses. In sparsely settled communities two or more school boards may unite and employ a school nurse, the salary of such nurse being paid pro rata according to the assessed valuation in the school districts.

History: En. Sec. 3, Ch. 121, L. 1917.

2506. Employment of county nurses. County commissioners are hereby authorized, at such time as they deem necessary, to employ regu-

larly qualified nurses, to be known as county nurses, for duties under the child welfare division.

History: En. Sec. 4, Ch. 121, L. 1917.

2507. Rules and regulations governing work of nurses. The superintendent of public instruction and the secretary of the state board of health, as soon as possible after the passage of this act, shall meet and formulate rules and regulations governing the work of school, county, and public health nurses, which rules and regulations, when regularly passed by the state board of health, shall invest the said state board of health with full power of supervision and regulation of said school and county and public health nurses.

History: En. Sec. 5, Ch. 121, L. 1917.

2508. Report blanks—Preparation and distribution. The state board of health, through its child welfare division, shall prepare and distribute to the school, county, and public health nurses all necessary report blanks.

History: En. Sec. 6, Ch. 121, L. 1917.

2509. Employment of officers to enforce act. The secretary of the state board of health, subject to the approval of said board, shall employ such officers as may be necessary to carry out the provisions of this act.

History: En. Sec. 7, Ch. 121, L. 1917.

2510. Interference with religious belief of child or parent prohibited. Nothing in this act shall be construed or operate so as to interfere in any way with the exercise of the child's or parent's religious belief, as to the examination for or in the treatment of diseases; provided, that quarantine regulations relating to contagious or infectious diseases are not infringed upon.

History: En. Sec. 8, Ch. 121, L. 1917.

2511. Appropriation for care indigent crippled children. There is hereby appropriated out of any money in the general fund of the state of Montana, not otherwise appropriated, the sum of twenty-five thousand dollars, to be used for the actual hospital and operating expenses, in the care of the indigent crippled children of the state of Montana who are at the instance or direction of the Montana orthopedic commission, cared for in any hospital within the state of Montana; said money so appropriated to be administered and expended at the instance and under the direction of the Montana orthopedic commission as hereinafter prescribed.

History: En. Sec. 1, Ch. 154, L. 1921.

2512. Montana orthopedic commission—Creation—Expenses. There is hereby created a commission composed of five members to be known as the Montana orthopedic commission, members of which shall consist of the secretary of the state board of health, the president of the Montana state medical association, a representative of the Montana tuberculosis association, and two members of the Montana federation of women's clubs, the latter three members to be appointed by the governor, and to serve until such time as they are removed by the governor. Such commission shall serve without pay; except the members thereof, shall be entitled to the actual necessary and traveling expenses incurred, when serving on the business of the commission.

History: En. Sec. 2, Ch. 154, L. 1921.

2513. Duty of commission—Employment and salary field investigator. It shall be the duty of this commission to examine into the matter of all applicants for relief, whenever any child or person within the state of Montana who is crippled and in indigent circumstances shall apply for relief in the matter of obtaining medical, surgical, and hospital expenses. The said commission in its discretion is hereby authorized to employ not to exceed one field investigator whose salary and expenses shall be paid from the money herein appropriated; provided, that such salary and expenses shall not exceed the sum of four thousand dollars.

History: En. Sec. 3, Ch. 154, L. 1921.

2514. Commission may order special care and operations—Claims. Whenever the need for relief has been established to the satisfaction of this commission, a special order for the care, treatment, and if an operation is necessary, an operation at any hospital properly equipped for the treatment of such cases shall be made, and all bills and statements for service so rendered for any crippled child or person, upon an order given by said Montana orthopedic commission, shall be first referred to said commission and if found correct by them, they shall so designate upon the said claim, and such claim shall then be allowed, and paid from the appropriation hereby made, upon presentation to, and approval by, the state board of examiners.

History: En. Sec. 4, Ch. 154, L. 1921.

CHAPTER 195.

STATE BUREAU OF VITAL STATISTICS—REGISTRATION OF BIRTHS AND DEATHS.

Section 2515. State Bureau of Vital Statistics—Creation of.
2516. State Registrar to Make Rules and Regulations.
2517. Local Registrars—Vital Certificates.
2518. Local Registrars Must File Duplicate Returns With County Clerk—Duty of Clerk.
2519. Copies of Returns to Be Transmitted to County Clerk—Fees for Copies, How Paid.
2520. Registry of Births.
2521. Registry of Deaths.
2522. Same.
2523. Duties of County Clerk.
2524. Certified Copies of Records—Fees.
2525. Registration of Births.
2526. Registration of Deaths—Burial Permits.
2527. Forms of Registry Certificates.
2528. Death Certificates and Burial Permits.
2529. Same.
2530. Certificate of Birth.
2531. Duty of Sexton or Person in Charge of Cemetery.
2532. Duties of State Registrar.
2533. Duties of Local Registrars.
2534. Fees for Filing Certificate of Birth.
2535. Registration of Physicians, Midwife, and Undertaker.
2536. Hospital Record.
2537. Compensation of Local Registrar.
2538. Penalties.
2539. Registrars Charged With Duty of Enforcing This Act.

2515. State bureau of vital statistics—Creation of. For the complete and proper registration of births and death for legal, sanitary, and statisti-

cal purposes, there shall be and hereby is established and created a state bureau of vital statistics, to be under the immediate superintendence of the secretary of the state board of health of Montana, who shall be the state registrar.

History: Sec. 1764, Rev. C. 1907. Cal. Pol. C. Sec. 3074.

Note.—Sections 2515 to 2517 and 2520 to 2539 were enacted as sections 1 to 18, chapter 25, Laws of 1907, appearing as sections 1764 to 1781 inclusive, Revised Codes 1907.

Constitutionality of statutes in relation to vital statistics, see note in 39 L. R. A. (N. S.) 1015.

Who is a physician or surgeon within meaning of statute in relation to vital statistics, see note in 8 A. L. R. 1070.

2516. State registrar to make rules and regulations. The state registrar is hereby empowered to make, promulgate, and enforce such rules and regulations as he may consider necessary, with the approval of the majority of the members of the state board of health, to carry out the provisions of this act.

History: En. Sec. 1765, Rev. C. 1907. See also history of Sec. 2515. Cal. Pol. C. Sec. 3074.

2517. Local registrars—Vital certificates. The health officer of each city or town shall be the local registrar in and for the city or town of which he is health officer, and he shall perform all the duties of local registrar as hereinafter provided. And when it may appear necessary for the convenience of the people of any locality, the state registrar is hereby authorized, with the approval of the state board of health, to appoint one or more suitable and proper persons to act as subregistrars, who shall be authorized to receive certificates and to issue burial and removal permits in and for such portions of the county or district as may be designated in their appointments, and they shall be subject to the same requirements and obligation as the local registrars, and shall make returns directly to the state registrar, as hereinafter provided.

And any justice of the peace of any township is hereby required to act as local registrar of births and deaths for the district in which he resides when called upon to do so by the state registrar of births and deaths.

History: Sec. 1766, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1911. See also history of Sec. 2515.

2518. Local registrars must file duplicate returns with county clerk—Duty of clerk. That every local registrar and subregistrar of births and deaths provided for by the preceding section, in addition to sending to the state registrar the returns required by law, must file duplicate returns with the county clerk in which said registrars are located, which returns so filed must be entered by the county clerk in the respective registers of births and deaths kept by such officer.

History: En. Sec. 1, Ch. 68, L. 1919.

Note.—The above section has been changed by the code commissioner to conform to subsequent enactments.

2519. Copies of returns to be transmitted to county clerk—Fees for copies, how paid. That all local registrars and subregistrars in the state of Montana must, within ninety days after the passage and approval of this act, prepare copies of all the returns on file in their respective offices heretofore filed and entered in their offices, showing record of all births and deaths appearing in their respective records, and must send such

copies of such returns to the county clerk of the county in which they are resident, and shall receive as a fee for preparing and sending such copies of such records ten cents for each of such records, which sum shall be paid by the board of county commissioners on presentation of duly verified claim, showing the number of returns so certified and filed with the county clerk.

History: En. Sec. 2, Ch. 68, L. 1919.

2520. Registry of births. All physicians and professional midwives must keep a record of the time of each birth at which they assist professionally, the sex, race, and color of the child, and the names and residence of the parents, and must promptly report such facts to the local registrar.

History: En. Sec. 2871, Pol. C. 1895; re-en. Sec. 1759, Rev. C. 1907. See also history of Sec. 2515. Cal. Pol. C. Sec. 3077.

Note.—The above section has been changed by the code commissioner to conform to subsequent enactments.

Validity and construction of statute requiring registration of births and deaths, see note in Ann. Cas. 1912C, 686.

2521. Registry of deaths. Physicians who attend deceased persons in their last sickness, clergymen who officiate at a funeral, coroners who hold inquests, sextons and undertakers who bury deceased persons, must each keep a record of the name, age, residence, and time of death of such person and must promptly report such facts to the local registrar.

History: En. Sec. 2872, Pol. C. 1895; re-en. Sec. 1760, Rev. C. 1907. See also history of Sec. 2515.

Note.—The above section has been changed by the code commissioner to conform to subsequent enactments.

2522. Same. If at any birth no physician or midwife attends, the parents must make a report to the local registrar.

History: En. Sec. 2874, Pol. C. 1895; re-en. Sec. 1762, Rev. C. 1907. See also history of Sec. 2515. Cal. Pol C. Sec. 3077.

Note.—The above section has been changed by the code commissioner to conform to subsequent enactments.

2523. Duties of county clerk. The county clerk must keep separate registers, to be known as the "Register of Births," and the "Register of Deaths," in which the births and deaths certified to him must be numbered in the order in which they are reported to him. There must be stated in each register, in separate columns, properly headed, the various facts contained in the certificates, and the name and official or clerical position of the person making the report. The county clerk must carefully examine each report, and register the same birth or death but once, although it may be reported by different persons.

History: En. Sec. 2875; Pol. C. 1895; re-en. Sec. 1763, Rev. C. 1907. See also history of Sec. 2515. Cal. Pol. C. Sec. 3078.

Note.—The above section has been changed by the code commissioner to conform to subsequent enactments.

2524. Certified copies of records—Fees. Every county clerk is required to issue a certified copy of a record of birth or death upon demand of any such record on file in his office, and shall receive on behalf of the county as the fee for such certified copy the sum of twenty-five cents.

History: En. Sec. 3, Ch. 68, L. 1919.

2525. Registration of births. All births shall be registered in the district in which they occur as hereinafter provided.

History: Sec. 1767, Rev. C. 1907. See also history of Sec. 2515.

2526. Registration of deaths—Burial permits. The body of any person whose death occurs in the state shall not be interred, or otherwise disposed of, or removed from or into any registration district, until a permit for a burial or removal shall have been properly issued by the registrar of the district in which the death occurs. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him, as hereinafter provided. Still-born children, or those dead at birth, shall be registered as births and also as deaths, and a certificate of both the birth and death shall be filed in the usual manner.

History: Sec. 1768, Rev. C. 1907. See also history of Sec. 2515.

2527. Forms of registry certificates. The forms of certificates used in registering births and deaths under this act shall be the standard form recommended by the bureau of the census and the American public health association.

History: Sec. 1769, Rev. C. 1907. See also history of Sec. 2515.

2528. Death certificates and burial permits. The undertaker or person acting as undertaker shall be responsible for obtaining and filing the certificate of death with the registrar, and securing a burial permit prior to any disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them, and present the certificate to the attending physician for the medical certificate of the cause of death, and said attending physician shall, upon such certificate coming to his notice, forthwith, and without delay, make his certificate of the cause of death, and said undertaker shall then present the completed certificate to the registrar to secure the burial or removal permit. The undertaker shall deliver duplicate burial permit to the sexton, or person in charge of the place of burial, before interring the body. The medical certificate shall be made and signed by the attending physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw deceased alive, and the hour of the day at which the death occurred. And the cause of death and all other facts required shall in all cases be stated in accordance with the rules and regulations of the state registrar, and if any undertaker, attending physician, or registrar shall fail to perform any of the acts hereinabove prescribed, he shall be guilty of a misdemeanor.

History: Sec. 1770, Rev. C. 1907; amd. Sec. 1, Ch. 48, L. 1909. See also history of Sec. 2515.

2529. Same. In case of any death occurring without medical attendance it shall be the duty of the undertaker to notify the registrar of such death, and when so notified, the registrar shall inform the local health officer or coroner, and refer the case to him for immediate investigation and certification prior to issuing a burial permit.

History: Sec. 1771, Rev. C. 1907. See also history of Sec. 2515.

2530. Certificate of birth. The certificate of birth shall be made and filed by the attending physician or midwife within ten days after the date of birth. And if there is no attending physician or midwife, then it shall be the duty of the father of the child, householder or owner of the premises, or the head of the hospital or institution in which the birth occurred, to make and file the certificate within ten days after birth.

History: Sec. 1772, Rev. C. 1907. See also history of Sec. 2515.

2531. Duty of sexton or person in charge of cemetery. No sexton or person in charge of any cemetery in which interments are made shall inter or permit the interment of any body unless it is accompanied by a burial permit as herein provided. And he shall indorse upon one of the permits the date of interment, over his signature, and return all permits so indorsed to the local registrar of his district within ten days from the date of interment. He shall also keep a record of all interments made in the premises under his charge, stating the name of the deceased person, place of death, date of burial, and name and address of the undertaker, which record shall at all times be open to public inspection.

History: Sec. 1773, Rev. C. 1907. See also history of Sec. 2515.

2532. Duties of state registrar. The state registrar shall prepare, print, and supply to all registrars all blanks and forms used in registration, recording, and preserving the returns, or in otherwise carrying out the purposes of this act, and shall prepare and issue such rules and regulations as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. He shall arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card-index of all births and deaths registered. He shall inform all registrars what diseases are to be considered as infectious, contagious, or communicable, and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent the spreading of dangerous diseases. And he shall annually certify to the treasurer of the several counties the number of births and deaths registered, and the names of the local registrars, with the amounts due each at the rate fixed herein.

History: Sec. 1774, Rev. C. 1907. See also history of Sec. 2515.

2533. Duties of local registrars. It shall be the duty of the local registrar or subregistrar to supply blank forms of certificates to such persons as require them. And he shall carefully examine each certificate of birth or death, when presented for record, to see that it has been made out in accordance with the provisions of this act and the instructions of the state registrar, and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defect in the return, and withhold issuing the burial permit until they are corrected. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease that is held by the state board of health to be infectious, contagious, or communicable, and dangerous to public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under the conditions prescribed by the

state and local boards of health. If a certificate of birth is incomplete, he shall immediately notify the informant and require him to supply the missing items if they can be obtained. He shall then number consecutively the certificates of births and deaths in two separate series, beginning with "number one" for the first birth and the first death in the calendar year, and sign his name as registrar in attestation of the date of filing in his office. He shall also make a complete and accurate copy of each birth and death certificate registered by him, upon a form identical with the original certificate, to be filed and properly preserved in his office as the local record of such birth and death, in such manner as directed by the state registrar, and he shall, on the fifth day of each month, transmit to the state registrar all the original certificates registered by him during the preceding month. And if no births or no deaths occur in any month, he shall, on the fifth day of the following month, report that fact to the state registrar in such manner as the state registrar shall direct.

History: Sec. 1775, Rev. C. 1907. See also history of Sec. 2515.

2534. Fees for filing certificate of birth. Each physician, midwife, father of child, householder, or owner of premises, manager or superintendent of public or private institution, or other person acting as informant and filing with the local registrar, within ten days after the birth of a child, a proper certificate correctly and legibly made out, and containing all the items required by the provisions of this act and the rules and regulations of the state registrar, shall be entitled to receive the sum of fifteen cents, to be paid by the treasurer of the county upon certification by the state registrar. Only one certificate shall be received of the birth of the same child, and the order of right to file the certificate shall be the same as the order of responsibility for filing as herein given. Certificates in which certain items are missing shall not be regarded as complete, and shall not be entitled to payment until the missing items have been supplied. And the state registrar shall annually certify to the treasurers of the several counties the number of births registered, with the name of the person registering them and the amounts due each at the rate fixed therein.

History: Sec. 1776, Rev. C. 1907. See also history of Sec. 2515.

2535. Registration of physicians, midwife, and undertaker. Every physician, midwife, and undertaker shall, without delay, register his or her name, address, and occupation with the local registrar of the district in which he or she resides, or may hereafter acquire residence, and shall thereupon be furnished by the registrar with a copy of this act, and such rules and regulations as may be prepared by the state registrar relative to its enforcement.

History: Sec. 1777, Rev. C. 1907. See also history of Sec. 2515.

2536. Hospital record. All superintendents or managers, or other persons in charge of hospitals or lying-in institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all personal and statistical particulars relative to the inmates in their institutions at the date of the approval of this act, that are required in the form of certificate herein provided for, as directed by the state registrar. And

thereafter such records shall be made by them, for all future inmates, at the time of admission.

History: Sec. 1778, Rev. C. 1907. See also history of Sec. 2515.

2537. Compensation of local registrar. Each local registrar or subregistrar shall be entitled to be paid the sum of twenty-five cents for each birth and each death certificate completely and properly made out and filed with him, to be paid by the treasurer of the county upon certification by the state registrar. He shall supply blank forms of certificate to such persons as require them, and shall carefully examine the certificates presented for record and require them to be properly made out. And he shall keep such records and make such returns to the state bureau as may be required by the rules and regulations of the state registrar.

History: Sec. 1779, Rev. C. 1907. See also history of Sec. 2515.

2538. Penalties. If any attending physician shall refuse or neglect to make the medical certificate of death herein required of him, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than five days nor more than twenty-five days, or by both such fine and imprisonment in the discretion of the court. And if any physician shall wilfully and knowingly make a false certificate of the cause of death in any case, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than twenty-five days nor more than one hundred days, or by both such fine and imprisonment in the discretion of the court. And any physician or midwife, or any other person with responsibility for reporting births, in the order named in section 2530 of this code, who shall refuse or neglect to make out and file the certificate of birth herein required, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars for each offense. And any sexton, undertaker, or other person who shall inter, remove, or otherwise dispose of the body of any deceased person, without the permit herein provided for, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. And any registrar or subregistrar who shall neglect or fail to enforce the provisions of this act in his district, or shall refuse or neglect to perform any of the duties imposed upon him by this act or the rules and regulations of the state registrar, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars. And any person or corporation who shall violate any of the provisions of this act, or any of the rules or regulations formulated thereunder by the state registrar, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars.

History: Sec. 1780, Rev. C. 1907. See also history of Sec. 2515.

2539. Registrars charged with duty of enforcing this act. Local registrars and subregistrars are hereby charged with the strict and thorough enforcement of the provisions of this act in their districts, under the

supervision of the state registrar. And they shall make an immediate report to the state registrar of any violation of this law coming to their notice by observation, or upon complaint of any person or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and with supervisory power over local registrars, to the end that all requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necesary, he shall report cases of violation of any of the provisions of this act to the prosecuting attorney of the proper county, with the statement of the facts and circumstances, and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith institute and promptly follow up the necessary court proceedings against the parties responsible for the alleged violation of law. And upon request of the state registrar, the attorney-general shall likewise assist in the enforcement of this act.

History: Sec. 1781, Rev. C. 1907. See also history of Sec. 2515.

CHAPTER 196.

STATE EPIDEMIOLOGIST.

Section 2540. State Epidemiologist—Employment and Powers of.
2541. Duties.
2542. Qualifications, Salary, and Traveling Expenses.

2540. State epidemiologist—Employment and powers of. The state board of health of Montana is hereby authorized and empowered to employ a competent epidemiologist, who shall be known as the state epidemiologist, and shall have the powers of a deputy state health officer under the direction of the secretary of the state board of health of Montana, and be subject to the control of said board.

History: En. Sec. 1, Ch. 76, L. 1919.

2541. Duties. The duties of the state epidemiologist shall be to study the causes and prevalence of diseases in the state of Montana, to take the proper steps to check such diseases, and to assist the local and county health officers in the suppression of these diseases, and perform such other duties as the state board of health may direct.

History: En. Sec. 2, Ch. 76, L. 1919.

2542. Qualifications, salary, and traveling expenses. The state epidemiologist shall be a regularly qualified physician and surgeon, and shall hold office at the discretion of the state board of health of Montana; he shall devote his whole time to the duties of the office, and shall receive as compensation for his services such salary as may be fixed by the state board of health of Montana, not in excess of three hundred and fifty dollars per month, together with his reasonable and necessary travel and subsistence expense while actually traveling in the state on business of his office.

History: En. Sec. 3, Ch. 76, L. 1919.

CHAPTER 197.

STATE BOARD OF ENTOMOLOGY.

Section 2543. Creation and Membership of Board of Entomology.
2544. Secretary of Board.
2545. Compensation and Expenses of Members of Board.
2546. Duties of Board.
2547. Eradication of Diseases Transmitted by Insects.
2548. Rules, Regulations, and Quarantine.
2549. Regulations Subject to Approval of Board of Health.
2550. Publication and Circulation of Rules and Regulations.
2551. Penalty for Violation of Rules and Regulations.
2552. Extermination of Tick-Bearing Rodents—Definition of Terms.
2553. Establishment of Control Districts.
2554. Regulations for the Extermination of Rodents.
2555. Appointment of Agents for Purposes of Extermination—Powers and Duties of Agents and Members of Board of Entomology.
2556. Agents to Be Under Supervision of Board of Entomology—Notice to Owner of Animals in Inclosed Fields and to Occupants of Dwellings—Records.
2557. Compensation of Agents—Maximum Expense Against Land—Duty of County Treasurer—Appeal to District Court.
2558. Preparation, Sale, and Approval of Poison.
2559. Quarantine of Control Districts.
2560. Regulations Concerning Grazing Outside of Inclosures Within Control Districts.
2561. Penalty for Violation of Act.

2543. Creation and membership of board of entomology. There is hereby created the Montana state board of entomology, which shall be composed of the state entomologist, the secretary of the state board of health, and the state veterinarian.

History: En. Sec. 1, Ch. 120, L. 1913.

Validity of statute providing for extermination of insect pests, see note in Ann. Cas. 1913A, 412.

2544. Secretary of board. The secretary of the state board of health shall be chairman of said board, and the state entomologist shall be secretary.

History: En. Sec. 2, Ch. 120, L. 1913.

2545. Compensation and expenses of members of board. None of the members of said board shall receive any compensation other than that already allowed by law, except that the actual expenses of members while engaged in the duties incident to the work of said board shall be paid out of the appropriation made to carry on the work of said board.

History: En. Sec. 3, Ch. 120, L. 1913.

2546. Duties of board. It shall be the duty of said board to investigate and study the dissemination by insects of diseases among persons and animals, said investigation having for its purpose the eradication and prevention of such diseases.

History: En. Sec. 4, Ch. 120, L. 1913.

2547. Eradication of diseases transmitted by insects. Said board shall take steps to eradicate and prevent the spread of Rocky Mountain tick fever, infantile paralysis, and all other infectious or communicable diseases that may be transmitted or carried by insects.

History: En. Sec. 5, Ch. 120, L. 1913.

2548. Rules, regulations, and quarantine. Said board shall have authority to make and prescribe rules and regulations, including the right of quarantine, over persons and animals in any district of infection, and shall have the right to designate and prescribe the treatment for domestic animals to prevent the spread of such diseases; but said board shall not have the right to prescribe or regulate the treatment given to any person suffering from any infectious or communicable disease.

History: En. Sec. 6, Ch. 120, L. 1913.

2549. Regulations subject to approval of board of health. All rules and regulations of the state board of entomology shall be subject to approval by the state board of health.

History: En. Sec. 7, Ch. 120, L. 1913.

2550. Publication and circulation of rules and regulations. The board shall publish in printed form all rules and regulations which shall be adopted by said board for the eradication and control of diseases of any kind, and such rules and regulations shall be circulated among the residents of every district affected thereby.

History: En. Sec. 8, Ch. 120, L. 1913.

2551. Penalty for violation of rules and regulations. Any person who shall violate any of the rules or regulations of the state board of entomology shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not in excess of one hundred dollars, or by imprisonment in the county jail for any period not exceeding thirty days, or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 120, L. 1913.

2552. Extermination of tick-bearing rodents—Definition of terms. The word "owner" as used in this act shall be construed to include both the singular and plural, as the case may be, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any corporation, company, society, or association, within the scope of his employment of office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the other person. The words "control district" as used in this act shall mean only such control districts of the state board of entomology as have been or may be specifically established for the control or eradication of any tick transmitting Rocky Mountain spotted fever. The words "other rodents" as used in this act shall be construed to include all rodents, other than the Columbian ground-squirrel, that are hosts of any stage of a tick transmitting Rocky Mountain spotted fever. The words "domestic animals" as used in this act shall be construed to include cows, horses, mules, asses, sheep, goats, and hogs.

History: En. Sec. 1, Ch. 27, L. 1919.

2553. Establishment of control districts. The state board of entomology may, from time to time and whenever it deems it necessary so to

do, create and establish control districts for the extermination of the Rocky Mountain spotted-fever tick. Such control districts shall be created and established by a written order of the board, which shall particularly define the boundaries of such districts.

History: En. Sec. 2, Ch. 27, L. 1919.

2554. Regulations for the extermination of rodents. The state board of entomology is hereby empowered to make such regulations as it may deem necessary, requiring the owners of land in any control district to poison or otherwise kill and exterminate the Columbian ground-squirrel or other rodents, and such regulations shall specify the Columbian ground-squirrel or other rodents to be destroyed, as well as the number of times each year, the period or periods during which, the means by which, and the control district or districts in which such poisoning or otherwise killing and exterminating of the Columbian ground-squirrel or other rodents shall be accomplished; and the secretary of said board shall cause all such regulations to be published in one or more of the newspapers circulated in the county or counties concerned during two weeks immediately following their adoption by said board.

History: En. Sec. 3, Ch. 27, L. 1919.

2555. Appointment of agents for purposes of extermination—Powers and duties of agents and members of board of entomology. Upon the establishment of one or more control districts within any county in Montana, the county commissioners of such county are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be to poison or otherwise kill and exterminate the Columbian ground-squirrel or other rodents within the limits of such control districts, and said county commissioners are further authorized and empowered to pay out of the general fund of the county the per diem of the person or persons so appointed, and all other expenses in connection with the killing and extermination of such Columbian ground-squirrel or other rodents. Any person so appointed is hereby empowered and directed to perform such poisoning or otherwise killing and exterminating of the Columbian ground-squirrel or other rodents as the state board of entomology may specify, provided the owner shall refuse or neglect to do so when so directed in the regulations of the state board of entomology, or shall refuse or neglect to do so within the period specified by the regulations of said board, or provided such work has not been performed in a thorough and efficient manner. Any person so appointed is further empowered and directed to enter upon any farm, grounds, or premises, a railroad right of way, or any other parcel of land, for the purpose of determining whether or not the Columbian ground-squirrel or other rodents are present, or for the purpose of killing and exterminating the Columbian ground-squirrel or other rodents, or to determine whether or not the Columbian ground-squirrel or other rodents have been poisoned or otherwise killed and exterminated, in accordance with the provisions of this act and the regulations of the state board of entomology. It is further provided that each member of the state board of entomology, and each of its duly authorized representatives and employees, are similarly empowered to

enter upon any farm, grounds, or premises, a railroad right of way, or any other parcel of land at any time, for each and all of the purposes specified in this act. When an owner has neglected or refused to poison, kill, or otherwise exterminate the Columbian ground-squirrel or other rodents as required by the provisions of this act and the regulations of said board, or has not done so in a thorough and efficient manner, the secretary of the state board of entomology, or his duly authorized representative, shall notify such owner that such poisoning or otherwise killing and exterminating of the Columbian ground-squirrel or other rodents will be performed at the owner's expense under the direction of said board, as provided in this act, and such notice shall be mailed to the last known address of such owner, and, in case of a railroad right of way, shall be delivered to the nearest station agent.

History: En. Sec. 4, Ch. 27, L. 1919.

2556. Agents to be under supervision of board of entomology—Notice to owner of animals in inclosed fields and to occupants of dwellings—Records. Any person or persons appointed for the purpose of poisoning or otherwise killing and exterminating the Columbian ground-squirrel or other rodents, as provided for in the preceding section, shall perform such work under the direction of the state board of entomology or its duly authorized representative in the county concerned; and it shall be the duty of any such person, or of any duly authorized representative or employee of said board, to give the owner or person in charge of any domestic animals which are pastured on the fenced land on which he is empowered to lay out poison or kill and exterminate the Columbian ground-squirrel or other rodents, at least forty-eight hours' notice in writing before laying out such poison, and to notify the owner or occupant of any dwelling or farmhouse, before laying out poison for the above purpose within twenty rods of such dwelling or farmhouse. He shall further keep such records of infestation by the Columbian ground-squirrel or other rodents as may be directed by the state board of entomology or its duly authorized representative, and shall keep an accurate record of the work performed on each parcel of land on which such person has poisoned or otherwise killed and exterminated the Columbian ground-squirrel or other rodents, specifying therein the kind of rodents so poisoned or otherwise killed and exterminated, the number of hours of labor required therefor, the date or dates during which, and a description of the land on which such labor was performed, together with the amount of poison or other material used, and shall transmit two sworn copies of such records to the secretary of the state board of entomology or his duly authorized representative in the county concerned, and the latter shall, on or before the first day of August of each year, transmit one copy thereof, on which is computed the total expense incurred on each parcel of land, to the county treasurer.

History: En. Sec. 5, Ch. 27, L. 1919.

2557. Compensation of agents—Maximum expense against land—Duty of county treasurer—Appeal to district court. Any person or persons appointed for the purpose of poisoning or otherwise killing and exter-

minating the Columbian ground-squirrel or other rodents, as provided for in section 2555, shall receive as compensation not to exceed the sum of three dollars and fifty cents per day of eight hours for labor performed in carrying out the provisions of this act, and such amount shall be paid by the county concerned out of its general fund. The maximum charge against any parcel of land shall not be greater for any one treatment than at the rate of eight dollars per one hundred and sixty acres. Whenever under the provisions of this act or of the regulations of the state board of entomology any money is expended by a county for the purpose of poisoning or otherwise killing and exterminating the Columbian ground-squirrel or other rodents from any parcel of land, the county treasurer of such county shall notify the owner of such land in writing of the amount so expended. Said notice shall be mailed to the last known address of such owner, and if such owner shall fail to pay the amount so expended by the county within thirty days of the time such notice is sent, then, and in that event, the county treasurer shall add the amount so expended to the taxes upon said property, and shall collect the same as provided by law for the collection of taxes for state and county purposes, except that such owner may, within thirty days from the time such notice is sent, appear before the county commissioners and show cause why such sum should not be paid; provided, however, that if such owner shall feel aggrieved by the decision of the county commissioners, such owner may appeal to the district court, and such appeal shall be perfected and prosecuted in the same manner as appeal in justice courts.

History: En. Sec. 6, Ch. 27, L. 1919.

2558. Preparation, sale, and approval of poison. In any county concerned, poison for the killing and exterminating of the Columbian ground-squirrel or other rodents shall be prepared by the secretary of the state board of entomology or his duly authorized representative, and shall be sold by him or his agents at cost to any owner or occupant of land in any control district; and it is further provided that the secretary of the state board of entomology or his duly authorized representative shall also prepare or approve all poison used by persons authorized under this act to lay out poison on lands, the owners of which shall refuse or neglect to poison or otherwise kill and exterminate the Columbian ground-squirrel or other rodents as directed by the regulations of the state board of entomology.

History: En. Sec. 7, Ch. 27, L. 1919.

2559. Quarantine of control districts. Between March 1st and July 15th of each year, each control district shall be held to be a quarantined area. Owners of domestic animals shall be prohibited from taking or moving such animals into or out of any quarantined control district, or from allowing such domestic animals to wander into or out of any quarantined control district; provided, that such domestic animals may be moved into or out of such quarantined control district under permits issued by the secretary of the state board of entomology or by his duly authorized representative, except that no permit so issued shall be effective for animals upon which a quarantine has been placed by the livestock sanitary

board; and provided, further, that animals ridden under the saddle or driven in harness or under yoke shall not be subject to this quarantine.

The secretary of the state board of entomology or his duly authorized representative shall be required to satisfy himself that domestic animals are free of ticks before issuing to the owner a permit allowing the removal into or out of quarantined district of such domestic animals.

History: En. Sec. 8, Ch. 27, L. 1919.

2560. Regulations concerning grazing outside of inclosures within control districts. The state board of entomology is hereby authorized and empowered to make regulations for the purpose of prohibiting or of regulating and controlling the grazing of domestic animals on unfenced land and roadsides and country roads within the limits of any control district established by said board.

History: En. Sec. 9, Ch. 27, L. 1919.

2561. Penalty for violation of act. Any owner of domestic animals who shall violate any provision of the two preceding sections, or any regulation of the state board of entomology made in conformity therewith, shall be guilty of a misdemeanor, and shall be fined in any sum not greater than one hundred dollars or imprisoned in the county jail for any period not exceeding thirty days, or both such fine and imprisonment may be imposed.

History: En. Sec. 10, Ch. 27, L. 1919.

CHAPTER 198.

CONTROL OF VENEREAL DISEASES.

Section 2562. Venereal Diseases—Authority of State Board to Co-operate With Federal Authorities in Suppression.
2563. Acceptance and Disbursement of Federal Moneys.
2564. Venereal Diseases Dangerous to Public Health.
2565. Record of Venereal Cases to Be Kept—Reporting Cases.
2566. Examination and Detention of Suspects—Quarantine—Co-operation of Local Health Officers.
2567. Isolation Hospitals.
2568. Pay Patients.
2569. Examination and Treatment of Prisoners.
2570. Quarantine of Infected Persons.
2571. Instruction of Patients in Disease.
2572. Duty of Physician or Other Person Consulted Concerning Disease.
2573. Druggists and Unlicensed Persons Prohibited from Prescribing—Duty of Druggists.
2574. Certificates of Freedom From Disease.
2575. Inaccessibility of Records to Public.
2576. Rules and Regulations for the Control of Venereal Diseases.
2577. Penalty for Violation of Act or Regulations.

2562. Venereal diseases—Authority of state board to co-operate with federal authorities in suppression. For the purpose of the prevention, control, and treatment of venereal diseases, the state board of health shall have authority to co-operate in this state with the division of venereal diseases of the bureau of public health service created by subchapter XV of chapter 143 of the act of congress of July 9, 1918, appropriating money

for the United States army, and giving aid to the several states in the prevention, control, and treatment of venereal diseases.

History: En. Sec. 1, Ch. 86, L. 1919.

2563. Acceptance and disbursement of federal moneys. The state treasurer is hereby authorized to accept, under the conditions of said act of congress, and to disburse under the direction of the state board of health, all moneys received by the state of Montana under said subchapter XV of chapter 143 of said act of congress, or otherwise allotted and paid to the state of Montana by the federal government for the prevention, control, and treatment of venereal diseases, and all moneys appropriated under this act.

History: En. Sec. 2, Ch. 86, L. 1919.

2564. Venereal diseases dangerous to public health. That syphilis, gonorrhoea, and chancroid, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for anyone infected with these diseases, or any of them, to expose another person to infection.

History: En. Sec. 1, Ch. 106, L. 1919.

2565. Record of venereal cases to be kept—Reporting cases. Any physician or other person who makes a diagnosis in or treats a case of syphilis, gonorrhoea, or chancroid, and every superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall keep a record thereof, which shall show the name and address or the office number, age, sex, color, and occupation of the diseased person, and the date of onset of the disease, and the probable source of infection. Every name entered in such record shall be assigned a number, commencing with No. 1 and continuing in numerical order, and shall report such case immediately in writing to the local or county health officer, giving the number assigned to such diseased person, together with the probable source of infection; provided, that the name and address shall not be given in such report, except as hereinafter specifically provided. Said report shall be inclosed in a sealed envelope and sent to the local or county health officer, who shall report weekly on the prescribed form to the state board of health all cases reported to him.

History: En. Sec. 2, Ch. 106, L. 1919.

2566. Examination and detention of suspects—Quarantine—Co-operation of local health officers. State, county, and local health officers, or their authorized deputies, within their respective jurisdictions, are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known, to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured; and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease. It shall be the duty of all local, county, and state health officers, or their authorized deputies, within their respect-

ive jurisdictions, to investigate sources of infection of venereal disease, to co-operate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

History: En. Sec. 3, Ch. 106, L. 1919. Compulsory examination for venereal diseases, see note in 2 A. L. R. 1332.

2567. Isolation hospitals. The county board of health of each county shall provide an isolation hospital for the care and treatment of all persons within the county suffering from venereal diseases, and shall make all necessary rules and regulations for the conduct and management thereof; provided, however, that the county board of health of any county may, in its discretion, if no isolation hospital has been established in such county, contract for the care and treatment of persons suffering from said diseases, with any county of the state that maintains an isolation hospital for the care and treatment of such diseases, or may contract with any private institution for the care and treatment of any such patients.

History: En. Sec. 4, Ch. 106, L. 1919.

2568. Pay patients. Every person who is committed to, detained, or treated in such isolation hospitals, and who is financially able, shall be required to pay all expenses for care and treatments while detained in such hospital, and the county board of health is authorized to maintain a civil action in the name of the county to recover therefor.

History: En. Sec. 5, Ch. 106, L. 1919.

2569. Examination and treatment of prisoners. All persons who shall be confined or imprisoned in any state, county, or city prison in the state shall be examined for, and, if infected, treated for venereal diseases by the health authorities or their deputies. The prison authorities of any state, county, or city prison are directed to make available to the health authorities such portion of any state, county, or city prison as may be necessary for a clinic or hospital, wherein all persons who may be confined or imprisoned in any such prison, and who are infected with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be isolated or quarantined under the provisions of section 2566, shall be isolated and treated at public expense until cured; or, in lieu of such isolation, any of such persons may, in the discretion of the local, county, or state health officer, be required to report for treatment to a licensed physician, or submit to treatment provided at public expense as provided in section 2567. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

History: En. Sec. 6, Ch. 106, L. 1919.

2570. Quarantine of infected persons. Local and county health officers are authorized and directed to quarantine persons who have, or who, after examination, are reasonably suspected of having syphilis, gonorrhea, or chancroid, whenever in the opinion of said local or county health officer, or the state board of health or its secretary, quarantine is necessary for the protection of the public health. In establishing quarantine the health officer shall designate and define the limits of the area in which the person known

to have, or reasonably suspected of having, syphilis, gonorrhea, or chancroid, and his or her immediate attendant are to be quarantined, and no other person than the attending physician shall enter or leave the area of quarantine without the permission of the local or county health officer. No one but the local, county or state health officer shall terminate said quarantine, and this shall not be done until the diseased person has become non-infectious, as determined by the local, county, or state health officer or his authorized deputy, through the clinical examination and necessary laboratory tests, or until permission has been given by the state board of health or its secretary.

History: En. Sec. 7, Ch. 106, L. 1919.

2571. Instruction of patients in disease. It shall be the duty of every physician, and every other person who examines or treats a person having syphilis, gonorrhea, or chancroid, to instruct such person in measures for preventing the spread of such diseases, and inform such person of the necessity for treatment until cured, and to hand such person a copy of the circular of information obtainable for this purpose from the state board of health.

History: En. Sec. 8, Ch. 106, L. 1919.

2572. Duty of physician or other person consulted concerning disease. When a person applies to a physician or other person for the diagnosis or treatment of syphilis, gonorrhea, or chancroid, it shall be the duty of the physician or person so consulted to inquire of and ascertain from the person seeking such diagnosis or treatment, whether such person has theretofore consulted with or has been treated by any other physician or person, and, if so, to ascertain the name and address of the physician or person last consulted. It shall be the duty of the applicant for diagnosis or treatment to furnish this information, and a refusal to do so or a falsification of the name and address of such physician or person consulted by such applicant shall be deemed a violation of these regulations. It shall be the duty of the physician or other person whom the applicant consults to notify the physician or other person last consulted of the change of advisers. Should the physician or person previously consulted fail to receive such notice within ten days after the last date upon which the patient was instructed by him to appear, it shall be the duty of such physician or person to report to the local or county health officer the name and address of such venereally diseased person.

If an attending physician or other person knows or has good reason to suspect that a person having syphilis, gonorrhea, or chancroid is so conducting himself or herself as to expose other persons to infection, or is about so to conduct himself or herself, he shall notify the local or county health officer of the name and address of the diseased person, and the essential facts in the case.

History: En. Sec. 9, Ch. 106, L. 1919.

2573. Druggists and unlicensed persons prohibited from prescribing—Duty of druggists. No druggist or other person, not a physician licensed under the laws of the state, shall prescribe or recommend to any person

any drugs, medicines, or other substances to be used for the cure or alleviation of gonorrhea, syphilis, or chancroid, or shall compound any drugs or medicines other than proprietary for said purpose, from any written formula or order not written for the person for whom the drugs or medicines are compounded, and not signed by a physician licensed under the laws of the state. All druggists are required to keep a record of the names and addresses of all persons to whom proprietary or patent medicines, commonly or presumably used in the treatment of venereal diseases, are sold or supplied to, and shall forward a report to the proper health officer at the end of each week, giving the names and addresses of such persons and the remedy sold in each case.

History: En. Sec. 10, Ch. 106, L. 1919.

2574. Certificates of freedom from disease. Physicians, health officers, and all other persons are prohibited from issuing certificates of freedom from venereal disease, providing this rule shall not prevent the issuance of necessary statements of freedom from infectious diseases, written in such form or given under such safeguards that their use in solicitation for sexual intercourse would be impossible. Such certificates shall not be used or exhibited for solicitation for immoral purposes.

History: En. Sec. 11, Ch. 106, L. 1919.

Requiring certificate of freedom from venereal diseases as condition to marriage, see note in 52 L. R. A. (N. S.) 778.

2575. Inaccessibility of records to public. All information and reports concerning persons infected with venereal diseases shall be inaccessible to the public.

History: En. Sec. 12, Ch. 106, L. 1919.

2576 Rules and regulations for the control of venereal diseases. The state board of health is hereby empowered and directed to make such rules and regulations as shall, in its judgment, be necessary for the carrying out of the provisions of this act, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of section 2566, and such other rules and regulations, not in conflict with provisions of this act, concerning the control of venereal diseases, and concerning the care, treatment, and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this act, and shall have the force and effect of law.

History: En. Sec. 13, Ch. 106, L. 1919.

2577. Penalty for violation of act or regulations. Any person who shall violate any of the provisions of this act, or any lawful rule or regulation made by the state board of health, pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by the state, county, or local health officer, pursuant to the authority granted in this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than a year, or by both such fine and imprisonment.

History: En. Sec. 14, Ch. 106, L. 1919.

CHAPTER 199.

PURE FOOD AND DRUG ACT.

Section 2578. Adulterated or Misbranded Drugs and Food—Unlawful Manufacture or Sale.
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2578. Adulterated or misbranded drugs and food—Unlawful manufacture or sale. It shall be unlawful for any person, persons, firm, or corporation, within this state, to manufacture for sale, within this state sell, offer for sale, or have within his or their possession, with the intent to sell within this state, any drugs or article of food which is adulterated or misbranded within the meaning of this act. The term "drug," as used in this act, shall include all medicines or preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or animals. The term "food," as used in this act, shall include all articles used as food, drink, confectionery, or condiment by man or animals, whether simple, mixed or compound.

History: En. Sec. 1, Ch. 130, L. 1911.

The pure food and drug act is a general police regulation, which recognizes the fact that the sale of adulterated foodstuff is a constant menace to the health of the consuming public, and the duty enjoined by it upon the seller is such that a violation of it can affect the public health only through the individuals who are injuriously affected by partaking of such food. The duty imposed upon the vendor is one which extends to the public considered as a composite of individuals, and if a consumer sustains some special injury by reason of defendant's violation of the act he has a right of action against the latter. Kelley v. John R. Daily Co., 56 Mont. 63, 71 181 Pac. 326.

A complaint alleging that, at the time of the sale of impure food by defendant to plaintiff, defendant was engaged in selling at retail, to the public generally, meat and meat products for human consumption, was sufficient to bring the case within the statute, and disclose the duty defendant owed to the public, including plaintiff, to see that its food products offered for sale were not adulterated within the meaning of such statute. Kelley v. John R. Daily Co., 56 Mont. 63, 71, 181 Pac. 326.

A charge in a complaint that defendant sold and delivered to plaintiff's husband, for immediate use in his family, including plaintiff, adulterated meat containing "diseased, infected, putrid, decomposed, poisonous acid and animal matter," suf-

ficiently charged defendant with a violation of the pure food act, and with a breach of duty constituting legal negligence. Kelley v. John R. Daily Co., 56 Mont. 63, 72, 181 Pac. 326.

The seller of food products is made insurer of their purity, and guilty knowledge on his part is not an ingredient of the offense prohibited; the obligation is personal, and cannot be avoided by showing that the impure food was purchased from a foreign concern and bore the stamp of approval by the government inspectors. Kelley v. John R. Daily Co., 56 Mont. 63, 74, 181 Pac. 326.

Liability under the pure food act arises from a violation of the statute, and it is immaterial whether the foundation of an action based upon such violation is laid in negligence or warranty. Kelley v. John R. Daily Co., 56 Mont. 63, 74, 181 Pac. 326.

It is not necessary for a plaintiff to refer to the pure food and drug act in order to recover damages for injuries arising from a violation of it. The courts take judicial notice of the general and public domestic statutes, and they need not be specially pleaded. Kelley v. John R. Daily Co., 56 Mont. 63, 74, 181 Pac. 326.

For general discussion of matters relating to food regulation, see 11 R. C. L. 1093.

Proper and improper branding and labeling of food and drugs, see Ann. Cas. 1915A, 46.

Branding of food and drugs under federal act, see note in 21 Ann. Cas. 1324.

State regulations with respect to misbranding as affected by federal pure food law, see note in 47 L. R. A. (N. S.) 985.

Power of state to regulate or prohibit the manufacture or sale of adulterated food, see note in 10 A. S. R. 423.

2579. What deemed adulterated. For the purposes of this act, an article shall be deemed as adulterated, in case of drugs:

First. When a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, if it differs from the standard strength, quality, or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary, official at the time of investigation; provided, that no drug shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

Second. If its strength or purity fall below the professed standard or quality under which it is sold.

In the case of foods:

First. In the case of confectionery, if it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

Second. If any substance or substances have been mixed with it so as as to reduce, or lower, or injuriously affect its quality or strength.

Third. If any substance has been wholly or in part substituted for the article.

Fourth. If any valuable constituent has been wholly or in part abstracted from it.

Fifth. If it contains any proportion of a filthy, diseased, decomposed, putrid, or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal.

Sixth. If it is mixed, colored, coated, polished, powdered, or stained in a manner whereby damage or inferiority is concealed, or whereby it is made to appear better or of greater value than it really is.

Seventh. If it contains any added poisonous or other added deleterious ingredient.

Eighth. If it contains any added antiseptic or preservative substance, except common salt, saltpeter, cane-sugar, beet-sugar, vinegar, spices, or in smoked foods, the natural products of the smoking process, or other harmless preservatives whose use is authorized by the state board of health, and no preservative shall be used in greater quantity than the rules and regulations of the state board of health shall designate.

History: En. Sec. 2, Ch. 130, L. 1911.

Cited or applied as section 2, chapter 130, Laws of 1911, in Kelley v. John R. Daily Co., 56 Mont. 63, 71, 181 Pac. 326.

Construction of federal pure food and drugs act with respect to adulteration, see notes in 21 Ann. Cas. 1327; Ann. Cas. 1915A, 48; Ann. Cas. 1917C, 495.

What constitutes adulteration within the food and drugs act, see note in L. R. A. 1915B, 774.

2580. Adulterated milk prohibited. No person, either by himself or by his servant or agent, or as the servant or agent of another person, shall sell, exchange, or deliver, expose or offer for sale or exchange adulterated milk, or milk to which water or any foreign substance has been added, milk produced from cows which have been fed on fermenting refuse from distilleries, breweries, or sugar factories or stable bedding or barnyard refuse, provided that fermenting pulp fed in conjunction with ground alfalfa and syrup be excepted, or from sick or diseased cows, or as pure milk from which the cream or a part thereof has been removed, or milk collected or kept or handled under conditions which are not cleanly or sanitary, and which do not conform to the rules and regulations of the state board of health made in conformity with the provisions of this act, or milk containing less than eight and one-half per cent. of milk solids, exclusive of fat, and three and twenty-five hundredths per cent. of milk fat, or milk which contains any added color preservative, or as cream, milk containing less than twenty per cent. of milk fat.

History: En. Sec. 3, Ch. 130, L. 1911.

Constitutionality of statutes regulating the sale of milk, see notes in 4 Ann. Cas. 119; 5 Ann. Cas. 911; 18 Ann. Cas. 321; Ann. Cas. 1915C, 72; L. R. A. 1917C, 243.

2581. Butter, cheese, and milk products. No butter, cheese, or other milk product shall be sold or offered for sale in this state unless made from milk, the sale of which is not prohibited under the provisions of the preceding section; provided, that cheese made from skim milk may be sold as "skim cheese" when branded in bold-faced letters not less than one inch in height, plainly stating that said article of food is made from skim milk; and provided, further, that renovated butter or butter made by any other process than that of churning milk, salable under the provisions of the preceding section, shall be branded so as to plainly indicate the method of making such butter and the contents thereof, and to the entire satisfaction of the state board of health.

History: En. Sec. 4, Ch. 130, L. 1911.

2582. Weights and measures—Size of gallon and pound. In case of food sold by weight or measure, all measures shall be in gallons or fractions thereof, a gallon to contain two hundred and thirty-one cubic inches, and each fraction of a gallon to contain its corresponding fraction of two hundred and thirty-one cubic inches. Where weights or measures are stated in pounds and ounces, they shall be exclusive of the wrapper or other container,

and each pound shall contain sixteen ounces, each ounce containing four hundred and thirty-seven and one-half grains. Any person, persons, firm, or corporation selling or offering for sale any article of food as a pound, or any multiple thereof, except by actual weight, the net weight of which is less than sixteen ounces, or the proper multiple thereof to represent the number of pounds sold or offered for sale, and any person, persons, firm, or corporation selling or offering for sale any quantity of food as a gallon, or any fraction thereof, which does not contain two hundred and thirty-one cubic inches net measure, or the fraction thereof represented by the fraction of a gallon offered for sale or sold, shall be guilty of a misdemeanor.

History: En. Sec. 5, Ch. 130, L. 1911.

Validity and construction of statutes regulating net weight of food packages, see notes in Ann. Cas. 1916B, 1169; Ann. Cas. 1916D, 551.

Validity of statute requiring food to be sold in a specified quantity or weight, see note in 6 A. L. R. 429.

2583. Tuberculin test of cattle in dairies. The state veterinarian, either in person or by his deputies, shall tuberculin test all cattle used in and about all dairies in the state of Montana, at least once during each calendar year; and all persons, firms or corporations conducting a dairy in this state shall file with the secretary of the state board of health a certificate for each cow hereafter added to his dairy, which certificate shall be signed by a veterinarian approved by the state board of health, and shall state that such cow has been tuberculin tested by him and found to be free from tuberculosis, and such certificate shall contain a description of such cow, which description shall be sufficiently complete to identify the cow; and any person, firm, or corporation using any cow in his dairy, or keeping any cow on his dairy premises, which has not been tuberculin tested and found free from tuberculosis, shall be guilty of a misdemeanor, and shall be deemed guilty of selling milk from diseased cows. For the purpose of this act, any person shall be deemed as conducting a dairy who offers for sale any milk or cream, or who sells milk or cream to any butter factory, creamery, or other place where milk or milk products are manufactured or sold.

History: En. Sec. 6, Ch. 130, L. 1911.

Validity and construction of statutes as to tuberculin test, see notes in 34 L. R. A. (N. S.) 654; 43 L. R. A. (N. S.) 1072; L. R. A. 1917C, 254.

2584. Animals slaughtered under unsanitary conditions— Unsanitary conditions defined. It shall be unlawful for any person, persons, firm, or corporation to sell within this state, or to have within his or their possession with the intent to sell within this state for human food, the carcass or parts of the carcass of any animal which has been slaughtered, prepared, handled, or kept under unsanitary conditions; and unsanitary conditions shall be deemed to exist whenever and wherever any one or more of the following conditions are found to appear, to-wit: If the slaughter-house is dilapidated or in a state of decay; if the floor or side walls are soaked with decaying blood or other animal matter; if efficient fly screens are not provided; if the drainage of the slaughter-house yard is not efficient; if maggots or filthy pools or hog wallows exist in the slaughter-house yard or under the slaughter-house floor; if the water supply used in connection with the cleaning and preparing of the meat is not pure and uncontaminated:

if the hogs are kept in the slaughter-house yard, or fed therein on animal offal, or if the odors of putrification plainly exist in or about the slaughter-house; if carcasses or parts of carcasses are transported from place to place when not covered with clean white cloths, or if kept in unclean or bad smelling refrigerator or refrigerators, or if kept in unclean or foul smelling storerooms. It shall be unlawful for any person, persons, firm, or corporation to have in his or their possession, with intent to sell, the carcass of any animal or fowl which has died from any cause other than being slaughtered in a sanitary manner, or the carcass or part of the carcass of any animal that shows evidence of any disease, or that came from a sick or diseased animal, or the carcass or part of the carcass of any calf that was killed before it had attained the age of four weeks.

History: En. Sec. 7, Ch. 130, L. 1911.

2585. Sale of bad eggs. It shall be unlawful for any person, persons, firm, or corporation to sell or offer for sale any eggs after the same have been placed in an incubator, or to sell or offer for sale to be used as food, knowingly, eggs in a rotten, decayed, or decaying condition.

History: En. Sec. 7, Ch. 130, L. 1911.
Related sections: 2634-2639.

Validity and construction of statute regulating the sale of eggs, see note in Ann. Cas. 1918A, 181.

2586. Duty of peace and health officers to seize unwholesome food offered for sale. It shall be the duty of all peace or health officers to seize any animal carcass or parts of carcasses, or any domestic or wild fowl, eggs, game, fish, or other food product found to be unwholesome, and which are intended for sale or offered for sale for human food, or which have been slaughtered or prepared, handled, or kept under unsanitary conditions as herein defined, or as the rules and regulations of the state board of health may designate, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained; and said police judge or said justice of the peace shall issue warrants of arrest for all persons believed to have violated any provision of this act, and said cause shall be tried at an early date thereafter. The said police judge or said justice of the peace shall immediately drench the unwholesome food brought before him with kerosene, and require the owner thereof to immediately dispose of the same in a sanitary manner, or he may, in his discretion, order the unwholesome food rendered into grease and tankage.

History: En. Sec. 7, Ch. 130, L. 1911.

Right of state to seize and destroy food unfit for use, see note in 15 Ann. Cas. 281; 29 L. R. A. (N. S.) 260.

2587. How term "misbranded" shall be understood. The term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food or drugs, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory, or country in which it is manufactured or produced, unless the word "process" or "type," in plain, legible and obvious English print, type, or script immediately follows the

state, territory, country, locality, or brand designated. That for the purpose of this act, an article shall be deemed to be misbranded; in the case of drugs:

First. If it be an imitation or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents differing in quality or quantity from the original contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, choloform, cannibis indica, chloral hydrate, acetanilide, phenacetine, antipyrine, or any derivative of any preparation of any such substance contained therein; provided, that said requirements as to statement of contents shall not be operative until on and after January 1, 1912; and provided, further, that the requirements of this section shall not apply to medical prescriptions written by physicians and surgeons, dentists, or veterinary surgeons, nor to extemporaneous preparations dispensed by druggists, nor shall the provisions of this section be construed as prohibiting legally qualified physicians and surgeons, dentists, and veterinary surgeons from administering drugs to patients under their care.

In the case of foods:

First. If it is an imitation of or offered for sale under the distinctive name of another article.

Second. If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign article when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannibis indica, chloral hydrate, acetanilide, phenacetine, or antipyrine, or any derivative or any preparation of any such substance or substances contained therein; provided, that such statement shall not be required as to articles of food in the hands of wholesalers or retailers on or prior to January 1, 1912.

Third. If in the package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

Fourth. If the package containing it, or its label, shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; provided, that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter become known as articles of food, under their own distinctive names and heretofore known to the consumer, and not an imitation of or offered for sale under the distinctive name or brand of another article, if the name be accompanied on the same label or brand with the statement of the place where said article has been manufactured or produced; provided, further, for the purposes of this act, a drug or food shall

not be deemed misbranded, marked, labeled, or tagged with the distinctive trade or commercial name heretofore known to the consumer.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly printed on the package in which it is offered for sale; provided, that the term blend as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring or flavoring; and provided, further, that in cases of spirituous liquors the term like substances shall be construed to mean pure distillates of grain, or pure distillates of fruit and grain; and provided, further, that nothing in this act shall be construed as compelling or requiring proprietors or manufacturers of proprietary foods, which contain no unwholesome added ingredients to disclose their trade formulas except so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

History: En. Sec. 8, Ch. 130, L. 1911.

What constitutes misbranding within pure food and drugs laws, see note in L. R. A. 1916D, 169.

2588. When dealer not to be prosecuted—Guaranties. No dealer shall be prosecuted under the provisions of this act for selling or offering for sale any article of food or drugs, as defined herein, when the same is found to be adulterated or misbranded within the meaning of this act, in the original, unbroken package in which it was received by said dealer, when he can establish a guarantee, signed by the wholesaler, jobber, or agent, or other party residing in the United States from whom he purchased such article, or if a proper printed guarantee of the manufacturer with his address be upon the package or container, to the effect that the same is not adulterated or misbranded in the original unbroken package in which the said article was received by said dealer, within the meaning of this act, designating it, or within the meaning of the food and drug act, enacted by the senate and house of representatives of the United States of America in congress assembled June 30, 1906. Said guarantee to afford protection must contain the name and address of the party or parties making the sale of such article to such dealer, or of the manufacturer thereof as herein specified, and in such case said party shall be amenable to prosecution, fines, and other penalties which would attach in due course to the dealer under the provisions of this act.

History: En. Sec. 9, Ch. 130, L. 1911.

2589. License from state board of health for manufacturers and purveyors of food and drinks. It shall be unlawful for any person, persons, firm, or corporation to conduct any restaurant, cafe, lunch counter, dining-car, manufacturing bakery, manufacturing confectionery, meat market, cannery, soda fountain, ice cream parlor, soft drink establishment or bottling works, without having a license issued by the state board of health of Montana; provided, that no license shall be required for a dining-room, cafe or lunch counter that is operated in connection with and under the same management as a hotel that holds a license from the state board of health, or that is subject to the payment of a license fee under the provisions of chapter 36, session laws of 1919 (2485-2498), an annual fee of two dollars

shall be required for each license. Licenses shall be made to expire on the last day of December of the current year in which they are issued. Applications for licenses shall be made on blanks supplied by the state board of health. No license shall be issued to any place of business that is conducted in a grossly unsanitary manner.

If as a result of inspection by an authorized representative of the state board of health, it is found that any licensed place of business is not conducted within a reasonable degree of compliance with the rules and regulations of the state board of health, the license may be canceled by the secretary of the state board of health; provided, that any licensee whose license is so canceled shall be entitled to a hearing before the state board of health to show cause if any, why his license should not be canceled. In such case licensee must make written request to the secretary of the state board of health for a hearing within five days after notice has been received that his license has been canceled.

Fees collected by the state board of health for licenses issued shall be transmitted to the state treasurer and placed to the credit of the general fund as provided for by law.

History: En. Sec. 10, Ch. 130, L. 1911; amd. Sec. 1, Ch. 175, L. 1921.

2590. Effective date of act. This act shall be in full force and effect on and after its passage and approval, provided that fees for licenses shall not be required until the year beginning January 1, 1922.

History: En. Sec. 2, Ch. 175, L. 1921.

2591. Duties and powers of state board of health. It shall be the duty of the state board of health to enforce the provisions of this act. They shall, through their secretary and through local and county health officers, make all necessary investigations and inspections in reference to all food and drugs, and for this purpose the state, county, and local health officers shall be food and drug inspectors for their respective districts; each local and county health officer shall make regular inspections as the rules and regulations of the state board of health may direct, and such special inspections as said board of health may from time to time order made, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the state board of health may direct. Should any health officer fail, neglect, or refuse to make any such regular or special inspection, or fail to make any report in the manner and at the time designated by the state board of health, or should he make a false report of any condition that may exist within his district, the state board of health shall notify the mayor of the city or town, in the case of a local health officer, or the chairman of the board of county commissioners, in the case of a county health officer, of such negligence on the part of such health officer, and said state board of health, may, in their discretion, order the removal from office of such delinquent health officer, and when such an order is issued by the state board of health, the mayor of the city or town, in the case of a local health officer, or the board of county commissioners, in the case of a county health officer, shall immediately declare the office of health officer vacant, and shall appoint another competent and legally qualified physician and surgeon to fill the office.

The state board of health shall adopt all needful rules and regulations for the thorough and uniform enforcement of the provisions of this act throughout the state, and shall adopt and promulgate rules and regulations relative to the sanitary management of all places designated in section 2589 of this code, and they shall adopt rules regulating the minimum standards for foods and drugs, defining specific adulterations and declaring proper methods of collecting and examining all drugs and articles of food, and the violation of any such rule or regulation shall be punished on conviction, as set forth in section 2594 of this code; provided, that such rules and regulations made and promulgated by the state board of health shall at all times conform to the rules and regulations of the national food and drug commission made under the Food and Drugs Act of June 30, 1906.

It shall be the duty of the state board of health, at the instance of any person, firm, or corporation, or on their own volition, to examine, analyze, and determine the purity, branding, and labeling of any food or drug placed upon the market or offered for sale in the state of Montana, and if found legal, they shall certify to the individual, firm, or corporation manufacturing, selling, or offering for sale such food or drug, that such food or drug is legal.

No prosecution shall follow until such time as the individual, firm, or corporation has been notified by the state board of health wherein any food or drug fails to meet the requirements of the rules and regulations of the state board of health, and such time to remedy the failure as the state board of health may rule.

All state, local, and county health officers are hereby authorized to enter any premises where any article of food or drug is sold, offered for sale, manufactured, cooked, stored, or treated in any way, for the purpose of inspecting such premises and the manner in which such food or drug is handled.

History: En. Sec. 11, Ch. 130, L. 1919.

2592. Samples of food and drugs for analysis. Every person offering or exposing for sale or delivering to a purchaser any drug or article of food included in the provisions of this act, shall furnish to any inspector or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender to him the value of the same, a sample sufficient for analysis of any drug or article of food which is in his possession. Whoever hinders, obstructs, or in any way interferes with an inspector, or other officer or agent appointed hereunder, in the performance of his duty, shall, upon conviction, be fined in any sum not less than ten dollars nor more than one hundred dollars.

History: En. Sec. 12, Ch. 130, L. 1919.

2593. Chemist of state board of health—Duties. The professor of chemistry at the Montana state agricultural college shall be the chemist to the state board of health, and he shall make all analyses that may be required by the state board of health in the enforcement of the provisions of this act, and such other analyses as they may require in the enforcement of the laws of the state pertaining to public health matters.

History: En. Sec. 13, Ch. 130, L. 1911.

2594. Violations of act—Penalties. Except as elsewhere provided in this act, any person, persons, firm, or corporation violating any of the provisions of this act shall, upon conviction of the first offense, be punished by a fine of not less than twenty-five dollars nor more than seventy-five dollars; for the second offense, by a fine of not less than fifty dollars nor more than two hundred dollars; and for the third and subsequent offenses, by a fine of not less than one hundred dollars and imprisonment in the county jail for not less than thirty nor more than ninety days, and all fines collected for violations of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said moneys shall be placed to the credit of the state board of health maintenance fund.

History: En. Sec. 15, Ch. 130, L. 1911.

2595. Duty of county attorney to prosecute—Report of chemist presumptive evidence. Whenever the state board of health shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm, or corporation violating any provision of this act, or any rule or regulation made by the state board of health in conformity with the provisions of this act, and the report of the chemist of the Montana state agricultural college, stating that any drug or food examined by him is found to be impure or below the standard required by the provisions of this act, or the rules and regulations of the state board of health, shall be taken as presumptive evidence of the impurity of such drug or article of food.

History: En. Sec. 16, Ch. 130, L. 1911.

2596. Limit to rules promulgated by state board of health. No rules or regulations shall be promulgated by the state board of health under the provisions of this act, which do not conform to the rules and regulations promulgated or to be hereafter promulgated by the national government under the food and drugs act of congress of June 30, 1906; and no article of foods or drugs shall be deemed to be adulterated, misbranded, or otherwise subject to the provisions of this act, when such article of food or drugs conforms to the rules and regulations of the United States government under any national act or acts.

History: En. Sec. 17, Ch. 130, L. 1911.

2597. Sale of food containing saccharin prohibited. It shall be unlawful for any person, persons, firm or corporation within the state of Montana knowingly, to manufacture, sell, offer for sale, or have within his or their possession with the intent to sell, any beverage or article of food which contains saccharin.

History: En. Sec. 1, Ch. 256, L. 1921.

2598. Food defined. The term "food," as used in this act shall include all articles used for food, drink, confectionery or condiment by man or animals, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.

History: En. Sec. 2, Ch. 256, L. 1921.

2599. Penalty for violation of act—Disposal of fines. Any person who violates provisions of this act shall be guilty of a misdemeanor and upon conviction, for the first offense, shall be punished by a fine of not less than twenty-five dollars nor more than seventy-five dollars, and for the second offense by a fine of not less than fifty dollars nor more than two hundred dollars, and for the third and subsequent offenses by a fine of not more than one hundred dollars and imprisonment in the county jail for not less than thirty days nor more than ninety days. All fines collected for violations of the provisions of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said moneys shall be placed to the credit of the general fund as provided by law.

History: En. Sec. 3, Ch. 256, L. 1921.

CHAPTER 200.

REGULATION OF MANUFACTURE AND SALE OF PARIS GREEN, LEAD ARSENATE AND OTHER FUNGICIDES.

Section 2600. Manufacture of Adulterated Insecticides, Paris Green, etc., Forbidden.
2601. Same—Shipment and Delivery Forbidden.
2602. Adulterated Articles Defined.
2603. "Misbranded," Use of Term.
2604. "Misbranded" Defined.
2605. Collection of Samples in Original Packages.
2606. Delivery of Original Packages to State Entomologist.
2607. Director of Experiment Station to Analyze.
2608. Insecticide, Paris Green, Lead Arsenate, and Fungicides Defined.
2609. Dealer's Defense.
2610. Proceedings Against Forbidden Articles in Transportation.
2611. Certificate of Director of Experiment Station—Fees for.
2612. Fines, Disposal of.
2613. Penalty for Violation of Act.
2614. Person to Include What.

2600. Manufacture of adulterated insecticides, paris green, etc., forbidden. It shall be unlawful for any person to manufacture within the state of Montana any insecticide, paris green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act.

History: En. Sec. 1, Ch. 26, L. 1911.

Constitutionality, construction, and effect of statute prohibiting or regulating sale of poisons, see note in 30 L. R. A. (N. S.) 519.

2601. Same—Shipment and delivery forbidden. Any person who shall offer for shipment, or deliver from any point in the state of Montana to any other point in the state of Montana, any insecticide, or paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act; or any person who shall receive, or offer to receive, any insecticide, or paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this act, and having received, shall sell or deliver, or shall offer for sale or delivery, such adulterated or misbranded insecticide, or paris green, or lead arsenate, or fungicide, shall be guilty of a violation of this act.

History: En. Sec. 2, Ch. 26, L. 1911.

2602. Adulterated articles defined. For the purpose of this act, an article shall be deemed to be "adulterated"—

In the case of paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxide ($As_2 O_5$); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide ($As_2 O_5$); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled "lead arsenate and water," the percentage of water being plainly and correctly stated on the label.

In the case of insecticides or fungicides other than paris green and lead arsenate: First, if its strength or purity fall five per cent. or more below the professed standard of quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended to use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects, shall be injurious to such vegetation when used.

History: En. Sec. 3, Ch. 26, L. 1911.

2603. "Misbranded," use of term. The term "misbranded," as used herein shall apply to insecticides, paris green, lead arsenate, or fungicide, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients of the substances contained therein which shall be false or misleading in any particular.

History: En. Sec. 4, Ch. 26, L. 1911.

2604. "Misbranded" defined. For the purpose of this act, an article shall be deemed to be "misbranded"—

In the case of insecticides, paris green, lead arsenate and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package.

In the case of insecticides other than paris green and lead arsenates and fungicides: First, if they contain arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely

of an inert substance or substances which do not prevent, destroy, repel or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label; provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient, the producer may at his discretion state plainly upon the label the correct names and percentage amount of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients except in so far as to state the total percentage of inert ingredients present.

History: En. Sec. 5, Ch. 26, L. 1911.

2605. Collection of samples in original packages. It shall be the duty of the state entomologist, upon the advice and under the direction of the director of the experiment station, to collect from time to time and deliver to the director of the experiment station specimens of insecticides, paris greens, lead arsenates, and fungicides in unbroken original packages, manufactured or offered for sale in the state of Montana, for the purpose of determining whether or not such insecticides, paris greens, lead arsenates, and fungicides are adulterated or misbranded within the meaning of this act.

History: En. Sec. 6, Ch. 26, L. 1911.

2606. Delivery of original packages to state entomologist. When any citizen of the state has reason to believe that any particular brand or lot of insecticide or paris green, or lead arsenate, or a fungicide, is adulterated or misbranded within the meaning of this act, he may send or deliver to the state entomologist an original and unbroken package of the article in question. Upon receipt of such a questionable article it shall be the duty of the state entomologist to deliver it to the director of the experiment station, who shall examine or cause an investigation to be made and, at his discretion, may cause chemical examinations of such questioned articles as hereinafter provided.

History: En. Sec. 7, Ch. 26, L. 1911.

2607. Director of experiment station to analyze. Upon the receipt of specimens of insecticides, paris greens, lead arsenates, and fungicides in unbroken original packages, as hereinbefore provided, the director of the experiment station shall make, or cause to be made, a chemical analysis of such specimens for the purpose of determining whether or not they comply with the requirements of this act; provided, that when the director has information showing that samples delivered to him for examination are out of lots of insecticides, paris greens, lead arsenates, or fungicides that have already been examined a sufficient number of times to indicate whether or not they comply with the requirements of this act then the director may refuse to examine such lots and so notify the state entomologist or citizens of the state.

History: En. Sec. 8, Ch. 26, L. 1911.

2608. Insecticide, paris green, lead arsenate, and fungicides defined. The term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repell-

ing or mitigating any insects, mites or ticks which may infest vegetation, man or other animals, or households, or be present in any environment whatsoever. The term "paris green," as used in this act, shall include the product sold in commerce as paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this act shall include the product or products derived from arsenic acid (H_3 As o_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever.

History: En. Sec. 9, Ch. 26, L. 1911.

2609. Dealer's defense. No dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the state of Montana from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it; said guaranty, to afford protection shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this act.

History: En. Sec. 10, Ch. 26, L. 1911.

2610. Proceedings against forbidden articles in transportation. Any insecticide, paris green, lead arsenate, or fungicide that is adulterated or misbranded within the meaning of this act and is being transported from one point within the state of Montana to another point within the state of Montana to be sold, wholly or in part, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the state of Montana, shall be liable to be proceeded against in any district court of the state of Montana. If any such article is condemned as being adulterated or misbranded within the meaning of this act, the same shall be disposed of by destruction or by sale, as the said court may direct; and the proceeds thereof, if sold, less the legal costs and charges, shall become a part of the expense fund as hereinafter provided; but such goods shall not be sold in any jurisdiction contrary to the provisions of this act or the laws of the jurisdiction; provided, however, that upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this act or the laws of this state, the court may by order direct that such articles be delivered to the owner thereof.

History: En. Sec. 11, Ch. 26, L. 1911.

2611. Certificate of director of experiment station—Fees for. When any particular lot or brand of an insecticide, paris green, lead arsenate, or fungicide, manufactured in the state of Montana, is found to comply with all the requirements of this act, the director of the experiment station shall have authority to issue certificate, and the person to whom such certificate is issued may use the same on packages of the article so certified, or in

advertising matter concerning such articles; provided, however, that articles bearing such certificate shall be subject to re-examination, and if found to fail to comply with all of the requirements of this act, shall be proceeded against as in uncertified articles. Said director of the experiment station shall have authority to levy a fee of from five to fifty dollars for each and every certificate issued in compliance with this section, such fees to be placed in an expense fund as hereinafter provided.

History: En. Sec. 12, Ch. 26, L. 1911.

2612. Fines, disposal of. One-half of all the fines which shall be levied for violations of this act, as hereinafter provided, shall be retained in the treasury of the Montana agricultural experiment station, and these fines, together with the fees as provided for in the preceding section, shall constitute an expense fund from which the director shall pay the necessary and actual expenses incurred by the state entomologist and the experiment station in carrying out the provisions of this act; provided, however, that whenever such fines and fees amount, at any one time, to more than one thousand dollars, the balance above this sum shall be turned into the state treasury.

History: En. Sec. 13, Ch. 26, L. 1911.

2613. Penalty for violation of act. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than two hundred dollars for the first offense, and upon conviction for each subsequent offense, be fined not less than fifty dollars nor more than three hundred dollars, or sentenced to imprisonment for not more than thirty days, in the discretion of the court.

History: En. Sec. 14, Ch. 26, L. 1911.

2614. Person to include what. The word "person," as used in this act shall be construed to include both the plural and the singular, as the case may be, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society, or association, as well as that of the other person.

History: En. Sec. 15, Ch. 26, L. 1911.

CHAPTER 201.

REGULATION OF MANUFACTURE AND SALE OF SHODDY MATERIAL.

Section 2615. Manufacture and Sale of Shoddy Prohibited.
2616. Definition of Shoddy.
2617. Health Boards to Enforce Act and Make Inspections.
2618. Prosecutions.
2619. Penalty for Violation of Act.

2615. Manufacture and sale of shoddy prohibited. No person, firm, or corporation, shall, within this state, sell, offer for sale, or manufacture, what is commonly known as shoddy, or sell, offer for sale or manufacture mat-

tresses, pillows, couches, couch pads, or lounges, containing shoddy in whole or in part.

History: En. Sec. 1, Ch. 146, L. 1915.

2616. Definition of shoddy. The term "shoddy," as used in this act, shall include all material made or manufactured of rags, wearing apparel, clothing, rugs, carpets or blankets.

History: En. Sec. 2, Ch. 146, L. 1915.

2617. Health boards to enforce act and make inspections. It shall be the duty of all boards and departments of health, health officers, or officials discharging similar duties in the state of Montana, to enforce the provisions of this chapter, and they shall have power in the performance of their official duties to enter any store or manufacturing establishment where the articles mentioned in section 2615 are manufactured or are for sale, and make such examination as they deem necessary in order to ascertain whether or not the provisions of this chapter are being violated.

History: En. Sec. 3, Ch. 146, L. 1915.

2618. Prosecutions. It shall be the duty of the attorney-general and prosecuting attorneys of the counties of this state to prosecute all cases arising under the provisions of this chapter.

History: En. Sec. 4, Ch. 146, L. 1915.

2619. Penalty for violation of act. Every person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days, nor more than six months, or both such fine and imprisonment.

History: En. Sec. 5, Ch. 146, L. 1915.

CHAPTER 202.

REGULATION OF PRODUCTION AND SALE OF DAIRY PRODUCTS.

Section 2620. Adulterated Milk.
2621. Butter and Cheese Factories.
2622. Imitation Butter.
2623. Mixing Extraneous Fats With Cream or Butter.
2624. Renovated and Storage Butter.
2625. Patent Butter.
2626. Imitation or Filled Cheese.
2627. Prohibition of Coloring Matter.
2628. Sale of Skim-Milk.
2629. Trade-Marks.
2630. Creation of Monopoly or Destruction of Competition.
2631. Penalty for Violation of Law.
2632. Sale of Imported Meat and Dairy Products.
2633. Penalty for Violation of Law.
2634. Regulation of Sale of Eggs.
2635. Foreign Eggs—Regulation of Sale—Incubated Eggs Defined.
2636. Definition of Terms.
2637. Cold Storage and Preserved Eggs.
2638. Candling of Eggs.
2639. Penalty for Violation of Act—Disposal of Fines.
2640. Regulation of Dairying.

2620. Adulterated milk. No person shall sell or exchange, or offer or expose for sale or exchange, as milk or cream, any unclean, impure,

adulterated, or unwholesome milk, or unclean, impure, adulterated, colored, or unwholesome milk or cream, or sell or exchange, or offer or expose for sale or exchange, any substance in imitation or semblance of milk or cream which is not milk or cream, nor shall he sell or exchange or offer or expose for sale or exchange, any such substance as and for milk or cream, or sell or exchange, or offer or expose for sale or exchange, any article of food, made from such milk or cream, or manufacture from any such milk or cream any article of human food.

Any person delivering milk or cream to any butter or cheese factory, condensed-milk gathering station, or railway station, to be shipped to any city, town, or village, shall be deemed to expose or offer the same for sale, whether the said milk or cream is consigned to himself or another. Each and every can thus delivered, shipped, or consigned, if it be not pure milk or cream, must bear a label or card upon which shall be plainly and legibly stated the constituents or ingredients of the contents of the can. There shall be no limit to the percentage of fat contained in unadulterated milk or cream sold to creameries for the sole purpose of manufacture into butter.

History: En. Sec. 2, Ch. 138, L. 1911; amd. Sec. 6, Ch. 77, L. 1913.

What is "milk," see note in Ann. Cas. 1912B, 388.

2621. Butter and cheese factories. Operators of all co-operative butter, cheese, and condensed milk factories shall keep their books open for inspection of any patron at all times, showing the daily amounts of milk and cream received, and the per cent. and amount of fat in the milk and cream received from each patron, and the amounts of cream sold, and butter, cheese, or condensed milk manufactured daily.

Every facility should be offered to the patron for keeping himself informed in regard to the business of the butter, cheese, and condensed-milk factory, and checking up his daily product with his returns.

History: En. Sec. 5, Ch. 138, L. 1911; re-en. Sec. 9, Ch. 77, L. 1913.

2622. Imitation butter. Hereafter the word "butter" shall not be printed or used, either alone or in conjunction with any other words, upon any carton, package, or other receptacle containing any substitute for butter, such as margarine or any other substance not made entirely from milk-fat. No person shall manufacture or sell, or expose for sale as butter, any substance out of vegetable or animal fats or oils (not from milk or cream) colored in imitation of butter or any shade of yellow.

All products made and sold, or exposed for sale as butter substitutes, and made either wholly or partly from any fat or oil other than from pure unadulterated milk or cream, shall be plainly marked, stamped, or labeled on every package, so made, sold, or exposed for sale, in plain black letters, one-half inch vertical dimensions, "Oleomargarine." Hotels or restaurants using imitation butter shall place placards, plainly legible from all parts of the dining-room, marked "Oleomargarine" or "Renovated butter" as the case may be, "used here."

History: En. Sec. 8, Ch. 138, L. 1911; amd. Sec. 12, Ch. 77, L. 1913; amd. Sec. 9, Ch. 199, L. 1919.

Constitutionality of state statutes regulating manufacture or sale of oleomargarine, see notes in 2 Ann. Cas. 451; 17 Ann. Cas. 1100; Ann. Cas. 1913E, 413.

Applicability of oleomargarine statutes where resemblance to butter results from choice of ingredients, and not from the

introduction of foreign coloring matter, see notes in 14 L. R. A. (N. S.) 1062; L. R. A. 1915A, 757.

Ignorance that article furnished as butter is oleomargarine as defense, see note in 32 L. R. A. (N. S.) 746.

2623. Mixing extraneous fats with cream or butter. No person shall manufacture, mix, or compound with or add to natural milk, cream, or butter, any animal fats or animal or vegetable oils, nor make nor manufacture any oleaginous substance not produced from milk or cream, with the intent to sell the same as butter or cheese made from unadulterated milk or cream, or have the same in his possession with such intent; nor shall any person solicit orders for same or offer for sale, nor shall any such article or substance or compound so made or produced be sold as or for butter or cheese, the product of the dairy.

History: En. Sec. 9, Ch. 138, L. 1911; re-en. Sec. 13, Ch. 77, L. 1913.

2624. Renovated and storage butter. No person shall sell any butter made by taking original packing stock or other butter, or both, and melting the same and drawing off or extracting the butter fat, and mixing such fat with skimmed milk or cream, or other milk product, and re-churning or re-working such mixture; or any butter produced by any process commonly known as boiled process, or renovated butter, unless the words "Renovated butter" shall be plainly branded with bold-faced letters, at least one-half inch in length, on top and sides of such receptacle, package, or wrapper in which it is kept for sale or sold. And if such butter is exposed for sale uncovered, and not in a receptacle, package, or wrapper, then a placard containing the words "renovated butter" shall be attached, printed in style and manner as aforesaid, to the mass of butter in such a manner as to be easily seen and read by purchasers; and in addition to such markings, the seller shall, at the time of sale, stamp the package with the words "Renovated butter" in letters at least one-half inch in height. Storage butter is hereby designated as butter which has been churned thirty days or longer. Storage butter, when offered for sale in the state of Montana, shall be marked on the receptacle in which it is sold, and also on the invoice or bill of lading relative to the same, "Storage butter."

History: En. Sec. 10, Ch. 138, L. 1911; re-en. Sec. 14, Ch. 77, L. 1913; amd. Sec. 10, Ch. 199, L. 1919.

2625. Patent butter. No person shall sell as pure butter any substance in which an abnormal quantity of casein or other ingredients has been incorporated.

History: En. Sec. 11, Ch. 138, L. 1911; re-en. Sec. 15, Ch. 77, L. 1913.

2626. Imitation or filled cheese. No person shall manufacture, deal in, sell, offer, or expose for sale or exchange as cheese, any article or substance in the semblance of or in imitation of cheese, made exclusively of unadulterated milk or cream, or both, into which any animal, intestinal, or offal fats or oils, or melted butter in any condition or state of modification of the same, or oleaginous substance of any kind not produced from unadulterated milk or cream, shall have been introduced.

History: En. Sec. 12, Ch. 138, L. 1911; re-en. Sec. 16, Ch. 77, L. 1913.

2627. Prohibition of coloring matter. No person manufacturing with intent to sell any substance or article in imitation or semblance of butter

or cheese, not made exclusively from unadulterated milk or cream, or both, with salt or rennet, or both, and with or without coloring matter or sage, but into which any animal, intestinal, or offal fats, or any oils or fats or oleaginous substance of any kind not produced from pure unadulterated milk or cream, or into which melted butter or butter in any condition or state, or any modification of the same, or lard or tallow, shall be introduced, shall add thereto or combine therewith any annate or compound of the same, or any other substance or substances whatever, for the purpose or with the effect of imparting thereto a color resembling yellow, or any shade of yellow butter or cheese, nor introduce any such coloring matter or other substance into any of the articles of which the same is composed.

No person shall coat, powder, or color with annate or any coloring matter whatever, butterine, or oleomargarine, or any compound of the same, or any product or manufacture made in whole or in part from animal fats or animal and vegetable oils not produced from unadulterated milk or cream which by means of such product, manufacture, or compound shall resemble butter or cheese, the product of the dairy; nor shall he have the same in his possession with the intent to sell the same, nor shall he sell or offer to sell the same.

No person or persons shall manufacture, sell, or expose for sale any poisonous coloring matter for coloring of dairy food products of any kind, nor shall any person or persons use in dairy products any poisonous coloring matter manufactured, sold, offered, or exposed for sale within the state, nor shall any person or persons sell, offer, or expose for sale any dairy food product containing such poisonous coloring matter.

History: En. Sec. 13, Ch. 138, L. 1911; re-en. Sec. 17, Ch. 77, L. 1913.

2628. Sale of skim-milk. Notwithstanding the provisions of the preceding section, milk from which cream has been removed, if such milk is otherwise wholesome and unadulterated, may be sold as such to makers of skim cheese, or to a consumer as hereinafter defined; but in the latter cases only from vessels legibly marked with the words "Skimmed Milk" in plain black letters upon a light-colored background, and each letter being at least one inch high and one-half inch wide, and said words being placed on the top or side of each vessel. These requirements, however, shall not apply to skimmed or separated milk, delivered to any patron of the creamery who regularly sells milk to the proprietor thereof; but all the milk so delivered shall first be pasteurized at a temperature of at least one hundred and eighty degrees Fahrenheit.

History: En. Sec. 14, Ch. 138, L. 1911; re-en. Sec. 18, Ch. 77, L. 1913.

2629. Trade-marks. When any dealer in dairy products wishes to retain for himself a name, brand, or trade-mark, the same may be registered with the state dairy commissioner, and on no account shall that name, brand, or trade-mark be used by another, unless duly consigned, given, or sold to him by the originator, or by the one to whom it belongs.

History: En. Sec. 19, Ch. 77, L. 1913.

2630. Creation of monopoly or destruction of competition. Any person, firm, copartnership, or corporation engaged in the business of buying milk, cream, or butter fat for the purpose of manufacture, who shall,

with the intention of creating a monopoly, or destroying the business of a competitor, discriminate between different sections, localities, communities, or cities of this state, by purchasing such commodity at a higher price or rate in one locality than is paid for the same commodity by said person, firm, copartnership, or corporation in another locality, after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture, shall be deemed guilty of unfair discrimination, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars nor more than ten thousand dollars, or by imprisonment for not less than thirty days nor more than twelve months in the county jail, or by both such fine and imprisonment for each offense.

History: En. Sec. 17, Ch. 138, L. 1911; amd. Sec. 21, Ch. 77, L. 1913.

2631. Penalty for violation of law. Any person or persons violating any of the sections of this act, except the preceding section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than five dollars nor more than two hundred fifty dollars for each offense.

History: En. Sec. 22, Ch. 77, L. 1913.

2632. Sale of imported meat and dairy products. Every person, company, or corporation selling or offering for sale in the state of Montana such food products as meat, lard, eggs, butter, or any other dairy products, imported from foreign countries, shall affix by pasting upon such food products sold or offered for sale, or upon the case or package in which such food products may be contained, a label upon which shall be printed the name of the country or countries from which such product has been imported, the date when shipped, and the date when received by the person, company, or corporation selling or offering same for sale.

History: En. Sec. 1, Ch. 11, L. 1915.

2633. Penalty for violation of law. Any person, company, or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than five days or more than thirty days, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 11, L. 1915.

2634. Regulation of sale of eggs. It shall be unlawful for any person, persons, firm, or corporation, within this state, to sell, or offer for sale, or have within his or their possession with intent to sell within this state, or ship within this state, or ship into this state for the purpose of sale, or in any manner dispose of, any eggs known as "yolk stuck to the shell," "heavy blood rings," "partly hatched," "mouldy eggs," "black spots," "black rots," "incubated eggs," and all other eggs unfit for food, unless the same are broken in the shell and then denatured, so as to render the same unfit for food.

History: En. Sec. 1, Ch. 184, L. 1921.
Related section: 2585.

Validity and construction of statute regulating sale of eggs, see note in Ann. Cas. 1918A, 181.

2635. Foreign eggs—Regulation of sale—Incubated eggs defined. All eggs imported into the state of Montana from foreign countries shall be sold as such. The case or container in which they are shipped shall have the words "foreign eggs" displayed thereon in letters two inches high. All retailers of said eggs shall sell them from the container in which he received them and shall inform each purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries, and confectioners using or serving foreign eggs must place a sign in letters not less than four inches in size in some conspicuous place where the consumer entering their place of business can see it, to read "we use foreign eggs." Incubated eggs shall include all eggs which have been subjected to incubation, whether natural or artificial, for more than forty-eight hours and it shall be unlawful to expose or offer for sale or sell incubated eggs.

History: En. Sec. 2, Ch. 184, L. 1921.

Constitutionality of statute requiring announcement that eggs are imported, see note in L. R. A. 1918F, 388.

2636. Definition of terms. Unless the context otherwise requires, words and phrases employed in this act shall have the meanings hereinafter defined.

(a) "Storage" eggs mean all eggs which have been in cold storage.

(b) "Preserved" eggs mean all eggs in which the natural deterioration has been prevented or retarded by any means, process, or treatment whatsoever.

(c) "Yolk stuck to the shell" means an egg in which the yolk has settled to one side and become fastened to the shell.

(d) "Heavy blood rings" means an egg in which the germ has developed to such a stage that blood is formed, and when this development stops the blood collects in a ring on the inside of the shell.

(e) "Partly hatched" eggs mean eggs in which the germ is developed to such an extent that the outline of the embryo chick can be detected

(f) "Mouldy" eggs mean eggs which through improper care have deteriorated so that mould spores have formed within the eggs. Such eggs when broken usually have a mouldy or musty smell.

(g) "Black spots" mean eggs in which mould or bacteria have developed in isolated areas inside the shell.

(h) "Black rots" mean eggs which have deteriorated to such an extent that the whole interior presents a darkened appearance.

(i) "A container" means any standard egg case, carton, can, basket, box, bag, or any other receptacle in which eggs are handled.

(j) The word "person," as used in this act, shall mean and include individuals, and employees or agents of individuals, firms, and members of firms, and their employees and agents, corporations and officers of corporations, and their employees and agents.

(k) The term "candle" means the determination of the condition of any egg by holding it before a strong light in such a way that the rays of light will shine through the egg and reveal its contents to the operator.

History: En. Sec. 3, Ch. 184, L. 1921.

2637. Cold storage and preserved eggs. No person, firm, or corporation, by himself or his agents, shall sell, agree to sell, or advertise for sale, any cold storage or preserved eggs without making it known to the pur-

chaser, or prospective purchaser, that the eggs are cold storage or preserved eggs, and all boxes or other receptacles in which cold storage or preserved eggs are displayed for sale, sold, or delivered, in wholesale or retail, shall be marked or lettered in a conspicuous manner with the words "cold storage eggs" or "preserved eggs."

History: En. Sec. 4, Ch. 184, L. 1921.

2638. Candling of eggs. On and after June 1, 1921, every retail or wholesale merchant or any person buying or selling eggs within this state before offering any eggs for sale shall candle the same, and any eggs found to be unfit for food shall not be offered for sale for food purposes.

History: En. Sec. 5, Ch. 184, L. 1921.

2639. Penalty for violation of act—Disposal of fines. Every person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction for the first offense shall be punished by a fine of not less than twenty-five dollars nor more than seventy-five dollars, for the second offense, a fine of not less than fifty dollars nor more than two hundred dollars for the third and subsequent offenses, by a fine of not less than one hundred dollars and imprisonment in the county jail for not less than thirty days nor more than ninety days. All fines collected for violations of this act shall be paid to the county treasurer of the proper county, who shall remit the same to the state treasurer of the state of Montana, and said money shall be placed to the credit of the general fund, the same to become immediately available, and to be paid out upon the presentment of vouchers issued by the secretary of the state board of health; provided also the county health officer of counties and city health officer of cities shall enforce this act.

History: En. Sec. 6, Ch. 184, L. 1921.

2640. Regulation of dairying. The regulation of the industry of dairying by the department of agriculture, labor, and industry is provided for by sections 3555 to 3572 of this code.

Note.—New section recommended by code commissioner.

CHAPTER 203.

PROTECTION OF PUBLIC WATER SUPPLY.

Section 2641. State Board of Health to Have Control of Public Water Supply.
2642. Examination of Waters.
2643. Publication of Orders, Rules and Regulations.
2644. Analysis of Water—Rules and Regulations Concerning.
2645. Disposition of Fees Collected.
2646. Penalty for Violation of Law.
2647. Employment of Agents and Servants.
2648. Duties of the Board.
2649. Pollution of Waters.
2650. Protection of Watersheds.
2651. Complaints and Investigations.
2652. Agents and Servants of Boards May Enter Buildings.
2653. Appeals to the District Court From Orders of the State Board of Health.
2654. Jurisdiction of the District Court.
2655. Establishment of Experiment Stations.
2656. Biennial Reports.
2567. Penalties for Violation of Law.

2641. State board of health to have control of public water supply. The state board of health shall have the general oversight and care of all

inland waters and of all streams, lakes, and ponds used by any city, town, or public institution, or by any water or ice company in this state, as sources of water supply for domestic use, and of all springs, streams, and water-courses tributary thereto. It shall be provided with maps, plans, and documents suitable for such purposes, and shall keep records of all its transactions relative thereto.

History: En. Sec. 1, Ch. 177, L. 1907; Sec. 1559, Rev. C. 1907.

Authority of state board of health to regulate municipal water supply, see note in 18 Ann. Cas. 499.

2642. Examination of waters. Said state board of health may cause examination of waters to be made to ascertain their purity and fitness for domestic use, or their liability to impair the interests of the public or of persons lawfully using them, or to imperil the public health. It may make rules and regulations to prevent pollution, and to secure the sanitary protection of all such waters as are used for domestic purposes.

History: En. Sec. 2, Ch. 177, L. 1907; Sec. 1560, Rev. C. 1907.

Validity of statute prescribing standard of purity of water furnished for human consumption, see note in 6 L. R. A. 475.

Power of state or health authorities to forbid the use of a polluted water supply, see note in 23 L. R. A. (N. S.) 766.

2643. Publication of orders, rules and regulations. The publication of an order, rule, or regulation made by the state board of health under the provisions of this act in a newspaper of the city or town in which such order, rule, or regulation is to take effect, or, if no newspaper is published, in such city or town, the posting of a copy of such order, rule, or regulation in a public place in such city or town, shall be legal notice to all persons, and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed, and recorded, with a copy of the notice, in the office of the clerk of such city or town, shall be admitted as evidence of the time at which, and the place and manner in which the notice was given.

History: En. Sec. 3, Ch. 177, L. 1907; Sec. 1561, Rev. C. 1907.

2644. Analysis of water—Rules and regulations concerning. The state board of health shall make and publish in the monthly bulletin of that board, rules and regulations for the collection of samples and analyses of water, either natural or treated, furnished by municipalities, corporations, companies, or individuals to the public, and shall fix the fees for such services, rendered under said rules and regulations, to cover the cost of the service.

History: En. Sec. 1, Ch. 126, L. 1917.

2645. Disposition of fees collected. The fees collected by the state board of health under this act shall be turned over to the state treasurer, who shall place them in the state board of health maintenance fund, and as much as is necessary of this fund shall be used for the state board of health water and sewerage laboratory; and the state auditor shall draw his warrant for claims against this fund, after such claims have been approved by the state board of examiners; provided, however, that this fund shall not be expended except after due appropriation.

History: En. Sec. 2, Ch. 126, L. 1917.

2646. Penalty for violation of law. Every corporation, railway, common carrier, company, or individual that shall fail to comply with the regulations prescribed by the state board of health under this act, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars.

History: En. Sec. 3, Ch. 126, L. 1917.

2647. Employment of agents and servants. Said state board of health may appoint, employ, and fix the compensation of such agents, clerks, servants, engineers, and expert assistants as it considers necessary. Such agents and servants shall cause the provisions of law relative to the pollution of water and of the rules and regulations of said board to be enforced.

History: En. Sec. 4, Ch. 177, L. 1907; Sec. 1562, Rev. C. 1907.

2648. Duties of the board. Said board shall consult with and advise the authorities of cities and towns, and persons having, or about to have, systems of water supply, drainage, and sewerage, as to the most appropriate source of water supply, and the best method of assuring its purity, or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other cities, towns, or persons which may be affected thereby. It shall also consult with and advise all corporations, companies, or persons engaged or intending to engage in any manufacturing or other business, whose drainage or sewage may tend to pollute any inland water, as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. Cities, towns, and all other corporations, companies, or persons shall submit to said board, for its advice and approval, their proposed system of water supply, or of the disposal of drainage or sewage, and no city, town, or person or company shall proceed to build or instal or enlarge or extend any system of water supply, drainage, or sewage disposal, without first obtaining the approval of the state board of health. In this section the term "drainage" means rainfall, surface, and subsoil water only, and "sewage" means domestic and manufacturing filth and waste.

History: En. Sec. 5, Ch. 177, L. 1907; Sec. 1563, Rev. C. 1907.

2649. Pollution of waters. No sewage, drainage, refuse, or polluting matter, of such kind and amount as either of itself or in connection with other matter will corrupt, pollute, or impair the quality of the water of any spring, pond, lake, or stream used as a source of water or ice supply by a city, town, or federal, state, or county institution, or water or ice company for domestic use, or render it injurious to health, and no human excrement shall be discharged into any such stream, spring, lake, pond, or upon their banks, or into any feeders of such spring, lake, pond or stream, unless such sewage, drainage, refuse, or polluting water shall, at the discretion of the state board of health, have been purified so as to render it harmless, in such a manner and under such conditions and restrictions as the state board of health may direct.

History: En. Sec. 6, Ch. 177, L. 1907; Sec. 1564, Rev. C. 1907; amd. Sec. 2, Ch. 66, L. 1911; amd. Sec. 1, Ch. 26, L. 1917.

Related sections: 2484, 1739, 11235.

Validity of statute imposing penalty for pollution of stream, see note in Ann. Cas. 1914A, 1180.

Liability for pollution of underground waters, see note in 16 Ann. Cas. 676.

2650. Protection of watersheds. No municipal or other public or private corporation, and no company or person, shall hereafter construct, build, establish, or operate any railroad, logging-road, logging-camp, electric plant or manufacturing plant of any kind, upon or over any watershed of any public water supply system, unless such corporation, company, or person shall protect said water supply from pollution by such sanitary precautions as shall be approved by the state board of health, and any such corporation, company, or person intending to construct, build, or establish or operate any railroad, logging-road, logging-camp, electric plant, or manufacturing plant of any kind, upon the watershed of any public water supply system, shall furnish the state board of health with detailed plans and specifications of the sanitary precautions to be taken, which must be approved by said board.

History: En. Sec. 7, Ch. 177, L. 1907; Sec. 1565, Rev. C. 1907.

Protection from pollution of source of municipal water supply, see notes in 11 L. R. A. (N. S.) 1163; L. R. A. 1918E, 954.

2651. Complaints and investigations. Upon complaint to the state board of health, or the mayor or health officer of any city or town, or the managing board or officer of any public institution, or the president of an ice company, stating that manure, excrement, garbage, sewage, or any other matter which pollutes or tends to pollute the waters of any lake, pond, spring, stream, or watercourse used by such city or town, public institution, or company as a source of water supply, the said board shall cause a thorough investigation to be made of such alleged nuisance or pollution, and if, in its judgment, the public health so requires, shall, by order served upon the party causing or permitting such pollution, prohibit the continuance of such pollution, and shall order him to remove any such cause of pollution.

Note.—Sections 2651 to 2657, inclusive, were enacted as sections 8 to 14, inclusive, of chapter 177, Laws of 1907, appearing as sections 1566 to 1572, inclusive, Revised Codes 1907.

History: En. Sec. 1566, Rev. C. 1907.

This section does not provide for a public trial, but contemplates an ex parte investigation by the state board of health; it may, therefore, upon its information from any source, and before it has heard any testimony, make a valid order prohibiting a city from polluting a stream which is a source of water supply for domestic uses. Miles City v. State Board of Health, 39 Mont. 405, 410, 102 Pac. 696, 25 L. R. A. (N. S.) 589.

2652. Agents and servants of boards may enter buildings. The agents and servants of said board may enter any building, structure, or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exist, and whether the rules, regulations, and orders aforesaid are obeyed.

History: En. Sec. 1567, Rev. C. 1907. See also history of Sec. 2651.

2653. Appeals to the district court from orders of the state board of health. Whoever is aggrieved by any order of the state board of health passed under the provisions of this act may appeal therefrom to the district court of the county in which such order shall be effective. But such notice as the court shall order shall also be given to the mayor of the city or town, or president of the water company, or any other persons inter-

ested in such order. While the appeal is pending, the order of the state board of health shall be complied with, unless otherwise authorized by the state board of health.

History: En. Sec. 1568, Rev. C. 1907. See also history of Sec. 2651.

Cited or applied as section 1568, Revised Codes, in City of Miles City v. State Board of Health, 39 Mont. 405, 410, 102 Pac. 696, 25 L. R. A. (N. S.) 589.

2654. Jurisdiction of the district court. The district court of any county of the state shall have jurisdiction in equity, upon the application of the state board of health or of any person interested, to enforce its orders, or the orders, rules, and regulations of said board of health, and to restrain the use or occupation of the premises, or such portion thereof as said board may specify, on which said material is deposited or kept, or such other cause of pollution exists, until the orders, rules, and regulations of said board have been complied with.

History: En. Sec. 1569, Rev. C. 1907. See also history of Sec. 2651.

2655. Establishment of experimental stations. In order that the state board of health may at all times be prepared to give the best advice to cities, towns, public institutions, or private corporations, relative to the prevention or removal of pollutions of water, said board is hereby authorized to establish and maintain an experiment station for the purpose of studying the best methods of preventing pollution of water, and for the purification of water, and for the purification, disinfection, and disposal of sewage and domestic and manufacturing waste so as to prevent pollution of water, and said board is authorized to cause sanitary methods and systems in use outside of the state of Montana to be investigated and studied with a view of ascertaining their fitness for conditions in this state.

History: En. Sec. 1570, Rev. C. 1907. See also history of Sec. 2651.

2656. Biennial reports. The state board of health shall biennially make a report to the legislature, through the governor, of its doings for the preceding period, recommending measures for the prevention of the pollution of such waters, and for the removal of polluting substance in order to protect and develop the rights and property of the state and municipalities therein, and to protect the public health, and recommend any legislation or plans for systems of main sewers necessary for the preservation of the public health, and for the purification and prevention of pollution of the ponds, lakes, springs, and inland waters of the state. It shall also give notice to the attorney-general of any violation of law relative to the pollution of water supplies and inland waters.

History: En. Sec. 1571, Rev. C. 1907. See also history of Sec. 2651.

2657. Penalties for violation of act. Whoever violates any of the provisions of this act, or any rule, regulation or order of the state board of health, made under the provisions of this act, shall be punished for each offense by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

History: En. Sec. 1572, Rev. C. 1907. See also history of Sec. 2651.

CHAPTER 204.

CONSTRUCTION AND EXAMINATION OF DAMS AND RESERVOIRS.

Section 2658. Dams and Reservoirs—How Constructed.
2659. Dams and Dikes to Be Constructed in a Secure Manner—Proceedings Upon Complaint of Insecurity.
2660. Complaint Against Filling Unsafe Reservoir—Duty of Court to Order Examination.
2661. Examination and Report.
2662. Report—What to Contain.
2663. Proceedings When Dam or Reservoir Is Insecure.
2664. Issues and Trial.
2665. Judgment.
2666. New Trial and Appeal.
2667. Water May Be Drawn Off Pending an Appeal.
2668. Board of County Commissioners May Appoint Experts to Examine Dam.
2669. Compensation of Experts.
2670. Duty of Board When Complaint Filed.
2671. Penalties.

2658. Dams and reservoirs—How constructed. No person must fill, or procure to be filled with water, any reservoir which is not so thoroughly and substantially constructed as to safely hold any water that may be turned therein.

Note.—Sections 2658 to 2671, are here given as they appear in sections 2138 to 2151, Revised Codes of 1907 as amended; being sections 3440 to 3453, Political Code of 1895. Earlier acts very similar in substance were sections 1 to 6, p. 221, Laws of 1877, re-enacted as sections 493 to 498, 5th Division Revised Statutes of 1879 and as sections 983 to 988, 5th Division Comp. Statutes of 1887.

History: Sec. 2138, Rev. C. 1907.

Cited or applied as section 2138, Revised Codes, in Frederick v. Hale, 42 Mont. 153, 168, 112 Pac. 70.

2659. Dams and dikes to be constructed in a secure manner—Proceedings upon complaint of insecurity. No person, association, or corporation shall construct, or cause to be constructed, a dam or dike for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

Upon complaint on oath being made to the state engineer by three or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam or dike of any reservoir within the state, and that they have reason to believe said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, it shall be the duty of the state engineer to forthwith examine, or cause to be examined, the said reservoir. If, upon such examination, the state engineer shall find that said reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall be his duty to notify the county attorney of the county in which the reservoir is located, setting forth his findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

In the event of either party being dissatisfied with the findings of the state engineer, he may take an appeal to the district court of the district wherein the reservoir is located, and said court shall hear and determine the matter at the earliest practical time, subject to the right of either party to take an appeal as in other civil cases; provided, that the judg-

ment of the state engineer shall control until the final determination of the case.

History: En. Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917.

Cited or applied as section 2139, Revised Codes, before amendment, in Frederick v. Hale, 42 Mont. 153, 168, 112 Pac. 70.

2660. Complaint against filling unsafe reservoir—Duty of court to order examination. Upon complaint on oath made by any person or persons, and filed in the district court, that a person, association, or corporation is filling or proposing to fill with water a reservoir, or has filled or gathered water in a reservoir, and that life and property are thereby endangered, the judge must appoint three disinterested persons, at least one of whom must be a resident of the county in which the dam or reservoir is situated, and one of whom must be a competent and experienced civil or hydraulic engineer, each of whom must take an oath that he will examine the dam and reservoir to determine as to its security to the best of his ability.

History: En. Sec. 2140, Rev. C. 1907; amd. Sec. 2, Ch. 168, L. 1917.

2661. Examination and report. It is the duty of the person so appointed to make a thorough examination of the dam or reservoir, and if, upon examination, they find that persons or property are endangered by reason of the dam or reservoir, and it is not secure against the pressure of the water confined therein, or the water that may be confined therein, or against rains and freshets that may occur, and if they find that the same is secure against the occurrence of the casualties mentioned, or any of them, they must make a report in writing to the judge, which must be entered of record as a proceeding in court.

History: Sec. 2141, Rev. C. 1907.

2662. Report—What to contain. If, upon such examination as to the safety of such reservoir, they consider such reservoir insufficient and insecure, they must further inquire whether the danger to be apprehended is imminent, and if they are of the opinion that such danger is imminent, and that destruction of life or property may result from delay, it is their duty forthwith to draw from such reservoir the waters therein, or so much thereof as will insure safety, and they must make return of their action to the judge; and in the discharge of such duties, the persons so acting are peace officers.

History: Sec. 2142, Rev. C. 1907.

2663. Proceedings when dam or reservoir is insecure. If, upon examination, they are of opinion that such dam or reservoir is insecure and insufficient, but that the danger therefrom is not immediate or imminent, they must so state in their report to the judge, who must thereupon cause a copy of the report to be served on the owner or person in charge thereof, with a notice requiring him to make the same secure, or to draw the water therefrom without delay; and unless such order is complied with after hearing, the judge may order the sheriff to draw from said dam or reservoir the waters thereof.

History: Sec. 2143, Rev. C. 1907.

Note.—For earlier history of sections 2663 to 2671, see also history of section 2658.

2664. Issues and trial. The owner of the dam or reservoir may answer the complaint, and an issue may be joined at the hearing, and the question of the security and sufficiency of the dam or reservoir may be tried before the court or jury as in other cases.

History: Sec. 2144, Rev. C. 1907.

2665. Judgment. If the jury find the dam or reservoir insufficient or insecure, judgment must be entered thereon, declaring such dam or reservoir a nuisance, and that all the water be drawn therefrom. Costs may be taxed as in other cases to the losing party.

History: Sec. 2145, Rev. C. 1907.

2666. New trial and appeal. Any party to the proceedings may move for a new trial and appeal as in other cases.

History: Sec. 2146, Rev. C. 1907.

2667. Water may be drawn off pending an appeal. The judge may, after the verdict of the jury, and pending an appeal, order that the water be drawn from the reservoir so as to make the same secure and safe until the final determination of the proceedings.

History: Sec. 2147, Rev. C. 1907.

2668. Board of county commissioners may appoint experts to examine dam. Whenever any person is constructing a dam or reservoir, and complaint is made to the board of county commissioners that the same is being built in an insecure and unsafe manner, and dangerous to life or property, or that when constructed will be insecure and dangerous, it is the duty of the board to appoint three experts under whose supervision the dam or reservoir must be constructed, and such reservoir must not be filled with water, nor shall any water be allowed to flow therein, until the owner thereof has filed in the office of the county clerk a certificate, signed by a majority of the persons so appointed, to the effect that such dam or reservoir is constructed in a proper manner and is safe and secure.

History: Sec. 2148, Rev. C. 1907.

2669. Compensation of experts. The persons acting as experts are entitled to a reasonable compensation for their services, to be allowed by the board and paid by the owners of the dam or reservoir.

History: Sec. 2149, Rev. C. 1907.

2670. Duty of board when complaint filed. Whenever such complaint is made to the board of commissioners, it is the duty of the board, in case such dam or reservoir is not being constructed in a safe and secure manner, to proceed against the owner or persons constructing the same, in the manner provided for in this chapter, and any person may file a complaint and proceed against any such owner of or person constructing such dam or reservoir, as provided in this chapter.

History: Sec. 2150, Rev. C. 1907.

2671. Penalties. Any person violating any of the provisions of this chapter is punishable as provided in section 11280 of the Penal Code, and if death ensue by reason of any of the acts prohibited by this chapter, the

person guilty of the same may be convicted of murder, manslaughter, or any other felony, as the case may be.

History: Sec. 2151, Rev. C. 1907.

CHAPTER 205.

CONSTRUCTION OF TEMPORARY FLOORS AND SCAFFOLDS.

Section 2672. Construction of Scaffolds.
2673. Temporary Floors for Protection of Workmen.
2674. Planking Above Scaffolds.
2675. Guarding of Stairways, Openings, etc.—Temporary Toilets.
2676. Penalty for Violation of Act—Duty of Building Inspector.

2672. Construction of scaffolds. All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, and sufficient width, and properly secured, so as to insure the safety of persons working thereon or passing thereunder, or by the same, and to prevent the falling thereof, or of any material that may be used, placed, or deposited thereon.

History: En. Sec. 1, Ch. 107, L. 1909.

2673. Temporary floors for protection of workmen. It shall be the duty of every owner, person, or corporation who shall have the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of said floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters, a plank floor, which shall be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below, or on such temporary floor in such building; provided, however, that where the permanent floor is in place on the floor herein required to be planked, a temporary protective floor shall not be required.

If the floor or permanent floor of the second floor, or of any other floor above the second, or roof, is being placed previous to the permanent floor immediately below the floor which is being arched or planked, a good, substantial temporary floor shall be laid on the joists and girders of the next lower floor. For the purpose of this section, the lowest framed floor in the building shall be considered the first floor.

History: En. Sec. 2, Ch. 107, L. 1909.

2674. Planking above scaffolds. In buildings more than three stories high, where persons are working on a scaffold or scaffolds on the outside of such buildings, such persons shall be protected by well-secured planking, set over the heads of such persons for the full width of the scaffolding on which they are working, if another story or stories are being raised above such persons during the time they are working on such outside scaffold or scaffolding.

History: En. Sec. 3, Ch. 107, L. 1909.

2675. Guarding of stairways, openings, etc.—Temporary toilets. It shall be the duty of all owners, contractors, builders, or persons having the direct and immediate control or supervision of any buildings in course of erection, which shall be more than thirty feet high, to see that all stairways, elevator openings, flues, and all other openings in the floors.

shall be covered or properly protected; provided, that wherever such building or buildings over three stories high are being erected in any city or town, other than a residence, temporary toilets in or convenient to such building shall be maintained for the convenience of employees.

History: En. Sec. 4, Ch. 107, L. 1909.

2676. Penalty for violation of act—Duty of building inspector. Any person violating any of the provisions of the foreging sections shall be fined not less than one hundred dollars nor more than two hundred dollars for each offense. It is hereby made the duty of the building inspector, his deputy, or other authorities in any county, city, town, or village in the state, through the county attorney, or any other attorney, in case of failure of such owner, person, or corporation to comply with this act promptly, to take the necessary steps to enforce the provisions of this act.

History: En. Sec. 5, Ch. 107, L. 1909.

CHAPTER 206.

ELECTRICAL CONSTRUCTION—REGULATION.

Section 2677. Overhead Construction of Light, Heat, and Power Lines.
2678. Space Between Arms on Poles or Appliances for High and Low Voltage.
2679. Cross-Arms.
2680. Bridge Arms.
2681. Double Arms.
2682. Guy Attachments.
2683. Guy Insulation.
2684. Guy Clearance.
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2677. Overhead construction of light, heat, and power lines. Any person, company, or corporation owning or using any pole or appliance on which is run, placed, erected, or maintained in the state of Montana, any wire or cable used or to be used to conduct or carry electricity for the purpose of light, heat, or power, shall provide and maintain an unobstructed climbing space adjacent to any such pole or appliance, so that persons shall be able to ascend any such pole or appliance with reasonable safety and convenience up to and through the wires, connections, attachments, and structures of any such pole or appliance, and all cases where any "buck" or reverse arm is used, or where special construction is used, there shall be provided and maintained unobstructed climbing space of not less than twenty-two inches square, omitting the area of any pole or appliance.

History: En. Sec. 1, Ch. 171, L. 1917.

2678. Space between arms on poles or appliances for high and low voltage. At least one standard pole-gain, or the equivalent of four feet, shall be left vacant between the nearest cross-arm on which is placed or maintained any wire or cable conducting or carrying more than four hundred and forty volts of electricity, and any cross-arm occupied by or used for wires or cables carrying four hundred and forty volts or less.

The said standard pole-gain shall be spaced not less than twenty-four inches center to center, except that one "buck" or reverse arm may be placed not more than twelve inches below any cross-arm; and provided, that this section shall be held not to apply to bridge construction; and further provided, that it shall be held not to apply to primary taps to transformers on poles; and provided further, that all such primary taps leading to transformers on poles shall be of double-braid, rubber-covered wire of at least twenty-two hundred volts insulation.

History: En. Sec. 2, Ch. 171, L. 1917.

2679. Cross-arms. All cross-arms shall be made from clear, straight-grained wood, or standardized material. The cross-section of wood arms shall be not less than three and one-half by four and one-half inches. The pin spacing shall be, for six-pin arms, not less than thirty-inch center for pole pin spacing, fourteen-inch side spacing, and five-inch end spacing; and four-pin arms not less than thirty-inch center for pole pin spacing, fourteen-inch side spacing and five-inch end spacing.

History: En. Sec. 3, Ch. 171, L. 1917.

2680. Bridge arms. Bridge arms having the same pin spacing as the standard cross-arm and a cross-section of not less than four by six inches may be installed in alleys or at alley and street intersections, wherever such construction may be proper, to provide the necessary clearance for fire-escapes and other obstructions which may be overhanging the alley. All such structures shall be provided with idle arm, or span wire, for use of workmen.

History: En. Sec. 4, Ch. 171, L. 1917.

2681. Double arms. Double arms, if of wood, shall be used at all line terminals, corners, and curves where there is excessive strain. All double arms must be blocked and bolted in accordance with standard practice.

All poles on which wires are permanently "dead-ended" shall be double armed.

History: En. Sec. 5, Ch. 171, L. 1917.

2682. Guy attachments. All guy wires, when attached to poles, stubs, or other ungrounded supports, shall not reach within eight feet of the ground. Guy anchors may be installed or guy wires may be attached to rocks or other grounded supports.

History: En. Sec. 6, Ch. 171, L. 1917.

2683. Guy insulation. Any guy wire attached to any pole or appliance on which is run, placed, erected, or maintained any wire or cable used to conduct or carry electricity for the purpose of light, heat, or power, or used jointly with telephone, telegraph, or other signal wires, shall be permanently and effectively insulated at all times, by the insertion of at least two strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six feet in a horizontal line from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight feet in a vertical line from the surface. In short guys in which the two insulators are required, and which will be located at the same points or near each other, two insulators may be coupled in series and put into the guy together. All strain insulators shall be so constructed and maintained that the guy wire or guy cable holding the insulator in place shall interlock in case of failure or breakage thereof. The above shall not apply to railway electrification, where at least one insulator shall be inserted in each end of every auxiliary cross-span, and one in each auxiliary guy.

History: En. Sec. 7, Ch. 171, L. 1917.

2684. Guy clearance. Guy wires shall be attached to poles, so as to interfere as little as possible with workmen climbing or working thereon. Every guy wire which passes either over or under an electric light or power wire, other than those attached to the guyed pole, shall be so placed and maintained as to provide a clearance of not less than three feet between the guy and any electric wire.

History: En. Sec. 8, Ch. 171, L. 1917.

2685. Arc lamps. No arc lamp shall be erected or maintained in the state of Montana on any pole or appliance, unless such arc lamp be so constructed and maintained as to be lowered within six feet from the surface; provided, that this section shall not include arc lamps used for ornamental street lights attached to iron pedestals or any arc lamp attached to buildings, poles, or other structures which do not carry wire other than those feeding the lamp.

History: En. Sec. 9, Ch. 171, L. 1917.

2686. Wire insulation. The standard insulation, wherever insulation is used, for any wire or cable run, placed, or erected in any city or town in the state of Montana, and used to conduct or carry electricity for light, heat, or power, for all voltage, shall have at least a triple-braided weatherproof cover.

History: En. Sec. 10, Ch. 171, L. 1917.

2687. Trolley and "span" wires. Trolley wires must readily stand the strain put upon them when in use, and shall have a double insulation from the ground. In wooden-pole construction the pole shall be considered one insulation. In all cases where "span" wires are attached to grounded supports, or on buildings or other structures, there shall be provided and maintained at least two approved insulators in any such "span" wire between the trolley and any such other structures. The outer insulators shall be placed at a distance equal to that of the curb. Any "span" wire attached to buildings or other structures shall be stranded iron or steel wire, and shall readily stand the strain put upon them in use. None of the provisions of this section shall be held to apply where "feed" wires are used in place of "span" wires.

History: En. Sec. 11, Ch. 171, L. 1917.

2688. Foregoing provisions apply to current and voltage for light, heat and power. All of the foregoing provisions of this act shall include current and voltage used for light, heat, or power, not to exceed seventy-five hundred volts of electricity.

History: En. Sec. 12, Ch. 171, L. 1917.

2689. Provisions not applicable, and when—Climbing space. None of the provisions of sections 2677 to 2679, inclusive, of this code shall be held to apply to direct-current wire carrying nominally six hundred volts of electricity, and used for street railway purposes; provided, however, that an unobstructed climbing space not less than twenty-six inches in a horizontal line shall at all times be provided and maintained.

History: En. Sec. 13, Ch. 171, L. 1917.

2690. Overhead line construction of telephone, telegraph, and other signal wires — Cross-arms. All cross-arms shall be made from clear, straight-grained wood, or standardized material. No wood cross-arm shall be used having a cross-section of less than three and one-fourth by four and one-fourth inches, except where steel pins are used or where two-pin arms are used. The standard pin spacing shall be not less than sixteen inches from center to center of pole pins.

History: En. Sec. 14, Ch. 171, L. 1917.

2691. Climbing space. Any person, company, or corporation owning or using any pole or appliance used exclusively for telephone, telegraph, or other signal wires, shall provide and maintain an unobstructed climbing space of not less than sixteen inches.

Whenever "buck" or reverse arms are used, an unobstructed climbing space shall be left adjacent to the pole or appliance at least twenty inches square, omitting the area of any such pole or appliance; any wire or cable attached to the pole in such buck-arm construction, not less than forty inches from the nearest cross-arm, shall be held not to be an obstruction to the climbing space as herein provided.

History: En. Sec. 15, Ch. 171, L. 1917.

2692. Guy insulation. In all cases where guy wires pass over, under, or between electric light, heat, or power wires, they shall be permanently and effectively insulated at all times by the insertion of at least two strain insulators. The upper of these insulators shall be inserted in the

guy so as to be at least six feet in a horizontal direction from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight feet from the surface in a vertical line. In short guys in which the two insulators herein required would be located at the same point, or near each other, two insulators may be coupled in series and put into the guy together. Anchor guys for guying aerial cable leads shall be insulated from the messenger wires, by being placed upon separate shims, or insulated as above specified.

History: En. Sec. 16, Ch. 171, L. 1917.

2693. "Aerial" cable supports. All "aerial" cables having two hundred pairs of number nineteen B & S gauge copper wires, or four hundred pairs of number twenty-two B & S gauge copper wires, shall be supported by through bolts at least five-eighths inches in diameter; at all railroad and high-tension crossings, grades, curves, and corners, such cable shall be reinforced by a strap supported by a lag-screw or through bolts at least one-half inch in diameter, or other appliance of equal strength.

History: En. Sec. 17, Ch. 171, L. 1917.

2694. Poles or appliances used jointly for electric light, heat, or power wires, and telephones, telegraph, or other signal wires. A separation of at least four feet, measured at the pole, shall be provided and maintained between any telephone, telegraph, and other signal wires or cables, and electric light, heat, or power wires, carrying not to exceed four hundred and forty volts; provided, that when the telephone, telegraph, or signal wires or cables are above the electric light, heat, or power wires carrying a voltage in excess of four hundred and forty volts, the clearance shall be eight feet. Telephone, telegraph, and other signal wires or cables shall preferably be run and maintained below electric light, heat, and power wires or cable. In no case shall telephone, telegraph, or other signal wires smaller than No. 12 N. B. S. gauge copper wire, or No. 12 B. W. G. iron wire be run or maintained as "lead" wires above electric light, heat, or power wires; provided, that this shall be held not to apply to telephone, telegraph, or signal wires used exclusively to maintain electric light, heat, and power line.

History: En. Sec. 18, Ch. 171, L. 1917.

2695. Same—Climbing space—Cross-arms. All telephone, telegraph, or other signal wires placed on poles jointly used for electric light, heat, and power wires, shall have an unobstructed climbing space of not less than twenty-six inches. All telephone, telegraph, or other signal wires placed on poles jointly used for light, heat, or power wires shall be placed and maintained on cross-arms, except that brackets may be maintained on one side of the pole not nearer than two feet below the lowest cross-arm, for the purpose of carrying duplex wires or cables to distribute telephone, telegraph, or signal wires.

History: En. Sec. 19, Ch. 171, L. 1917.

2696. Guy insulation for joint construction. All joint construction for wires or cable of different and conflicting voltage, as outlined in the preceding section, shall be guyed in the same manner as specified for electric light, heat, and power construction.

History: En. Sec. 20, Ch. 171, L. 1917.

2697. Two or more lines on same side of street—Climbing space. In all cases where there are two or more pole lines used for telephone, telegraph, or other signal wires, on the same side of any street, alley, or public highway, provided such lines are not parallel on a horizontal plane, the crossarms shall have an unobstructed climbing space of not less than twenty-six inches.

History: En. Sec. 21, Ch. 171, L. 1917.

2698. General construction for all wires and voltage. All poles shall be of the best quality cedar or other standardized material, except poles carrying one telephone circuit for rural or farmers' use. No pole shall be maintained which has not sufficient strength to safely sustain itself when supporting wires are removed.

History: En. Sec. 22, Ch. 171, L. 1917.

2699. Side arms. When necessary to avoid obstruction, a side or offset arm may be used. In all such cases a special arm of the same dimensions as the standard arm shall be used. This arm shall be bored for pins and bolts and installed with an angle-iron brace. Wherever a transformer is used on any such pole on which side arm construction is used, an idle arm shall be provided.

History: En. Sec. 23, Ch. 171, L. 1917.

2700. Guy wire and anchor protection. Where guy wires installed on public highways are subject to mechanical injury, they shall be protected with a shield. This shield may consist of an iron pipe or a suitable wood shield, which may be clamped on the guy itself. The guy shield shall extend from the anchor rod up to a height of approximately seven feet.

History: En. Sec. 24, Ch. 171, L. 1917.

2701. Construction of wire crossings. Where wires used for power, heat, or light, cross telephone, telegraph, or signal wires, or where the above mentioned wires cross railroad tracks, the methods of future construction or betterments, and hereafter all future electrical construction in the state of Montana not herein provided for, shall conform to the national electrical code of the United States bureau of standards; this code to be interpreted and enforced by the railroad and public service commission of Montana. This section shall not be held to conflict with any of the specific provisions of this act.

History: En. Sec. 25, Ch. 171, L. 1917.

2702. Protection of ground wires and cables run vertically on poles or other structures. Any person, company, or corporation owning or using any poles or appliances for light, heat, or power, or poles used jointly for light, heat, or power wires, and telephone, telegraph, and other signal wires, on which is run any ground or vertical wires, shall cause all such wires, except railway auxiliary negative taps, to be incased in a channel iron conduit or metal casing from the ground to a point approximately seven feet above the ground, so as to protect any such wires from mechanical injury, the remaining portion to be wholly incased in a casing equal in durability and insulating efficiency to a wooden casing not less than

one and one-fourth inches thick, except that grounds for four hundred and forty volts or less, and railway auxiliary negative taps, shall be required to be incased down the pole to a point five feet below the lowest cross-arm. All metal casings to be permanently and effectively grounded; provided, that this section shall be held not to apply to wires or cables which lead from overhead to underground systems, except in case of joint construction; and further provided, that it shall not apply to high-tension lines.

History: En. Sec. 26, Ch. 171, L. 1917.

2703. Generating and substation equipment, records, and warnings. In every generating and substation used for light, heat, or power, there shall be kept a log-book or record showing the changes in the condition of operation, including the starting and stopping of electrical supply equipment, the name of each foreman or workman locally in charge of work, and all unusual occurrences and accidents.

The log-book or record shall be signed by the person in charge before being relieved. He shall keep within sight an operating diagram or equivalent device, indicating whether electrical supply circuits are open or closed, and where work is being performed. On circuits carrying normally in excess of seventy-five hundred volts, the operator in charge shall place "Men at Work" tags upon switches controlling any circuits upon which men are known to be working, and it shall be his duty to enforce the safety rules, and permit only authorized persons to approach the equipment or lines.

This section shall not apply to isolated plants, generating current for telegraph, telephone, and signaling purposes.

History: En. Sec. 27, Ch. 171, L. 1917.

2704. Protective devices. There shall be provided in conspicuous and suitable places in electrical stations and shops, a suitable and sufficient supply of first-aid and protective devices, all of approved kinds and qualities; the kinds and number of such devices will depend on the requirements of each case, as may be from time to time prescribed by the state industrial accident board, and it shall be the duty of the said state industrial accident board to prescribe such necessary protective devices. All such prescribed devices shall be kept, when not in use, in their regular location and in good working order.

History: En. Sec. 28, Ch. 171, L. 1917.

2705. Air-gap and oil-break switches, where required—Number of workmen employed—Circuit-breaking devices. All circuits of four hundred and forty volts or more, where originating or terminating in any inclosure or building, or used for underground, shall be provided with air-gap switches or other approved devices; if any of the above circuits are of seven and one-half kilowatts or more capacity, they shall, in addition, be provided with an oil-break switch, or other approved device which will safely open the circuit under the load.

There shall be no less than two experienced electricians employed on any work or maintenance to be performed on any electrical wires or equipment connected therewith carrying nominally six hundred volts or more;

provided, however, that this shall not apply to the operation of electrical equipment, nor in cases of emergency.

Direct-current feeders of two hundred and fifty volts or over shall be protected by approved circuit-breaking devices.

History: En. Sec. 29, Ch. 171, L. 1917.

2706. Fuse requirements. All fuses shall be inclosed, or expulsion type, or other approved "national electrical code" standards.

History: En. Sec. 30, Ch. 171, L. 1917.

2707. Safety measures—Head room—Guarding passages, manways, etc.—Grounding of wires. Where necessary, all forms of electrical apparatus shall be effectively grounded for the protection of persons.

Wherever wires or conductors are installed within inclosures or buildings, in and about switchboards and other appliances where conductors are run, placed, or erected, a clear head room of six and one-half feet above the floor or surface must be maintained, or the wires be effectively guarded. All apparatus, passages, manways, and other places where persons may enter into, must be protected with efficient guards in accordance with standard practice; provided, this shall not be held to apply to electrical machinery and auxiliary devices carrying six hundred volts or less.

When lines or wires carrying seventy-five hundred volts or more are disconnected from their source of power, for work to be performed thereon, said lines or wires shall be effectively grounded for the protection of workmen.

History: En. Sec. 31, Ch. 171, L. 1917.

2708. Opening to outer air for manholes. The openings to outer air for any manhole used for light, heat, or power shall be circular in shape, and shall not be less than twenty-four inches in diameter.

The opening to outer air for any manhole used for telephone, telegraph, or other signal wires shall be circular in shape, and shall be not less than twenty inches in diameter.

Whenever persons are working in any manhole, whose opening to the outer air is less than three feet from the rail of any railway or street-car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

History: En. Sec. 32, Ch. 171, L. 1917.

2709. Violation of act a misdemeanor—Penalty. Every corporation or joint-stock company or individual, which shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

History: En. Sec. 33, Ch. 171, L. 1917.

2710. Date for act to take effect. This act shall go into effect on the first day of May, 1917, from which time all new construction shall conform to the provisions hereof, and all betterments on existing plants and equipment shall be made to conform to the provisions of this act.

History: En. Sec. 34, Ch. 171, L. 1917.

2711. Repealing clause. All acts or parts of acts, and all ordinances or parts of ordinances, of cities and towns in the state of Montana, in conflict with this act, are hereby repealed, and hereafter no ordinance in conflict with any provisions of this act shall be enacted or passed in any city or town in the state of Montana.

History: En. Sec. 35, Ch. 171, L. 1917.

CHAPTER 207.

INSPECTION OF BOILERS—ENGINEERS' LICENSES.

Section 2712. Appointment, Term and Compensation of Boiler Inspectors.
2713. Qualifications of Boiler Inspectors.
2714. Inspection of Boilers.
2715. Further Requirements in Making Inspection.
2716. Same—Material to Be Used.
2717. Examination May Be Made at Any Time.
2718. Duty of Owner to Permit Inspection—Sealing of Fire-Box—Costs and Expenses.
2719. Classification of Licenses—Who Not Granted License.
2720. Classification of Engineers.
2721. Complaints and Revocation of License.
2722. Certificate of Inspection.
2723. Fees for Inspection or Examination.
2724. Re-examination for License.
2725. A Board to Re-examine Applicants.
2726. Boilers Exempted From Provisions of Act—Duty of Owner of Traction-Engine—Notice of Purchase.
2727. Certificates Must Be Renewed Yearly—Annual Report.
2728. Operation of Boiler or Steam-Engine Without License.
2729. Sale of Second-hand Boilers.

2712. Appointment, term and compensation of boiler inspectors. The industrial accident board shall appoint not to exceed four inspectors of boilers and shall prescribe their term of office and fix their compensation.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921.

2713. Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam-engines who has not had at least ten years of actual experience in the operation of steam-engines, steam-boilers, and steam machinery, and who has not held for at least five years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana, or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913.

2714. Inspection of boilers. The inspector of boilers must inspect all steam-boilers and steam-generators before the same are used, and all persons who bring into this state any boiler or boilers must notify the boiler inspector stating the number and kind of boilers, where they had heretofore been located, and where they are to be located and operated in this state, and must secure from the boiler inspector a certificate of inspection before said boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety days after they are put in use, and all boilers must be inspected at least once in every year. Any person failing to give notice to the boiler inspector as herein provided, or

who operates such boilers without a certificate from the boiler inspector, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each offense, or by imprisonment in the county jail for not less than thirty nor more than ninety days, or by both such fine and imprisonment. The inspector of boilers must subject all boilers to hydrostatic pressure, which hydrostatic pressure must be thirty-three and one-third per cent. greater than the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water is such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

History: Ap. p. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919.

Public regulation or inspection of steam boilers, see note in Ann. Cas. 1915D, 846.

Construction of federal boiler inspection act, see note in Ann. Cas. 1918C, 584.

Master's right to rely on inspection of boiler by public authorities, see note in 15 L. R. A. (N. S.) 812.

2715. Same—Further requirements in making inspection. The inspector must also satisfy himself that the safety-valves are of suitable dimension, sufficient in number and area, and properly arranged, and that the safety-valve weights are properly adjusted so as to allow no greater pressure in the boilers than the amount prescribed by the inspection certificate; that there are a sufficient number of gauge-cocks properly inserted to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and adequate and certain provisions for an ample supply of water to feed the boilers at all times, and that suitable means for blowing out are provided, so as to thoroughly remove mud and sediment from all parts of the boilers when they are under pressure of steam, and any renter, user, or owner of a boiler, or any person or persons who tamper with the safety-valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate, shall be deemed guilty of a misdemeanor.

In subjecting the boilers to the hydrostatic test, the test applied must exceed the working pressure allowed in the ratio of one hundred to sixty-six and two-thirds, provided the valves and other conditions of piping on the boiler will allow the inspector to make such test. But where there are leaks on the boiler which make it impossible to apply such hydrostatic pressure, or where the water cannot be procured with which to make such test, the inspector may make a hammer test of said boiler and inspect same closely and give to such boiler a rating for steam pressure as its condition will warrant. In all cases the inspector must use judgment in the steam pressure allowed on boilers. Where a boiler is constructed with lap horizontal seams on boiler, dome, or drum, a factor of four and one-half shall be used in determining the safe working pressure allowed

on such boiler. But where the boilers are constructed with butt-strap horizontal seams, a factor of four may be used in determining such safe working pressure. But in any case the inspector may use a higher factor if the conditions are such as to warrant it. If boiler rests on side wall on lugs, or is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used to determine the safe working pressure allowed on boiler. Where the horizontal lap seams of boiler are exposed to the fire, a factor of five must be used to determine the safe working pressure to be allowed on such boiler. On stay bolts, if new, seven thousand five hundred pounds pressure per square inch shall be allowed. If such stay-bolts are corroded or defective, the inspector must determine the pressure to be allowed on same. On braces made of solid material, eight thousand pounds pressure per square inch shall be allowed. On welded braces or braces with only one crowfoot, six thousand pounds pressure per square inch shall be allowed. No cast-iron shall be used in the construction or reinforcements of any boiler where the pressure allowed on said boiler is more than one hundred pounds per square inch.

History: Ap. p. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913.

2716. Same—Material to be used. No boiler or steam-pipe, nor any of the connections thereto, must be approved which is made in whole or in part of bad material, or is unsafe from any cause. Nothing herein shall be construed to prevent the use of any boiler or steam-generator which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam-generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907.

Note.—The latter part of the foregoing section as originally enacted is omitted from this code to conform to later enactments.

2717. Examination may be made at any time. In addition to the annual inspection, it is the duty of the inspectors to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause, and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

History: En. Sec. 557, Pol. C. 1895; re-en. Sec. 1646, Rev. C. 1907.

2718. Duty of owner to permit inspection—Sealing of fire-box—Costs and expenses. It is the duty of the owners or managers of steam-boilers to allow the inspector free access to the same. In case the owner or manager of any boiler is notified by the inspector to have said boiler ready for inspection on a day certain, and fails to have such boiler ready for inspection at such time, the inspector shall at once seal up the fire-box in such boiler, and such seal must not be removed from the fire-door without a written order from the inspector. Any person tampering with or removing said seal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment

in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. If the owner or manager of any boiler that has been so sealed desires to have the same inspected before the next regular visit of the inspector to the district where said boiler is situated, he must pay all transportation and hotel expenses of the inspector who makes the inspection, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913.

2719. Classification of licenses—Who not granted license. No person must be granted a license to operate steam-boilers or steam machinery under the provisions of this article, who has not been examined by the inspector and found competent to perform the duties of an engineer, and received from such inspector a written or printed license so to act. Any person who operates any steam-boiler or steam-engine without first obtaining a license from the inspector is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913.

The trade of engineer is a proper subject for police regulation. Johnson v. City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1059, 16 Ann. Cas. 974.

Licensing or regulating stationary engineers, see note in Ann. Cas. 1915A, 1017.

2720. Classification of engineers. Engineers intrusted with the care and management of steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers. No license shall be granted to any person to perform the duties of a first-class engineer who has not taken and subscribed an oath that he has had at least three years' experience in the operation of steam-boilers and steam machinery, or whose knowledge and experience is not such as to justify the belief that he is competent to take charge of all classes of steam-boilers and steam machinery. No license must be granted to any person to act as a second-class engineer who has not taken and subscribed an oath that he has had at least two years' experience in the operation of steam-boilers and steam-engines, and is, on examination, found competent to take charge of all classes of steam-boilers and steam machinery not exceeding one hundred horsepower. No license must be granted to any person to act as a third-class engineer who has not served at least one year under a competent engineer, and is found, upon examination, to be sufficiently acquainted with the duties of an engineer to be intrusted with the care of steam-boilers, and of steam machinery not exceeding twenty horsepower. All firemen who have charge of steam-boilers, as to the regulation of feed-water and fuel, where the boilers are so situated as not at all times to be under the eye of the engineer in charge, are required to

pass a third-class engineer's examination and procure the same kind of license. All firemen who operate boilers where over thirty pounds pressure per square inch is allowed must hold at least a third-class license. All persons who operate heating boilers or plants, in public buildings where the steam pressure allowed on such boilers is thirty pounds per square inch or less, must procure from an inspector a low-pressure license. Applicants for this grade of license must have at least six months' previous experience in the care and management of low-pressure boilers, and must be found competent, on examination, to hold such grade of license. Such license shall not entitle the holder thereof to operate steam-boilers or steam machinery where the boiler pressure allowed is over thirty pounds to the square inch. Engineers holding third-class or higher class of license may operate boilers in heating plants where thirty pounds pressure or less, per square inch is allowed, without obtaining a low-pressure license. All applicants for license as stationary engineers or firemen must be at least eighteen years of age. None of the licenses in this section above named shall entitle the holder thereof to operate a traction-engine, but all persons who are intrusted with the care and management of traction-engines, or boilers on wheels, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. No license shall be granted to any person to act as a traction engineer who has not had at least six months' experience as fireman on traction-engines, and who is not found, upon examination, to be sufficiently acquainted with the duties of a traction engineer to be intrusted with the care of traction engines. Applicants for traction license must be at least eighteen years of age.

History: En. Sec. 3, Ch. 32, L. 1905; 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, re-en. Sec. 1649, Rev. C. 1907; amd. Sec. L. 1919.

2721. Complaints and revocation of license. Whenever complaint is made against an engineer holding a license from the inspector that he through negligence, want of skill, or inattention to duty, permitted his boiler to burn or otherwise become in bad condition, or that he has been found intoxicated while on duty, it is the duty of the inspector or assistant inspector to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of such engineer.

History: En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913.

2722. Certificate of inspection. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the boiler inspector's office. Any inspector or assistant inspector who wilfully and feloniously certifies regarding any steam boilers or their attachments, or grants a license to any person to act as engineer contrary to the provisions of this article, is punishable under the provisions of section 11198 of the Penal Code.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913.

2723. Fees for inspection or examination. The inspector of boilers is authorized to charge a fee of ten dollars for the inspection of each steam-boiler and its steam connections, and five dollars for each additional boiler when connected. The fee for the inspection of each traction-engine or boiler on wheels shall be ten dollars. The fee for the inspection of boilers in incorporated cities shall be five dollars. Such fees shall be payable at the time of the inspection. In case of the failure of the owner, manager, or person in charge of any boiler to pay such fee upon the demand of the inspector, said inspector is authorized to seal the fire-box of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager. Any person who tampers with or removes such seal without such written order shall be deemed guilty of a misdemeanor, and punished as provided by section 2718. The fee for the examination of applicants for engineer's license is seven dollars and fifty cents for first-class engineer; five dollars for second-class engineer; three dollars for third-class engineer; two dollars for low-pressure engineer, and three dollars for traction engineer, to be paid at the time of application for license. In case of the failure of any applicant to pass a successful examination, ninety days must elapse before he can again be examined as applicant for license. But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919.

2724. Re-examination for license. If any person who has applied for a license as a first or second or third-class engineer, under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within ninety days after the date of his rejection, by petition in writing set forth the causes of his grievance and demand another examination. Such petition must be addressed to and served upon the inspector, and shall be duly verified by the rejected applicant, and accompanied by the required fee for a second examination. Within two days after receiving such petition and fee, it is the duty of the inspector to notify the applicant in writing that on a day certain, which shall not be less than five nor more than forty days after the date of the service of the petition upon such inspector, he will be ready to grant him another examination. At least two days before the day set for examination the applicant must designate in writing to such inspector the name of an engineer holding a certificate of equal grade with the one applied for, and such engineer may present himself upon the day and at the hour fixed for the re-examination.

History: En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907.

2725. A board to re-examine applicants. Upon the same day, or any day prior to the date set for such examination, the inspector and selected engineer must in writing agree upon, and designate and notify a third disinterested engineer holding a license equal in grade to the license applied for by the rejected applicant, to sit with them. On the day and

hour set for such examination all three of such board, that is, the inspector and the engineer selected by the applicant, and the engineer agreed upon by them, must proceed to carefully re-examine such applicant, and fully and fairly test his qualifications and capabilities to receive a license such as he has applied for. After such examination is completed, if a majority of such board decide that such applicant is entitled to the license he has applied for, or any license of any inferior grade, the inspector must without delay issue a certificate accordingly, but if a majority of such board reject the applicant, it is a final rejection, and he must not be granted another examination for the space of ninety days after such last rejection, when he may again apply to the inspector or assistant inspector as provided by section 2723 of this code, and no person must be granted more than one re-examination before a board under the provisions of this article. One-half of the fee which may have accompanied any rejected applicant's petition for re-examination must be awarded by the inspector to each of the engineers who sit on any such examining board, and in case the applicant is granted a license, the fee paid when he was first rejected is the fee for the issuing of such license granted by any board. In any case any engineer selected or agreed upon as by this section is provided fails or neglects to appear or serve, another may be selected in his place in the manner herein provided.

History: En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907.

2726. Boilers exempted from provisions of act—Duty of owner of traction-engine—Notice of purchase. Boilers used for heating purposes in private residences and locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the provisions of this article. But locomotives, commonly known as dinkey-engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased, or operated by any individual, company, or corporation, and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction-engines, and be subject to inspection as are other traction-engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction license. Nor are locomotive engineers, save as herein provided, or persons operating any of the engines or boilers herein exempted from the operation of this article, required to procure license from the inspectors. It shall be the duty of the owner and user of any traction-engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction-engine or boiler on wheels who shall fail to notify the inspector as herein provided shall be deemed guilty of a misdemeanor. Any person purchasing any steam-boiler, whether traction or stationary boiler, shall be entitled to receive from the seller the certificates of inspection issued on such boiler, and any person purchasing any steam-boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten days after such purchase, report the fact of such purchase to the boiler inspector and notify such inspector where he intends to locate or operate said boiler. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other steam-boilers and steam-engines, save as herein

exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, re-en. Sec. 1655, Rev. C. 1907; amd. Sec. L. 1919.

2727. Certificates must be renewed yearly—Annual report. All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. The fee for renewal is one dollar in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license of the same grade, before license can be reissued; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have sixty days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee of one dollar.

All moneys collected by virtue of the provisions of this article must be paid into the state treasury once in each month and credited to the industrial accident board administrative fund as other inspection fees of the industrial accident board are now paid and credited.

History: En. Sec. 6, Ch. 32, L. 1905; 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, re-en. Sec. 1656, Rev. C. 1907; amd. Sec. L. 1919.

2728. Operation of boiler or steam-engine without license. It is unlawful for any person in this state to operate a stationary boiler or steam-engine, or any boiler or steam-engine other than railroad locomotives or other engines and boilers exempted by the provisions of section 2726 of this code, without a license granted under the provisions of this charter. The owner, renter, or user of any steam-engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, refusal to work, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of a steam-engine or boiler operated in remote districts, which would retard the work to be performed, the owner, renter, or user may, for the space of fifteen days, employ any person of the age of eighteen years whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license. The person so employing the unlicensed engineer must immediately notify the inspector or assistant inspector. But no owner, renter, or user of steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913.

2729. Sale of second-hand boilers. Any person, firm, or corporation who sells or offers to sell, or who uses or attempts to use, or who rents to others for use, or who delivers to others for use, or who induces others to use any steam-boiler that has theretofore been used, either within or without this state, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not longer than six

months, or by both such fine and imprisonment; provided, that the provisions of this section shall not apply to boilers or engines exempted by the provisions of section 2726 of this code, nor does it apply to boilers which have been inspected within one year prior to the commission of the act complained of, and on which a certificate of inspection has been issued and has not been revoked, nor does it apply to boilers on which a certificate of inspection has been extended as provided in section 2714 of this code within the time limit of such extension.

History: En. Sec. 7, Ch. 32, L. 1905; re-en. Sec. 1659, Rev. C. 1907; amd. Sec. 16, Ch. 30, L. 1913.

Cited or applied as section 1659, Revised Codes, before amendment, in Johnson v. City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1059.

CHAPTER 208.

REGULATION OF HOISTING ENGINES—LICENSES.

Section 2730. Operators of Hoisting Engines Must Procure License.
2731. Application and Fee for License—Life, Renewal, and Revocation of License.
2732. Scope of License—Who Need Not Obtain.
2733. First and Second-Class Licenses—Qualifications of Applicant.
2734. Machinery Which Licensee Deemed Qualified to Operate.
2735. Renewal of Application by Rejected Candidate.
2736. Penalty for Operating Machinery Without License.

2730. Operators of hoisting engines must procure license. It shall be unlawful for any person to operate an electric hoisting engine, or any air hoisting engine, or any hoisting engine operated by gas, oil, or any product of oil, of over five horsepower when used in lowering or hoisting men, except in operating elevators in buildings, or any air compressor operated by any power, without first obtaining a license therefor from a boiler inspector as herein provided. Except that in emergencies the provisions of section 2728 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919.

2731. Application and fee for license—Life, renewal, and revocation of license. Application for such licenses shall be made to the state boiler inspector in the manner, and the same fee shall be charged therefor and for such license, as now required by law for obtaining a license to operate steam-engines and steam-boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam-engines or steam-boilers; provided, that the state boiler inspector shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which he could revoke a license to operate steam-engines and steam-boilers.

History: En. Sec. 2, Ch. 104, L. 1915.

2732. Scope of license—Who need not obtain. A license granted under the provisions of this act shall entitle the holder thereof to operate any of the machinery named in section 2730 of this code, and the license shall specify on its face such machinery, but no license issued hereunder shall authorize or qualify the person to whom issued to operate a steam-boiler or steam-engine. Any person holding a license as a first-class

engineer, authorizing him to operate steam-boilers and steam-engines, shall be deemed qualified to operate any of the engines and machinery named in said section 2730 without obtaining any license under the provisions thereof. Any person holding a license as a second-class engineer, authorizing him to operate steam-boilers and steam-engines, shall be deemed qualified to operate any of the engines and machinery mentioned in said section 2730, where the same are not over one hundred horsepower capacity, without obtaining any license under the provisions thereof.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919.

2733. First and second-class licenses—Qualifications of applicant. Licenses issued under this act shall be divided into two classes, namely, first class and second class. No person must be granted a first-class license who has not taken and subscribed an oath that he has had at least three years' experience in the operation of at least one of the engines named in section 2730 of this code, and whose knowledge of the construction and operation is such as to justify the belief that he is competent to take charge of and operate such machinery. No person must be granted a second-class license who has not taken and subscribed an oath that he has had at least two years' experience in the operation of at least one of the engines named in section 2730 of this code, and whose knowledge of the construction and operation is such as to justify the belief that he is competent to take charge of and operate such machinery.

History: En. Sec. 4, Ch. 104, L. 1915.

2734. Machinery which licensee deemed qualified to operate. Any person to whom is granted a first-class license under the provisions of this act shall be deemed qualified to operate any of the machinery or engines named in section 2730 of this code, without regard to the horsepower thereof. Any person to whom is granted a second-class license under the provisions of this act shall not be permitted to operate any of the machinery named in said section 2730 of a greater capacity than one hundred horsepower.

History: En. Sec. 5, Ch. 104, L. 1915.

2735. Renewal of application by rejected candidate. Any person who has regularly applied for a license under the provisions of this act and has been rejected, may renew his application for such license within the time and in the manner prescribed in sections 2724 and 2725 of this code.

History: En. Sec. 6, Ch. 104, L. 1915.

2736. Penalty for operating machinery without license. Every person who operates any of the engines and machinery named in section 2730 of this code for which a license is required, without first obtaining a license as required by the provisions of this act, and every owner, employer, or manager of any such engines or machinery who knowingly permits any unlicensed person to operate the same, or any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 104, L. 1915.

CHAPTER 209.

FIRE PROTECTION—STATE FIRE MARSHAL.

Section 2737. Creation of Office of State Fire Marshal.
2738. Appointment and Term of Office.
2739. Salary.
2740. Assistant State Fire Marshal—Appointment and Salary.
2741. Marshal Not to Engage in Other Business.
2742. Special Deputy Fire Marshal.
2743. Investigation of Fires.
2744. Duty in Carrying on Investigations.
2745. Penalty for Violation of Law.
2746. Further Investigation by Marshal.
2747. Arrests by Marshal.
2748. Attendance of Witnesses and Production of Evidence.
2749. Duties of Marshal and Deputies in Case of Violation of Law—False Swearing or Contemptuous Conduct of Witnesses.
2750. Investigation May Be Private.
2751. Examination of Premises Where Fire Occurred.
2752. Entering of Buildings for Purpose of Examination.
2753. Removal of Dangerous Structure or Combustible Material—Proceedings to Compel.
2754. Appeal to State Fire Marshal.
2755. Failure of Owner of Building to Comply With Order.
2756. Records of Fire Marshal.
2757. Compensation of Officers.
2758. Itemized Statement of Marshal's Expenses.
2759. Annual Reports to Commissioner of Insurance.
2760. Oath and Bond of Marshal and Deputy.
2761. Tax Levy—Expenditure of Funds.
2762. Powers of Commissioner of Insurance.

2737. Creation of office of state fire marshal. There is hereby created and established the office of state fire marshal, which shall be a department of and under the supervision and control of the state auditor and commissioner of insurance ex-officio.

History: En. Sec. 1, Ch. 148, L. 1911.

Validity of regulations for fire protection other than building regulations, see note in 41 L. R. A. (N. S.) 456.

2738. Appointment and term of office. The state auditor and commissioner of insurance ex-officio is hereby authorized and empowered to appoint, immediately after the approval of this act, a suitable person, a citizen of this state, who shall be designated as state fire marshal, and whose term of office shall be for four years; except, that the first officer appointed under this act shall hold office until January 1, 1913, or until his successor is appointed and qualified; provided, that such officer is subject at all times to removal by the appointing power.

History: En. Sec. 2, Ch. 148, L. 1911.

2739. Salary. The salary of the state fire marshal shall be twenty-four hundred dollars per annum, payable monthly from the state fire marshal fund.

History: En. Sec. 3, Ch. 148, L. 1911; amd. Sec. 1, Ch. 122, L. 1919; Sec. 1, Ch. 131, L. 1919.

2740. Assistant state fire marshal—Appointment and salary. The state auditor is hereby authorized and empowered to appoint an assistant state fire marshal, at a salary of twenty-one hundred dollars per year, payable monthly.

History: En. Sec. 1, Ch. 126, L. 1919.

2741. Marshal not to engage in other business. The state fire marshal shall not engage in any other business. He shall at all times be in

the office of the state fire marshal, ready for the performance of the duties required of him by law.

History: En. Sec. 4, Ch. 148, L. 1911.

2742. Special deputy fire marshal. In an emergency, or during the absence or disability of the state fire marshal, the state auditor and commissioner of insurance may appoint a special deputy fire marshal, who shall perform the duties of the office, or any duty which may be assigned to him, such appointment to be temporary and to cease when the necessity therefor has been relieved. Said special deputy shall be allowed and paid at the rate of five dollars per day for each day's service performed in the interest of the state under said appointment, during the period for which said appointment was authorized. His claim for per diem for such service, and for necessary traveling expenses incurred in the performance of said duties, properly attested and sworn to, shall be filed with the commissioner of insurance or state fire marshal, who shall certify to the correctness of the same, and refer said claim, so certified, to the state board of examiners, and upon their approval, as required by law, said claim shall be paid in the usual manner; provided, that the warrant issued in payment of said claim shall be charged against the amount appropriated for the expenses of the state fire marshal's office; and provided, further, that the state auditor and commissioner of insurance may also appoint special deputy fire marshals without remuneration.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913.

2743. Investigation of fires. The state fire marshal, the chief of the fire department of each city or village in which a fire department is established, the mayor of each incorporated village in which no fire department exists, and the justice of the peace of each organized township without the limits of a village or city, shall investigate the cause, origin, and circumstances of each fire occurring in such city, village, or township, by which such property has been destroyed or damaged, and shall make an investigation to determine whether the fire was the result of carelessness or design. The investigation shall be commenced within two days, not including Sunday, if the fire occurred on that day, and the state fire marshal may superintend and direct the investigation if he deems it necessary.

History: En. Sec. 6, Ch. 148, L. 1911.

2744. Duty in carrying on investigations. The officer making an investigation of a fire occurring in a city, village, or township, shall forthwith notify the state fire marshal, and within one week of the occurrence of the fire shall furnish him a written statement of all facts relating to its cause and origin, and such other information as is required by forms provided by the state fire marshal.

History: En. Sec. 7, Ch. 148, L. 1911.

2745. Penalty for violation of law. An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter, shall be fined not less than twenty-five dollars nor more than two hundred dollars.

History: En. Sec. 8, Ch. 148, L. 1911.

2746. Further investigation by marshal. If, in his opinion, further investigation is necessary, the state fire marshal or a deputy state fire marshal shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have means of knowledge in relation to the matter concerning which an examination is required by law to be made, and cause such testimony to be reduced to writing.

History: En. Sec. 9, Ch. 148, L. 1911.

2747. Arrests by marshal. If the state fire marshal or a deputy is of the opinion that there is evidence sufficient to charge a person with arson or a similar crime, he shall arrest him or cause him to be arrested and charged with such offense. He shall furnish the prosecuting attorney such evidence, with the names of witnesses, and a copy of material testimony taken in the case.

History: En. Sec. 10, Ch. 148, L. 1911.

2748. Attendance of witnesses and production of evidence. The state fire marshal or a deputy state fire marshal may summon and compel the attendance of witnesses before him to testify in relation to any matter which by law is a subject of inquiry and investigation, and require the production of any book, paper, or document he deems pertinent.

History: En. Sec. 11, Ch. 148, L. 1911.

2749. Duties of marshal and deputies in case of violation of law—False swearing or contemptuous conduct of witnesses. If the state fire marshal or a deputy fire marshal shall be notified by any officer or other persons, or shall have knowledge of any violation of any of the provisions of this act, or of the laws of this state relating to fires, it shall be his duty forthwith diligently to inquire into the facts of such violation, and for that purpose he is hereby authorized to cause subpoenas to be issued for such persons as he shall have reason to believe have any information concerning, or knowledge of such violation, to appear before a justice of the peace at the time and place to be designated in the subpoena, then and there to testify concerning any violation of any of the provisions of such laws; and for that purpose the said state fire marshal or deputy fire marshal may file with some justice of the peace a written statement signed by said state fire marshal or deputy state fire marshal, alleging any violation of the laws of this state relating to fires, or any of the provisions of this act, and said justice of the peace shall then, upon the written praecipe of the state fire marshal or deputy state fire marshal, issue subpoena for the witness named in said praecipe, commanding such witness to be and appear before such justice of the peace at the time designated in such subpoena, to testify concerning any violation of the provisions of said laws. Such subpoenas may be served by the sheriff or any constable of the county, or by any other person who is a citizen of the county, and shall be served and returned to such state fire marshal or a deputy state fire marshal, or a justice of the peace, in the same manner that subpoenas are served and returned when issued by justices of the peace. Each witness shall be sworn to make true answers to all questions propounded to him touching the matters under investigation, and the testimony of each witness shall be reduced to writing and signed by the witness. For the purpose of this act, the state fire marshal or a deputy state fire marshal

shall have authority to administer an oath to any person appearing as a witness as above provided. False swearing in such a matter or proceeding shall be perjury and punished as such. Any disobedience to such subpoena or any refusal to be sworn as a witness, or to sign the testimony given by such witness, or any refusal to answer any proper question propounded to him, shall be a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Justices of the peace, when acting under the provisions of this act, shall have power to adjourn such proceedings from time to time, and to punish any witness for contempt for, or on account of his refusal to be sworn or to answer questions as a witness, or to sign his testimony; and the attendance of witnesses may be by such justice of the peace compelled by attachment. If the testimony so taken shall disclose the fact that an offense has been committed, the county attorney of the county in which said offense was committed shall prosecute the person or persons committing such offense in the same manner as in other criminal cases.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919.

2750. Investigation may be private. Investigation by or under the direction of the state fire marshal may, in his discretion, be private. He may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not be allowed to communicate with each other until they have been examined.

History: En. Sec. 13, Ch. 148, L. 1911.

2751. Examination of premises where fire occurred. In the performance of the duties imposed by the provisions of this chapter the state fire marshal and each of his subordinates, at all times of day or night, may enter upon and examine any building or premises where a fire has occurred, and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911.

2752. Entering of buildings for purpose of examination. The state fire marshal, his deputies and subordinates, the chief of the fire department of each city or village where a fire department is established, or the mayor of a city or village where no fire department exists, or the justice of the peace of a township in territory without the limits of a city or village, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of examination.

History: En. Sec. 15, Ch. 148, L. 1911.

2753. Removal of dangerous structure or combustible material—Proceedings to compel. Any building or other structure, which for want of proper repair, by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other cause or reason is especially liable to fire, and which building or other structure is so situated as to endanger other buildings and property, is hereby declared to

be a public nuisance. If the state fire marshal, a deputy state fire marshal, or any officer mentioned in the preceding section, upon an examination or inspection finds that a building or other structure, which for want of proper repair, by reason of age and dilapidated condition, defective or poorly installed electric wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other cause or reason is especially liable to fire, and which building or other structure is so situated as to endanger other buildings or property, such officer shall order such building or buildings to be repaired, torn down, or demolished, materials removed, and all dangerous conditions remedied.

If such officer finds in a building, or upon any premises, any combustible or explosive material, rubbish, rags, waste, oils, gasoline, or inflammable conditions of any kind, dangerous to the safety of such buildings or premises, buildings, or property, he shall order such materials removed or conditions remedied. Such order shall be made against and served personally or by registered letter upon the owner, lessee, agent, or occupant of such building or premises, and thereupon such order shall be complied with by the owner, lessee, agent, or occupant, and within the time fixed in said order.

In case any such owner, lessee, agent, or occupant shall neglect or refuse to obey any order mentioned in this section, within the time specified in such order, the state fire marshal or a deputy state fire marshal may maintain an action in the district court of the county in which such building or property is located, for the purpose of procuring an order of court that such building or other structure is a public nuisance, and an order that such building or structure be repaired, torn down, or demolished, and that all such dangerous conditions be remedied. Upon the filing of the complaint in such a proceeding in the district court, the judge thereof shall issue an order to show cause, directed to such owner, lessee, agent, or occupant, requiring him to be and appear before such court at the time and place therein specified, not less than five nor more than ten days from the date of such order, then and there to show cause why such building or structure should not be repaired, torn down, or demolished, and all dangerous conditions removed. And upon the hearing by the court, if it shall be shown that such building or other structure is especially liable to fire, and is so situated as to endanger other buildings or property, and that such dangerous conditions should be remedied, the court shall make a summary order directing that such building or structure be repaired, torn down, or demolished, and that such dangerous conditions be remedied. Such order shall specify a reasonable time within which such owner, lessee, agent, or occupant shall comply. Any failure to obey any such order of court shall be punished as a contempt. In case such order of court is not complied with in the time specified, the state fire marshal or deputy state fire marshal may, upon order of the court, repair, tear down, or demolish such buildings or other structure, and remedy all dangerous conditions at the expense of such owner, lessee, agent, or occupant.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919.

Right of municipality to prohibit accumulation of inflammable material in fire limits, see note in Ann. Cas. 1913E, 435.

2754. Appeal to state fire marshal. If the owner or occupant deems himself aggrieved by an order of an officer under the preceding section, he may appeal to the state fire marshal within twenty-four hours, and the cause of the complaint shall at once be investigated by direction of the state fire marshal. Unless such order is revoked by the state fire marshal, it shall remain in force and forthwith be complied with by such owner or occupant.

History: En. Sec. 17, Ch. 148, L. 1911.

2755. Failure of owner of buildings to comply with order. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in the three preceding sections shall be fined not less than ten dollars nor more than fifty dollars for each day's neglect.

History: En. Sec. 18, Ch. 148, L. 1911.

2756. Records of fire marshal. The state fire marshal shall keep in his office a record of all fires occurring in the state, the origin of such fires, and all facts, statistics, and circumstances relating thereto, which have been determined by investigations under the provisions of this chapter. Except the testimony given upon an investigation, such record shall be open at all times to public inspection.

History: En. Sec. 19, Ch. 148, L. 1911.

2757. Compensation of officers. Chiefs of fire departments and mayors of incorporated villages who do not receive compensation for their services, and justices of the peace of organized townships, who are required by the provisions of this chapter to report fires to the state fire marshal, shall receive fifty cents for each fire reported to his satisfaction, and fifteen cents per mile for each mile traveled to the place of the fire. At the close of each appropriation year such allowance shall be paid in the same manner as other claims arising in the state fire marshal's department, and as heretofore provided for in this act.

History: En. Sec. 20, Ch. 148, L. 1911.

2758. Itemized statement of marshal's expenses. The state fire marshal shall keep on file in his office an itemized statement of all expenses incurred by the department. He shall approve all vouchers issued therefor before they are submitted to the state board of examiners for payment, and thereupon such vouchers shall be allowed and paid as other claims against the state.

History: En. Sec. 21, Ch. 148, L. 1911.

2759. Annual reports to commissioner of insurance. The state fire marshal shall make an annual report to the commissioner of insurance, containing a detailed statement of his official action and the transactions of his department. The commissioner of insurance shall, in turn, submit said report to the governor of the state, with such recommendations and comments thereon as he may deem necessary.

History: En. Sec. 22, Ch. 148, L. 1911.

2760. Oath and bond of marshal and deputy. The state fire marshal shall be required to give a surety bond, furnished by a company author-

ized to transact surety business in this state, in the sum of five thousand dollars, for the faithful performance of his duties, and shall subscribe and file therewith the oath of office required of all public officers; and, provided, further, that any special deputy fire marshal appointed under the provisions of this act shall also file the oath of office required of all public officers.

History: En. Sec. 23, Ch. 148, L. 1911.

2761. Tax levy—Expenditure of funds. For the purpose of maintaining the department of the state fire marshal and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the state auditor and commissioner of insurance ex-officio, during the month of February or March in each year, in addition to the license fees required by law to be paid by it, provided in section 6112 of these codes, a tax of one-fourth of one per cent. on the gross premium receipts of such companies, less cancellations and return premiums, on all business transacted by it in the state of Montana during the calendar year next preceding, as shown by its annual statement under oath to the insurance department. The state auditor and commissioner of insurance ex-officio shall pay the money so received into the state treasury to the credit of a special fund for the maintenance of the office of the state fire marshal, to be known as the "state fire marshal fund." If any portion of such special fund remains unexpended at the end of the year for which it was required to be paid, and the state fire marshal so certifies, it shall be transferred to the general fund of the state; provided, that such salaries, compensation of special deputies or clerks, and all other expenses of the department of the state fire marshal, necessary in the performance of the duties imposed on him by law, shall not exceed in any year the amount paid into the state treasury for that year by fire insurance companies, as provided herein.

History: En. Sec. 24, Ch. 148, L. 1911.

2762. Powers of commissioner of insurance. The powers and authority granted by this act to the state fire marshal are also vested in the commissioner of insurance.

History: En. Sec. 25, Ch. 148, L. 1911.

CHAPTER 210.

FOREST FIRE PROTECTION—FIRE WARDENS.

Section 2763. Definition of Terms.
2764. Ex-Officio Fire Wardens—Designation and Compensation.
2765. Permits for Burning Forest Material—Penalty for Violation of Section.
2766. Penalty for Setting or Leaving Fire Causing Damage.
2767. Arrest Without Warrant of Persons Violating Act.
2768. Duty of County Attorney to Prosecute Offenders—Failure of County Attorney or Magistrate to Comply With Duty.
2769. Liability of Offenders for Damages and Costs.
2770. Disposition of Fines.
2771. Disposition of Brush, Slashings, etc., of Cut Timber.
2772. Brush, Slashings, and Inflammable Materials to Be Burned, When.
2773. Period During Which Materials Shall Not Be Burned Without Permit.
2774. Violation of Act a Misdemeanor—Penalty.
2775. Duties of State Forester and Fire Wardens.
2776. State Fire Wardens.
2777. Deputy Fire Wardens.
2778. Expenses and Expenditures—How Paid.

2763. Definition of terms. In this act, unless the context or subject-matter otherwise requires, the word "forester" shall mean the state forester, or any of his subordinate officers; "warden" shall be held to mean "fire warden"; "ranger" to mean "forest ranger," or any duly appointed forest officer of the United States forest service; "rangers" shall be held to mean "forest rangers"; "person" shall be held to include "firm or corporation"; and "forest material" shall be held to mean "forest, slashing, stump land, chopping, woodland, or brush land"; "camp-fire" shall be held to mean "any fire set for any purpose other than the disposal of forest material."

History: En. Sec. 1, Ch. 170, L. 1919.

Validity and construction of legislation respecting forestry, see notes in Ann. Cas. 1917A, 5, 38, 40, 46; Ann. Cas. 1918E, 709.

2764. Ex-officio fire wardens—Designation and compensation. All duly appointed officers of the United States forest service, the northern Montana forestry association, and the United States Indian service, are hereby made ex-officio fire wardens, and shall have authority to enforce and carry out the provisions of this act. Said officers are to serve without compensation from the state.

History: En. Sec. 2, Ch. 170, L. 1919.

2765. Permits for burning forest material—Penalty for violation of section. No person shall burn any forest material within the state of Montana during the period from June 1st to September 30th, inclusive, of each year, which period is hereby designated as the closed season, without first obtaining permission in writing from the forester, a warden, or a ranger, and afterward complying with the terms of said permit; said permit shall fix the time for setting out fires on any three consecutive days therein named, and no fire shall be set out later than ten days from date of said permit, and no such fires shall be set at a time when the wind is blowing to such an extent as to cause danger of same spreading beyond the control of the person setting said fire, and without sufficient help and tools present at time of setting and thereafter until out, to control the same, and the said fire shall be watched by the person setting the fire until the same is out; and any one violating any provision contained in the preceding portions of this section shall, upon conviction thereof, be fined not less than twenty-five dollars nor more that five hundred dollars, or be imprisoned in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment.

The forester, any of his assistants, any warden or ranger, may, at his discretion, refuse, revoke, or postpone the use of permits to burn, when such action is clearly necessary for the safety of adjacent property; provided, that the provisions of this section shall not apply to any actual settler engaged in clearing his land for agricultural purposes, and shall not apply where the brush is piled up and there is a clear space of thirty feet around such pile, but shall apply to all burning of slashings.

History: En. Sec. 3, Ch. 170, L. 1919.

2766. Penalty for setting or leaving fire causing damage. Any person who shall, upon any land within this state, set or leave any fire that shall spread and damage or destroy property of any kind not his own, shall, upon conviction, be punished by a fine of not less than ten dollars

nor more than five hundred dollars. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony, and shall be punished by imprisonment in the state penitentiary for not less than one nor more than fifty years.

During the closed season, any person who shall kindle a camp-fire on land not his own, in or dangerously near any forest material, and leave same unquenched, or who shall be a party thereto, or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms, or in any other manner start a fire in forest material not his own, and leave same unquenched, shall, upon conviction, be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding sixty days.

History: En. Sec. 4, Ch. 170, L. 1919.

Liability of state for fire negligently set by state forester, see note in Ann. Cas. 1917A, 40.

2767. Arrest without warrant of persons violating act. The forester, his assistants, wardens, rangers, and all police officers are hereby empowered to make arrests without warrant of persons violating this act.

History: En. Sec. 5, Ch. 170, L. 1919.

2768. Duty of county attorney to prosecute offenders—Failure of county attorney or magistrate to comply with duty. Whenever an arrest shall have been made for a violation of any of the provisions of this act, or whenever information of such violation shall have been lodged with him, the prosecuting attorney of the county in which the criminal act was committed shall prosecute the offender or offenders with all diligence and energy. If any county attorney shall fail to comply with the provisions of this act, he shall be guilty of a misdemeanor, and, upon his conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars; and upon his conviction the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof. Action against the county attorney shall be brought by the attorney-general in the name of the state of Montana. The penalties of this section shall also apply to any magistrate, with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons, when a complaint under oath of a violation of any of the provisions of this act has been lodged with him.

History: En. Sec. 6, Ch. 170, L. 1919.

2769. Liability of offenders for damages and costs. Any person who shall, upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own, shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall, upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property, shall be liable for all costs and expenses incurred by the state of Montana, or by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: En. Sec. 7, Ch. 170, L. 1919.

2770. Disposition of fines. All fines collected under this act shall be paid to the county treasury of the county in which the offense was committed for the benefit of the common school fund of such county.

History: En. Sec. 8, Ch. 170, L. 1919.

2771. Disposition of brush, slashings, etc., of cut timber. Any person, firm, or corporation who shall hereafter cut or remove any timber, logs, ties, poles, wood, or other forest products from lands within the state of Montana, whether public or private, shall burn or otherwise dispose of the brush, slashings, and all inflammable materials incident to such cuttings, within one year from the date of such cuttings.

History: En. Sec. 1, Ch. 179, L. 1919.

2772. Brush, slashings, and inflammable materials to be burned, when. All owners of lands in the state of Montana from which there has been cut or removed since the first day of October, 1918, any timber, logs, ties, poles, wood, or other forest products, and upon which there is now any brush, slashings, or other inflammable materials incident to such cuttings, shall, within two years from the passage of this act, burn or otherwise dispose of such brush, slashings, or other inflammable materials.

History: En. Sec. 1a, Ch. 179, L. 1919.

2773. Period during which materials shall not be burned without permit. None of such materials referred to in the preceding sections shall be burned during the period from June 1st to September 30th, inclusive, of each year, without first obtaining permission in writing from the state forester, or one of his subordinate officers. Such permit shall fix the time for burning such materials, and the rules and regulations under which such materials shall be burned; provided, however, that the provisions of this act shall not apply to any actual settler engaged in clearing his land for agricultural purposes, but shall apply to all burning of slashings.

History: En. Sec. 2, Ch. 179, L. 1919.

2774. Violation of act a misdemeanor—Penalty. Any person, firm, or corporation failing to comply with or violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than twenty-five dollars nor more that five hundred dollars, or by imprisonment in the county jail not less than ten days nor more than ninety days, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 179, L. 1919.

2775. Duties of state forester and fire wardens. Other duties of the state forester and fire wardens appointed by him, relating to the control and prevention of fire are prescribed by sections 1830-1839 of this code.

Note.—New section recommended by code commissioner.

2776. State fire warden. There is hereby created the office of state fire warden, and the state game and fish warden is hereby made ex-officio state fire warden to serve as such state fire warden without additional salary.

History: En. Sec. 1, Ch. 147, L. 1907; sec. 2071, Rev. C. 1907.

2777. Deputy fire wardens. All of the deputy state game and fish wardens shall be deputy fire wardens to serve without extra salary, and

said state fire warden and said deputies shall, under such rules and regulations as the state board of land commissioners shall provide, protect the timber of the state, and especially the timber owned by the state, from destruction by fire, and for such purpose in emergencies may employ men and incur other expenses when necessary, and such fire warden and deputies shall have power and authority to make arrests of any person or persons who may violate any of the laws of this state relating to prairie or forest fires.

History: En. Sec. 2, Ch. 147, L. 1907; Sec. 2072, Rev. C. 1907.

2778. Expenses and expenditures—How paid. The actual expenses and expenditures of said fire warden and deputies necessarily incurred under this act shall be paid in the same manner as other expenses incurred in managing the state lands and the state auditor is hereby authorized to draw his warrants for such expenses and expenditures and the state treasurer is hereby directed to pay the same.

History: En. Sec. 3, Ch. 147, L. 1907; sec. 2073, Rev. C. 1907.

CHAPTER 211.

FIRE ESCAPES FOR HOTELS.

Section 2779. Fire Escapes—Duty to Provide on Public Buildings.
2780. Adequate Fire Escapes Defined.
2781. Guide Signs and Exit Lights.
2782. Fire Marshal to Enforce Act.
2783. Inspection—Notice to Owners.
2784. Penalty for Violation of Act.
2785. Action to Enjoin Occupancy of Building.

2779. Fire escapes—Duty to provide on public buildings. It shall be the duty of the owner entitled to the beneficial use, rental or control, or, if such owner be a non-resident, the occupant or lessee, of any building three or more stories in height, constructed or used, or intended to be used, in whole or in part, as a hospital, seminary, college, academy, schoolhouse, dormitory, hotel, lodging house, apartment house, rooming house, boarding house, theater or any place of public amusement, lodge hall, or any hall, used for public gatherings, or any manufacturing establishment or industrial plant, wholesale or retail mercantile store, workshop, warehouse, office building, and any building erected by municipal, county or state authority, wherein public assemblies are permitted, or sleeping apartments are provided on any floor above the second, to cause to be erected and fixed to every such building one or more adequate fire escapes, which in no case shall be less than one such escape to each five thousand square feet of lot area covered by such building; provided, that any building six or more stories in height shall have at least two such fire escapes to each five thousand square feet of lot area covered by such building; provided, that where the area and height of any building is such that the construction of one fire escape will meet the requirements of this act, and it is elected to construct an interior stairway-type escape, then, in such case, there shall be provided at least one other exit from each floor of said building, which exit shall be placed as remote from the entrance to the fire escape as is consistent with the construction of the building; and provided, further, that all fire escapes possible, consistent with accessibility, from stairways, elevator hatchways, and other openings

in the floors, and as far apart as is consistent with the construction and location of the building; provided, that it shall be the duty of the owner entitled to the beneficial use, rental or control, or if such owner be a non-resident, the occupant or lessee, of any building two stories in height, already erected or which may hereafter be erected and used in whole or in part as a hotel, school, dormitory, theater or hospital, to cause to be erected an adequate number of stairways, or fire escapes which, in no case, shall be less than one, and one additional stairway or fire escape for each five thousand square feet of lot area covered by such building in excess of ten thousand square feet, which stairways or fire escapes shall be located as remote from each other as possible, and be easy of access from all parts of the building. A basement of any building that extends five feet or more above grade line shall be considered a story within the meaning of this act.

History: En. Sec. 1, Ch. 98, L. 1921.

Note.—Earlier acts were sections 2505, 2506, Civil Code 1895; amended sections 1, 2, chapter 53, Laws of 1907; sections 5169, 5170, Revised Codes 1907; chapter 213, Laws of 1919.

Duty to provide fire escapes on hotels, see note in 119 A. S. R. 792.

Constitutionality of statutes requiring fire escapes, see note in 2 Ann. Cas. 780.

Scope and import of term "owner" in statutes requiring construction of fire escapes, see note in 2 A. L. R. 801.

Innkeeper's liability for death of guest due to failure to provide fire escape, see note in Ann. Cas. 1917E, 852.

2780. Adequate fire escapes defined. An adequate fire escape, provided for in the preceding section is defined to be a concrete stairway, an iron or steel stairway, an iron or steel straight chute, or which may be constructed of other fireproof material of equal strength, to which there shall be free, unoccupied and unobstructed passage, and free, unoccupied and unobstructed egress and ingress to and from the interior of the building, and may be erected on the exterior or interior of any building requiring fire escapes; provided, however, where outside stairways do not reach the ground, same must have an iron stairway from the lowest balcony to the ground, counter-balanced so that same shall remain in a horizontal position when not in use. This stair must be constructed in the same manner and of the same material as those of the upper balconies. When a suspended weight is used as a counter-balance, proper guides or places must be provided. It is hereby made the duty of the state fire marshal to prepare and promulgate minimum specifications for the construction and erection of each type of fire escape authorized by this act, which specifications shall be based upon a working stress of not less than sixteen thousand pounds to the square inch for steel, twelve thousand pounds to the square inch for wrought iron, and seven hundred pounds to the square inch for concrete; provided, that specifications for interior fire escapes shall require that they be inclosed with non-combustible material, and that all door and window openings be properly protected with self-closing, fire-proof shutters and that all stairway escapes, interior and exterior be continuous and suitably connected with the roof of the building. No fire escape shall be approved as complying with the provisions of this act, the material and erection of which are not at least the equivalent of the minimum specifications promulgated by the state fire marshal as herein provided. It shall also be the duty of the state fire marshal to prepare and promulgate minimum specifications for the construction of

stairways required for buildings two stories in height, as set forth in the preceding section, which stairways may be constructed of wood or other material and located on the interior or exterior of the building, but shall not be required to be inclosed.

History: En. Sec. 2, Ch. 98, L. 1921.

2781. Guide signs and exit lights. It shall be the duty of the owner entitled to the beneficial use, rental or control; or if the owner be a non-resident, the occupant or lessee of any building used or intended to be used, as described in section 2779, where fire escapes are required, also to provide and maintain, in good condition at all times, therein, proper guide signs and exit lights, which signs and lights shall be of a sufficient number on each floor to indicate the location of fire escapes and all entrances thereto. And it shall be unlawful to obstruct in any manner whatsoever any fire escape required by the provisions of this act, or any hallway, corridor, or entrance-way leading thereto.

History: En. Sec. 3, Ch. 98, L. 1921.

2782. Fire marshal to enforce act. The state fire marshal shall have general charge and supervision of the enforcement of the provisions of this act, and, for this purpose, it is hereby made the duty of any inspector under the jurisdiction of the state fire marshal or any person authorized to act in his stead, to assist the state fire marshal in giving effect to the terms and provisions hereof, and shall be subject to his direction and to the rules and regulations adopted for its enforcement.

History: En. Sec. 4, Ch. 98, L. 1921.

2783. Inspection—Notice to owners. It shall be the duty of the state fire marshal, his deputies, and subordinates, the chief of the fire department of each city or village where a fire department is established, or the mayor of a city or village where no fire department exists, or the justice of the peace of a township in territory without the limits of a city or village, to enter into all buildings, and upon all premises within his jurisdiction, for the purpose of the examination of such premises for violations of this act, and when any building shall be found which requires the erection of fire escapes, and upon which fire escapes have not been erected according to the provisions of this act, to serve a written notice upon the party or parties whose duty it is to erect such fire escapes, which notice shall specify the time within which said fire escapes shall be erected, and which in no case shall be more than ninety days; and said notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the postoffice, directed to the last known address of the person to be notified. In case of buildings within the terms of this act, that are managed and controlled by a board of trustees, board of commissioners, or other governing body, notice may be served on the president, secretary, or treasurer of such board of trustees, board of commissioners, or other governing body, to cause the erection of fire escapes on said buildings, as may be required; provided, that the occupant or lessee of any building is required to erect fire escapes under the provisions of this act, shall be entitled to reimburse himself for the cost and expense of erecting said fire escapes out of the rent or lease money of said premises, and such reimbursement shall not be

construed to be a breach of any existing lease, contract, or any covenant thereof nor grounds for any action or damages ouster.

History: En. Sec. 5, Ch. 98, L. 1921.

2784. Penalty for violation of act. Any person failing, neglecting, or refusing to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars, and each days' failure to comply with any of the provisions of this act, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense, and it shall be the duty of the state fire marshal or any person authorized to act in his stead, to file complaint for violations of the provisions of this act in any court of competent jurisdiction within the county where said violations occur, and it shall be the duty of the county attorney of such county to forthwith prosecute all such complaints so filed.

History: En. Sec. 6, Ch. 98, L. 1921.

2785. Action to enjoin occupancy of building. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty so to do to erect fire escapes in accordance with this law, the attorney-general of the state, or any county attorney of the county where any such building is located, shall bring an action against the owner, lessee, and occupants of any such building for an injunction enjoining the further occupancy of such building until compliance with this act. Such action may be brought in the county where such building is located.

History: En. Sec. 7, Ch. 98, L. 1921.

CHAPTER 212.

REGULATIONS OF THE MANUFACTURE AND SALE OF EXPLOSIVES.

Section 2786. Definitions.
2787. Prohibitions and Exceptions.
2788. Quantity and Distance Table.
2789. Maximum Allowed.
2790. Reduction of Distances.
2791. Containers.
2792. Magazines.
2793. Blasting Caps.
2794. Certificate of Compliance.
2795. License.
2796. Inspection.
2797. Who May Enter.
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2800. Penalties.
2801. Possession of Shells or Bombs for Unlawful Purpose.
2802. Effect of Unconstitutionality of Act.
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2805. Explosives, Misrepresentation Concerning Percentage of Nitro-Glycerine.
2806. Regulating Sales of Explosives.
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2809. Construction and Location of Magazines.
2810. Magazines, etc., to Bear Warning Signs.
2811. Transportation of Explosives.
2812. Careless Use of Explosives.
2813. Penalties.
2814. Penalty When Death Caused by Violation of This Act.
2815. Sales of Explosives After Dark.

2786. Definitions. The term "explosive" or "explosives" whenever used in this act shall be held to mean and include any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb.

The word "magazine" as used herein means any building or other structure, other than a factory building, used for the storage of explosives.

The term "building" or "buildings" as used herein shall be held to mean and include only a building or buildings occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble.

The term "factory building" as used herein shall be held to mean any building or other structure containing explosives in which the manufacture of explosives or any part of the manufacture is carried on.

The term "railroad" as used herein shall be held to mean and include any steam, electric or other railroad which carries passengers for hire.

The term "highway" as used herein shall be held to mean and include any public street, public alley or public road.

The term "efficient artificial barricade" as used herein shall be held to mean an artificial mound or properly riveted wall of earth of a minimum thickness of not less than three feet.

The term "person" as used herein shall be held to mean and include firms and corporations, as well as natural persons.

Words used in the singular number shall include the plural, and the plural the singular.

History: En. Sec. 1, Ch. 129, L. 1917.

Police power to regulate use, storage, or transportation of explosives within city limits, see note in 108 A. S. R. 356.

2787. Prohibitions and exceptions. No person shall manufacture, have, keep, or store explosives in this state, except in compliance with this act, except that explosives may be manufactured without compliance with this act in the laboratories of schools, colleges and similar institutions, for the purpose of investigation and instruction.

It shall be unlawful to sell, give away, or otherwise dispose of, or deliver to any person under eighteen years of age any explosives, whether said person is acting for himself or for any other person.

History: En. Sec. 2, Ch. 129, L. 1917.

2788. Quantity and distance table. All factory buildings and magazines in which explosives are had, kept, or stored, must be located at distances from buildings, railroads and highways in conformity with the following quantity and distance table, and this table shall be the basis on which applications for certificate of compliance, as provided in section 2794, shall be made and the certificate of compliance issued; provided that the quantity and distance table may be disregarded and a certificate of com-

pliance may be issued for two second-class magazines (see section 2792) in any building not otherwise prohibited by law, if the contents and location of the magazine are as follows: (a) One second-class magazine containing not more than fifty pounds of explosives may be allowed if the said second-class magazine is placed on wheels and located not more than ten feet from, on the same floor with and directly opposite to the entrance on the floor nearest the street level; (b) One second-class magazine containing not more than five thousand blasting caps may be allowed if the said second-class magazine is placed on wheels and located on the floor nearest the street level.

The quantity and distance table governing the manufacture, keeping, and storage of explosives is as follows:

QUANTITY AND DISTANCE TABLE.

Column One				Column Two	Column Three	Column Four
Quantity that may be had, kept or stored				Distance from Nearest Building	Distance from Nearest Railway	Distance from Nearest Highway
Blasting and Electric Blasting Caps		Other Explosives				
Number Over	Number not Over	Pounds Over	Pounds not Over	Feet	Feet	Feet
1,000	5,000			30	20	10
5,000	10,000			60	40	20
10,000	20,000			120	70	35
20,000	25,000		50	145	90	45
25,000	50,000	50	100	240	140	70
50,000	100,000	100	200	360	220	110
100,000	150,000	200	300	520	310	150
150,000	200,000	300	400	640	380	190
200,000	250,000	400	500	720	430	220
250,000	300,000	500	600	800	480	240
300,000	350,000	600	700	860	520	260
350,000	400,000	700	800	920	550	280
400,000	450,000	800	900	980	590	300
450,000	500,000	900	1,000	1,020	610	310
500,000	750,000	1,000	1,500	1,060	640	320
750,000	1,000,000	1,500	2,000	1,200	720	360
1,000,000	1,500,000	2,000	3,000	1,300	780	390
1,500,000	2,000,000	3,000	4,000	1,420	850	420
2,000,000	2,500,000	4,000	5,000	1,500	900	450
2,500,000	3,000,000	5,000	6,000	1,560	940	470
3,000,000	3,500,000	6,000	7,000	1,610	970	490
3,500,000	4,000,000	7,000	8,000	1,660	1,000	500
4,000,000	4,500,000	8,000	9,000	1,700	1,020	510
4,500,000	5,000,000	9,000	10,000	1,740	1,040	520
5,000,000	7,500,000	10,000	15,000	1,780	1,070	530
7,500,000	10,000,000	15,000	20,000	1,950	1,170	580

QUANTITY AND DISTANCE TABLE—(Continued).

Column One				Column Two	Column Three	Column Four
Quantity that may be had, kept or stored				Distance from Nearest Building	Distance from Nearest Railway	Distance from Nearest Highway
Blasting and Electric Blasting Caps		Other Explosives				
Number Over	Number not Over	Pounds Over	Pounds not Over	Feet	Feet	Feet
10,000,000	12,500,000	20,000	25,000	2,110	1,270	630
12,500,000	15,000,000	25,000	30,000	2,260	1,360	680
15,000,000	17,500,000	30,000	35,000	2,410	1,450	720
17,500,000	20,000,000	35,000	40,000	2,550	1,530	760
		40,000	45,000	2,680	1,610	800
		45,000	50,000	2,800	1,680	840
		50,000	55,000	2,920	1,750	880
		55,000	60,000	3,030	1,820	910
		60,000	65,000	3,130	1,880	940
		65,000	70,000	3,220	1,940	970
		70,000	75,000	3,310	1,990	1,000
		75,000	80,000	3,390	2,040	1,020
		80,000	85,000	3,460	2,080	1,040
		85,000	90,000	3,520	2,120	1,060
		90,000	95,000	3,580	2,150	1,080
		95,000	100,000	3,630	2,180	1,090
		100,000	125,000	3,670	2,200	1,100
		125,000	150,000	3,800	2,280	1,140
		150,000	175,000	3,930	2,360	1,180
		175,000	200,000	4,060	2,440	1,220
		200,000	225,000	4,190	2,520	1,260
		225,000	250,000	4,310	2,590	1,300
		250,000	275,000	4,430	2,660	1,340
		275,000	300,000	4,550	2,730	1,380

History: En. Sec. 3, Ch. 129, L. 1917.

2789. Maximum allowed. No quantity in excess of three hundred thousand pounds, or in case of blasting caps no number in excess of twenty million caps, shall be had, kept or stored in any factory building or magazine in this state.

History: En. Sec. 4, Ch. 129, L. 1917.

2790. Reduction of distances. Whenever the building, railroad or highway to be protected is effectually screened from the factory, building or magazine, where explosives are had, kept or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the top of any side wall of the factory building or magazine to any part of the building to be protected, will pass through such intervening natural or efficient artificial barricade, and

any straight line drawn from the top of any side wall of the factory building or magazine to any point twelve feet above the center of the railroad or highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distances given in columns 2, 3 and 4 of the quantity and distance table may be reduced one-half.

History: En. Sec. 5, Ch. 129, L. 1917.

2791. Containers. Except only at a factory building, and except while being used, no person shall have, keep or store explosives at any place within this state unless such explosives are completely enclosed or encased in tight metallic, wooden or fibre containers, and, except while being transported or used or in the custody of a common carrier awaiting shipment or pending delivery to consignee during the time permitted by federal law, explosives shall be kept and stored in a magazine constructed and operated as provided in the following section, and no person having explosives in his possession or control shall, under any circumstances, permit or allow any grains or particles to be or remain on the outside or about the containers in which such explosives are held. All containers in which explosives are held shall be plainly marked with the name of the explosive contained therein.

History: En. Sec. 6, Ch. 129, L. 1917.

2792. Magazines. Magazines in which explosives may lawfully be kept or stored shall be of two classes, as follows:

(a) Magazines of the first class shall consist of those containing explosives exceeding fifty pounds, and shall be constructed of brick, concrete, iron, or wood, covered with iron, and shall have no openings except for ventilation and entrance. The doors of such magazine must at all times be kept closed and locked, except when necessarily open for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. Every such magazine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks of fire through the same. Upon each end of such magazine, above the side walls thereof, or upon its barricade, there shall at all times be conspicuously posted a sign with the words "Magazine—Explosives—Dangerous" legibly printed thereon in letters not less than six inches high. No matches or fire of any kind shall at any time be permitted at any such magazine. No package of explosives shall at any time be opened within fifty feet of any magazine, nor shall any explosives be kept therein except in the original containers. Magazines in which more than fifty pounds of explosives are kept and stored must be detached from other structures, and magazines where more than five thousand pounds of explosives are kept and stored must be located at least two hundred feet from any other magazine, and magazines where quantities of explosives over twenty-five thousand pounds are kept and stored must have an increase over two hundred feet of two and two-thirds feet for each one thousand pounds of explosives in excess of twenty-five thousand pounds stored therein; provided, that where magazines are protected one from the other by natural or efficient artificial barricade, the distance above specified may be reduced one-half.

(b) Magazines of the second class shall be made of fire-proof material or wood, covered with sheet iron, and no more than fifty pounds of explosives shall at any time be kept or stored therein, and, except when necessarily opened for use by authorized persons, shall at all times be kept securely locked. Upon each magazine there shall at all times be kept conspicuously posted a sign with the words "Magazine—Explosives—Dangerous" legibly printed thereon, and not more than two such magazines shall be had or kept in any building.

History: En. Sec. 7, Ch. 129, L. 1917.

2793. Blasting caps. No blasting caps, or other detonating or fulminating caps, or detonators, shall be kept or stored in any magazine in which other explosives are kept or stored.

History: En. Sec. 8, Ch. 129, L. 1917.

2794. Certificate of compliance. All persons engaged in keeping or storing explosives on the date when this act takes effect shall within sixty days thereafter, and all persons engaging in keeping or storing explosives after this act takes effect shall, before engaging in the keeping or storing of explosives, make a report in writing, subscribed to by such persons, or his agent, to the state fire marshal stating:

(1) The location of the magazine, if then existing or in case of a new magazine, the proposed location of such magazine.

(2) The kind of explosives that are kept or stored or intended to be kept or stored, and the maximum quantity that is intended to be kept or stored thereat.

(3) The distance that such magazine is located or intended to be located from the nearest buildings, railroads, and highways.

The state fire marshal shall, as soon as may be after receiving such report cause an inspection to be made of the magazine, if then constructed, and in the case of a new magazine as soon as may be after same is found to be constructed in accordance with the specifications provided in section 2792 of this code, the state fire marshal shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance table set forth in section 2788 of this code, and shall issue a certificate to the person applying therefor, showing compliance with the provisions of this act, which certificate shall set forth the maximum quantity of explosives that may be had, kept or stored in said magazine. Such certificate of compliance shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical condition surrounding said magazine at the time of the issuance of the certificate of compliance therefor, such as

(a) The erection of buildings nearer said magazine,

(b) The construction of railroads nearer said magazine, or

(c) The opening for public travel of highways nearer said magazine, then the amounts of explosives which may be lawfully had, kept or stored in said factory or magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the certificate of compliance, and the state fire marshal shall modify or cancel such certificate in accordance with the changed condi-

tions. Whenever any person to whom a certificate of compliance has been issued, keeps or stores in the magazine covered by such certificate of compliance, any quantity of explosives in excess of the maximum amount set forth in said certificate of compliance, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the state fire marshal is authorized to cancel such certificate of compliance. Whenever a certificate of compliance is canceled by the state fire marshal for any cause hereinbefore specified, the state fire marshal shall notify the person to whom such certificate of compliance is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine within the time specified in said notice shall constitute a violation of this act.

History: En. Sec. 9, Ch. 129, L. 1917.

2795. License. Every person engaging in the keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the state fire marshal according to the quantity kept or stored therein, of not less than one dollar nor more than twenty-five dollars. Said license fee shall be payable in advance to the state fire marshal and by him paid to the state treasurer.

History: En. Sec. 10, Ch. 129, L. 1917.

2796. Inspection. The state fire marshal shall make, or cause to be made, at least one inspection during every year, of each licensed factory or magazine.

History: En. Sec. 11, Ch. 129, L. 1917.

2797. Who may enter. No person, except an official as authorized herein or a person authorized to do so by the owner thereof, or his agent, shall enter any factory, building, magazine, or car containing explosives in this state.

History: En. Sec. 12, Ch. 129, L. 1917.

2798. Transportation. Every vehicle while carrying explosives shall display upon an erect pole at the front end of such vehicle and at such height that it shall be visible from all directions, a red flag with the word "danger" printed, stamped or sewed thereon, in white letters at least six inches in height or in lieu of such flag the words "explosives—dangerous" must be painted on, or attached to the end and each side of such vehicle in white letters at least six inches in height.

It shall be unlawful for any person in charge of a vehicle containing explosives to smoke in or upon such vehicle, to drive the vehicle while intoxicated, to drive the vehicle in a careless or reckless manner, or to load or unload such vehicle in a careless or reckless manner.

It shall be unlawful for any person to place or carry or cause to be placed or carried, any metal tool or other similar piece of metal, in the bed or body of a vehicle containing explosives.

It shall be unlawful for any person to place or carry or cause to be placed or carried, in the bed or body of any vehicle containing explosives,

any exploders, detonators, blasting caps, or other explosive material, or to carry in or upon any such vehicle any matches.

History: En. Sec. 13, Ch. 129, L. 1917.

2799. Fire arms. No person shall discharge any fire arms at or against any magazine or factory building.

History: En. Sec. 14, Ch. 129, L. 1917.

2800. Penalties. Except as otherwise provided in this act, whoever fails to comply with or violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars.

History: En. Sec. 15, Ch. 129, L. 1917.

2801. Possession of shells or bombs for unlawful use. Any person who shall have in his possession or control any shell, bomb or similar device, charged or filled with one or more explosives, intending to use the same or cause the same to be used for an unlawful purpose, shall be deemed guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not less than five years nor more than twenty-five years. The possession or control by any person, of any such device, so charged or filled, shall be deemed prima facie evidence of an intent to use the same, or cause the same to be used for an unlawful purpose.

History: En. Sec. 16, Ch. 129, L. 1917.

2802. Effect of unconstitutionality of act. In case any provision of this act shall be adjudged unconstitutional, or void for any other reason, such adjudication shall not affect any of the other provisions of this act.

History: En. Sec. 17, Ch. 129, L. 1917.

2803. Exemptions. Nothing contained in this act shall apply to the regular military or naval forces of the United States, nor the duly authorized militia of any state or territory thereof, nor to the police or fire departments of this state, or of any municipality or county within this state, providing the same are acting in their official capacity, and in the proper performance of their duties.

Nothing contained in this act shall apply to explosives while being transported upon vessels or railroad cars in conformity with the regulations adopted by the interstate commerce commission; nor to transportation or use of blasting explosives for agricultural or prospecting purposes in quantity not exceeding two hundred pounds at any one time; nor to any explosives in quantities not exceeding five pounds at any one time; nor to any person or persons carrying ammunition in reasonable amounts.

History: En. Sec. 18, Ch. 129, L. 1917.

2804. Existing ordinances not affected. Nothing contained in this act shall affect any existing ordinance, rule or regulation of any city or municipality not less restrictive than this act governing the manufacture, storage, and sale of explosives, or affect, modify, or limit the power of cities or municipalities in this state to make ordinances, rules, or regulations not less restrictive than this act, governing the manufacture,

storage, sale, use, or transportation of explosives within their respective corporate limits.

History: En. Sec. 19, Ch. 129, L. 1917.

2805. Explosives, misrepresentations concerning percentage of nitro-glycerine. Any person or corporation engaged in the business of selling blasting or giant powder by whatever name the same shall be known containing nitro-glycerine, or equivalent explosive compound in any form, who shall sell or vend any such blasting powder upon the representation that the same contains a certain percentage or proportion of nitro-glycerine, or equivalent explosive compound, or who being applied to for blasting powder containing a certain percentage or proportion of nitro-glycerine or equivalent explosive compound shall sell or deliver any such blasting powder, containing a less percentage or proportion of nitro-glycerine, or equivalent explosive compound, than represented or than such powder as was applied for, shall be deemed guilty of a misdemeanor and, on conviction, shall be punished by a fine of not more than one thousand dollars nor less than one hundred dollars.

History: En. Sec. 1, Ch. 124, L. 1909.

2806. Regulating sales of explosives. That every person, company or corporation, manufacturing, storing, selling, transferring, dealing in, or in any manner disposing of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substances, shall keep in a book for that purpose an accurate record of all transactions, with the date thereof, relating to the receiving and disposing of the same, which record shall show the amount of each such explosive received, by whom transported or conveyed, and each and every sale or other disposition made of such explosive, with the amount thereof, and the name of the person to whom delivery of the same was made, who shall be required to receipt therefor. Such record shall at all times be open to the inspection of the state inspector of mines, or any peace officer.

History: En. Sec. 707, Pen. C. 1895; re-en. Sec. 8545, Rev. C. 1907.

2807. Storage of explosives in mines. No person, company or corporation shall store, deposit or keep in any mine a greater quantity than three thousand pounds of blasting powder, giant or Hercules powder, or other highly explosive substance, and no explosives named in this section shall be stored, deposited, or kept in any place where its accidental explosion would cut off the escape of miners working in said mine.

History: En. Sec. 708, Pen. C. 1895; Sec. 8546, Rev. C. 1907.

An allegation of negligence in storing dynamite in a mine, in a quantity greater than three thousand pounds, or in storing that or any other explosive in a mine where, should an explosion accidentally take place, escape by those working in the mine would be cut off, charges the violation of a specific duty imposed by this section, and such a violation is negligence per se. Westlake v. Keating Gold Min. Co., 48 Mont. 120, 128, 136 Pac. 38.

Plaintiff who, at the time of the explosion of a quantity of dynamite stored at a place in a mine contrary to the provisions of this section, was not so situated as to have his escape from the mine cut off by it, could not charge as an act of negligence the storage of the powder in a place where, in case of accidental discharge, escape by those working in the mine would be cut off, since the causal connection between his injuries and the stoppage of egress from the mine would be lacking. Westlake v. Keating Gold Min. Co., 48 Mont. 120, 130, 136 Pac. 38.

2808. Storage of explosives in cities, etc. No person, company, or corporation shall store, deposit, or keep within one mile of the limits of any city, town, or village any powder, gunpowder, giant or Hercules powder, or other highly explosive substance, in greater quantities than one hundred pounds, or more than one thousand giant caps, at any one time, nor shall such explosives be stored, deposited or kept in any quantities whatever within one mile of such city, town, or village, except in a magazine constructed as hereinafter described; provided, that this section shall not be construed to prevent any person, company or corporation, operating a mine within one mile of the limits of such city, town, or village, from storing powder for use in such mine in the manner prescribed in sections 2807 and 2809 of this code; provided also, that this section shall not prevent the keeping of a reasonable amount of gunpowder, not exceeding fifty pounds, in a safe place for sale.

History: En. Sec. 709, Pen. C. 1895; re-en. Sec. 8547, Rev. C. 1907.

An illustration is found in this section and the next succeeding section of the frequent legislative use of the term "city or town" without any definite prefix, but under circumstances which would render it absurd to hold that only incorporated cities and towns are meant. State ex rel. Powers v. Dale, 47 Mont. 227, 230, 131 Pac. 670, Ann. Cas. 1914D, 227.

Validity of ordinance regulating the keeping of explosives within city limits, see note in 1918E, 145.

2809. Construction and location of magazines. It shall be unlawful to store, deposit, or keep any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance, in amounts exceeding one hundred pounds, elsewhere than in storehouses or magazines constructed as follows:

The walls of such storehouses and magazines shall be constructed entirely of stone or brick. There shall be no opening in such magazine except necessary ventilation, and one entrance not exceeding thirty inches in width. There shall be two doors to such entrance, an outer door opening outward and an inner door opening inward. The said doors shall be of plank not less than two inches in thickness, and both doors shall be entirely covered with one-eighth inch iron, and shall be hinged upon two or more iron hooks securely anchored in the walls of such magazine. Both said doors shall be kept securely locked at all times when powder is stored therein, except when it is necessary to store therein or remove therefrom such powder or other explosives. Such storage room or magazine shall be well and securely roofed with fire-proof and bullet-proof material. Such magazine shall not be constructed within less than one-fourth of a mile of any human habitation except by the permission of the county commissioners, nor shall any magazine constructed within one mile of the limits of any city, town, or village be constructed within one hundred feet of any building owned by any other person.

History: En. Sec. 710, Pen. C. 1895; re-en. Sec. 8548, Rev. C. 1907.

Cited or applied as section 8548, Revised Codes, in State ex rel. Powers v. Dale, 47 Mont. 227, 230, 131 Pac. 670, Ann. Cas. 1914D, 227.

2810. Magazines, etc., to bear warning signs. Every storehouse or magazine constructed as provided in the foregoing section, in which shall be stored, deposited, or kept any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance, shall at all times

have posted above the entrance thereof a sign-board on which shall be painted in conspicuous letters not less than four inches in length the words "explosives—dangerous." Every dray, wagon, freight car, or other vehicle in which shall be transported, transferred, or delivered any of the said explosives, shall bear on each side thereof a similar sign with conspicuous letters not less than two inches in length.

History: En. Sec. 711, Pen. C. 1895; re-en. Sec. 8549, Rev. C. 1907.

2811. Transportation of explosives. It shall be unlawful to knowingly transport or deliver or cause to be delivered giant or Hercules powder, giant caps, nitro-glycerine, nitroleum, blasting or nitrated oil, or powder mixed therewith or fibre saturated therewith, or any other highly explosive substance in any quantitities whatever on any vessel or vehicle whatever carrying passengers by land or water between any points within the state of Montana; provided, that on mixed trains intended for service on railroad lines leading to mining localities or camps the aforesaid explosive substances or any of them may be lawfully carried, by hanging a placard on each side of the car or cars carrying the explosives, reading thus: "This car is loaded with powder"—each letter of said placard to be at least two inches long, but this proviso shall not permit the carrying of any of said explosive substances in the same car or coach in which the passengers are carried.

History: En. Sec. 1, p. 246, L. 1897; re-en. Sec. 8550, Rev. C. 1907.

2812. Careless use of explosives. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance, whereby any human being is intimidated, terrified, or endangered, shall be guilty of a misdemeanor.

History: En. Sec. 713, Pen. C. 1895; re-en. Sec. 8551, Rev. C. 1907.

2813. Penalties. Any person, or association of persons, violating any of the provisions of this act, shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

History: En. Sec. 714, Pen. C. 1895; re-en. 8552, Rev. C. 1907.

2814. Penalty when death caused by violation of this act. When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance that has been stored, kept, handled, or transported, contrary to the provisions of the foregoing sections, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives, or who may have knowingly or negligently permitted their agents, servants, or employees to so unlawfully store, keep, handle, or transport the same, shall be guilty of manslaughter, and, on conviction, shall be punished by imprisonment in the state penitentiary for a period not exceeding ten years.

History: En. Sec. 715, Pen. C. 1895; re-en. Sec. 8553, Rev. C. 1907.

2815. Sales of explosives after dark. No person or persons shall store, or keep in any store, warehouse, or any other building within the limits of any unincorporated town or village, more than five thousand

giant caps at any one time, or any coal oil, kerosene or petroleum, exceeding sixty gallons, other than in original packages, within the limits of the said unincorporated town or village, or shall sell, lend, barter or dispose of, deliver or receive the same, or any or either of the said articles or materials, in the section herein enumerated, after dark, by the aid of any lamp, lantern, candle, match, or other artificial light, except electric light.

History: En. Sec. 3, p. 72, L. 1893; re-en. Sec. 716, Pen. C. 1895; re-en. Sec. 8554, Rev. C. 1907.

CHAPTER 213.

WORKMEN'S COMPENSATION ACT—INDUSTRIAL ACCIDENT BOARD.

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2816. Name of act—What each part to contain. This act shall be known and may be cited as the Workmen's Compensation Act. Part I (sections 2816 to 2969) shall contain those sections which have a general application to the whole of the act, and may be referred to as the "general provisions"; part II (sections 2970 to 2977) shall contain those sections which refer to compensation plan number one; part III (sections 2978 to 2989) shall contain those sections which refer to compensation plan number two; part IV (sections 2990 to 3011) shall contain those sections which refer to compensation plan number three; part V (sections 3012 to 3033) shall contain those sections which may be referred to as the "safety provisions."

History: En. Sec. 1, Ch. 96, L. 1915.

The Workmen's Compensation Act is applicable to counties and county employees, and as such it is not class legislation, nor is it in violation of the constitutional prohibition against donations to individuals. Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 12, 155 Pac. 268, L. R. A. 1916D, 628.

The Workmen's Compensation Act is not repugnant to the state constitution. Shea v. North-Butte Min. Co., 55 Mont. 522, 179 Pac. 499.

The rule, that a statute will not be declared invalid on constitutional grounds unless its invalidity is made to appear beyond a reasonable doubt, applies with peculiar force where, as in the case of the Workmen's Compensation Act, the statute seems to have been found satisfactory after a four-year period of operation, by those directly affected by it, namely, the employer and the employee. Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

Inasmuch as the Workmen's Compensation Act becomes binding upon the employer and employee only at their election, neither may thereafter object to its enforcement, and the fact that the modes in which they may indicate their election are different, does not make it objectionable on the ground that it discriminates against either employer or employee. Shea v. North-Butte Min. Co., 55 Mont. 522, 534, 179 Pac. 499.

The silence of an employee, when given an opportunity to elect whether he will be bound or not bound by the provisions of the workmen's compensation law, establishes a presumption that he elects to become subject to it. Shea v. North-Butte Min. Co., 55 Mont. 522, 536, 179 Pac. 499.

It is competent for a party to waive his right to have a cause of action determined by a court before it actually arises, especially where the legislature has provided a substitute remedy, as under the compensation act, which renders his right to relief absolute. Shea v. North-Butte Min. Co., 55 Mont. 522, 536, 179 Pac. 499.

While the industrial accident board, created as a purely administrative body, exercises many functions that are judicial in character, it is not vested with judicial power, in the sense in which that expression is used in the constitution, wherein it means the power of a court to decide, to pronounce a judgment, and to carry it into effect, between persons and parties who bring a case before it for decision. Shea v. North-Butte Min. Co., 55 Mont. 522, 536, 179 Pac. 499.

Cited or applied in Chenoweth v. Great Northern Ry. Co., 50 Mont. 481, 488, 148 Pac. 330.

Constitutionality of workmen's compensation acts, see notes in Ann. Cas. 1912B, 174; Ann. Cas. 1915A, 247; Ann. Cas. 1916B, 1286; Ann. Cas. 1917E, 401, 839; Ann. Cas. 1918B, 611; 34 L. R. A. (N. S.) 162; 37 L. R. A. (N. S.) 466; L. R. A. 1916A, 409; L. R. A. 1917D, 51.

2817. Reference to plan numbers. Whenever compensation plans number one, two, or three, or the safety provisions of this act shall be referred to, such reference shall also be held to include all other sections which are applicable to the subject-matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915.

2818. "Compensation provisions." The "compensation provisions" of this act, whenever referred to, shall be held to include the provisions of

compensation plans number one, two, or three, and all other sections of this act applicable to the same, or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915.

2819. Industrial accident board — Compensation — Term and salary. There is hereby created a board to consist of three members; the commissioner of agriculture, labor, and industry shall be one member; the state auditor shall be one member, and one member shall be appointed by the governor, which board shall be known as the industrial accident board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of five thousand dollars, payable monthly, and shall be chairman of the board.

The board shall elect one of their number as treasurer of the board.

History: En. Sec. 2, Ch. 96, L. 1915; amd. Sec. 1, Ch. 95, L. 1919; amd. Sec. 1, Ch. 254, L. 1921.

Cited or applied as section 2 (a), chapter 96, Laws of 1915, before amendment, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2820. Vacancy in office and removal of appointive member. A vacancy in the office of the appointed member of the board shall be filled in the same manner as the original appointment, but shall only be for the unexpired term of such vacancy. The appointed member shall not be removed except for cause, and after a hearing had before and a finding made by the remaining members of the board, and both of the remaining members of the board must concur in the removal of the appointed member.

History: En. Sec. 2, Ch. 96, L. 1915.

2821. Official bonds. Each member shall, upon entering upon the duties of his office, execute to the state of Montana and file with the secretary of state a bond in the sum herein prescribed, executed by not less than four responsible sureties, or by some surety company authorized to become sole surety on bonds in the state of Montana, such bond to be approved by the governor, and conditioned that he will faithfully and impartially discharge the duties of his office. Such bonds shall be in addition to any other bonds required by law to be furnished.

History: En. Sec. 2, Ch. 96, L. 1915.

2822. Treasurer's bond—Bond of other members. The bond of the treasurer of the board shall be in a sum to be fixed by the governor, not less than twenty-five thousand dollars, nor more than one hundred thousand dollars. The bonds of the members of the board other than the treasurer shall be in the sum of ten thousand dollars.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (d), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2823. Ex-officio members to receive no additional compensation. Neither the commissioner of labor and industry nor the state auditor shall receive any additional compensation for the duties imposed upon them by this act.

History: En. Sec. 2, Ch. 96, L. 1915.

2824. Quorum—Powers in case of vacancy—Hearings—Findings and orders. A majority of the board shall constitute a quorum for the transaction of any business. A vacancy on the board shall not impair the right of the remaining members to perform all of the duties and exercise all the powers and authority of the board. The act of the majority of the board when in session as a board shall be deemed to be the act of the board, but any investigation, inquiry, or hearing which the board has power to undertake or to hold, may be undertaken or held by or before any member thereof, or any examiner or referee appointed by the board for that purpose. Every finding, order, decision, or award made by any commissioner, examiner, or referee, pursuant to such investigation, inquiry, or hearing, when approved and confirmed by the board and ordered filed in its office, shall be deemed to be the finding, order, decision, or award of the board.

History: En. Sec. 2, Ch. 96, L. 1915.

2825. Seal of board. The board shall have a seal bearing the following inscription. "Industrial Accident Board, State of Montana, Seal." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the board shall direct. All courts shall take judicial notice of said seal.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (g), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2826. Office and furnishings—Temporary quarters. The board shall keep its principal office in the capital of the state, and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies. For the purpose of holding sessions in other places the board shall have power to rent temporary quarters.

History: En. Sec. 2, Ch. 96, L. 1915.

2827. Secretary—Appointment, term, duties—Records. The board shall appoint a secretary who shall hold office at the pleasure of the board. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the board; to issue all necessary processes, writs, warrants, and notices which the board is required or authorized to issue, and generally to perform such other duties as the board may prescribe.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (i), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2828. Other assistants and employees. The board shall employ such assistants and other employees as it may deem necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (j), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2829. Compensation of officers and employees—Term of office and duties. All officers and employees of the board shall receive such compensation for their services as may be fixed by the board, shall hold office

at the pleasure of the board, shall perform such duties as are imposed on them by law or by the board.

History: En. Sec. 2, Ch. 96, L. 1915.

2830. Salaries to be paid monthly—Approval and auditing. The salaries of members of the board, secretary, and every other person holding office or employment under the board, as fixed by law or by the board, shall be paid monthly after being approved by the board upon claims therefor to be audited and approved by the state board of examiners.

History: En. Sec. 2, Ch. 96, L. 1915.

2831. Expenses to be paid from what fund. All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees incurred while on business of the board, either within or without the state, shall, unless otherwise provided in this act, be paid from the industrial administration fund, after being approved by the board upon claims therefor to be audited and approved by the state board of examiners.

History: En. Sec. 2, Ch. 96, L. 1915.

2832. Blank forms, minutes and records. The board shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the board, and such other books or records as it shall deem requisite for the purpose and efficient administration of this act. All such records are to be kept in the office of the board.

History: En. Sec. 2, Ch. 96, L. 1915.

Cited or applied as section 2 (n), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2833. Reports and bulletins which may be published. The board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915.

2834. Fees of board. The board shall have power and authority to charge and collect the following fees:

1. For copies of papers and records not required to be certified or otherwise authenticated by the board, fifteen cents for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, twenty cents for each folio.

2. To fix and collect reasonable charges for publications issued under its authority.

3. The fees charged and collected under this section shall be paid monthly into the treasury of the state, to the credit of the industrial administration fund, and shall be accompanied by a detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915.

2835. Attorney-general legal adviser of board. The attorney-general shall be the legal adviser of the board, and shall represent it in all proceedings whenever so requested by the board or any member thereof.

History: En. Sec. 2, Ch. 96, L. 1915.

2836. Defenses excluded in personal injury action—Negligence of employee—Fellow-servant—Assumption of risk. In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense:

(1) That the employee was negligent, unless such negligence was wilful;

(2) That the injury was caused by the negligence of a fellow employee;

(3) That the employee had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools or appliances.

History: En. Sec. 3, Ch. 96, L. 1915.

Statutes affecting defense of contributory negligence in actions by servants against masters, see note in 5 Ann. Cas. 633.

Constitutionality of statute abrogating fellow-servant doctrine, see notes in 10 Ann. Cas. 1113; Ann. Cas. 1916D, 268.

2837. Provisions not to apply to domestic servants, farm laborers, etc. The provisions of the preceding section shall not apply to actions to recover damages for personal injuries sustained by household or domestic servants, farm or other laborers, engaged in agricultural pursuits, or persons whose employment is of a casual nature.

History: En. Sec. 3, Ch. 96, L. 1915.

Liability of general or special employer for compensation to injured employee, see notes in L. R. A. 1917D, 143; 3 A. L. R. 1181.

Farm laborers and domestic servants as within or outside workmen's compensation acts, see notes in Ann. Cas. 1917D, 504; L. R. A. 1917D, 147; L. R. A. 1918F, 202.

2838. Employers not liable for death or injury other than herein defined—Employees who elect not to come under law. Any employer who elects to pay compensation as provided in this act shall not be subject to the provisions of section 2836, nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee except as in this act provided; and, except as specifically provided in this act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common-law rights and remedies for and on account of such death of, or personal injury to, any such employee are hereby abolished; provided, that section 2836 shall not apply to actions brought by an employee who has elected not to come under this act, or by his representatives, for damages for personal injuries or death, against an employer who has elected to come under this act.

History: En. Sec. 3, Ch. 96, L. 1915.

Constitutionality of workmen's compensation act giving choice of remedies exclusively to either employer or employee, see note in 6 A. L. R. 1562.

2839. Employers not liable for death or injury other than herein defined—Employees who elect not to come under act. Where both the

employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and such employee of their right to any other method, form, or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suit in equity, or statutory or common-law right or remedy, or proceeding whatever, for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself, and in case of death shall bind his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer, and those conducting his business during liquidation, bankruptcy, or insolvency.

History: En. Sec. 3, Ch. 96, L. 1915.

When an employee has elected to become subject to the provisions of the Workmen's Compensation Act, neither he nor his personal representatives in case of the former's death may thereafter prosecute an action for damages against the employer for an injury suffered by him during the course of his employment. Shea v. North-Butte Min. Co., 55 Mont. 522, 532, 179 Pac. 499.

Right to and effect of election with respect to acceptance of provisions of Workmen's Compensation Act, see notes in Ann. Cas. 1915C, 308; Ann. Cas. 1918A, 700; Ann. Cas. 1918B, 715.

2840. Compensation plan No. 3 exclusive, etc., when a public corporation is the employer—Duty of governing body of corporations. Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise. Whenever any contractor engaged in the performance of contract work for any public corporation is the employer, such public corporation upon final settlement with the contractor shall deduct for the benefit of the industrial accident fund the amount of all premium assessments necessary to be paid by such contract under the provisions of this act. Whenever any public corporation neglects or refuses to file with the industrial accident board monthly payroll report of its employees, the board is hereby authorized and empowered to levy an arbitrary assessment upon such public corporation in an amount of twenty-five dollars for each such assessment, which assessments shall be collected in the manner provided in this act for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921.

Compensation plan No. 3 is, as to a city, exclusive, compulsory, and obligatory upon both employer and employee. City of Butte v. Industrial Accident Board, 52 Mont. 75, 77, 156 Pac. 130.

Cited or applied as section 3 (e), chapter 96, Laws of 1915, before amendment, in Lewis and Clark County v. In-

dustrial Accident Board, 52 Mont. 6, 7, 155 Pac. 268, L. R. A. 1916D, 628; City of Butte v. Industrial Accident Board, 52 Mont. 75, 77, 156 Pac. 130.

Applicability of compensation acts to states, counties, cities, districts, charitable and other public institutions, and their employees, see notes in L. R. A. 1917D, 143; L. R. A. 1918F, 190.

2841. Employers engaged in hazardous industries—Election. Every employer engaged in the industries, works, occupations, or employments in this act specified as "hazardous," may, on or before the first day of July, 1915, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, may, on or after thirty days before entering upon such hazardous work, occupation, or employment, or at any time thereafter, elect whether he will be bound by either of the compensation plans mentioned in this act. Such election shall be in the form prescribed by the board, and shall state whether such employer shall be bound by compensation plan number one, or compensation plan number two, or compensation plan number three, and a notice of such election, with the nature thereof, shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the board.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (f), chapter 96, Laws of 1915, City of Butte v. Industrial Accident Board, 52 Mont. 75, 76, 156 Pac. 130; Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2842. Employee engaged in hazardous occupation bound by what plan—Election. Every employee in the industries, works, occupations, or employments in this act specified as "hazardous," shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer, unless such employee shall elect not to be bound by any of the compensation provisions of this act, and until such employee shall have made such election. Such election shall be made by written notice in the form prescribed by the board, served upon the employer, and a copy filed with the board, together with the proof of such service.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (g), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 80, 156 Pac. 130; Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2843. Presumption when employer fails to make election—Election binds employer until what time. If the employer shall fail to make the election herein provided for, at the time and in the manner herein prescribed, such employer shall be presumed to have elected not to be bound by the provisions of either compensation plan number one, or compensation plan number two, or compensation plan number three for that fiscal year, unless such employer shall elect to become subject to or bound by this act in the manner provided for such election in the first instance. After having once elected to be bound by one or the other of the compensation plans provided in this act, such employer shall be bound by such election for said first fiscal year and each succeeding fiscal year, unless such employer shall, not less than thirty or more than sixty days prior to the end of any fiscal year, elect not to be bound by either of such compensation plans, after the expiration of said fiscal year, or unless

he shall elect to be bound for the succeeding fiscal year by a different compensation plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this act.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (h), chapter 96, Laws of 1915, in Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2844. Employer shall make election before being bound—Employee presumed to have elected. It is the intention of this act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be subject to and bound by the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (i), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 76, 156 Pac. 130; Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2845. Election at any time. Any employee who has elected not to be bound by the provisions of this act in the manner herein provided may revoke such election and elect to come thereunder at any time. Any employer who has failed to elect to be bound by either one or the other of the compensation plans herein mentioned, may, at any time during any fiscal year, elect to be bound thereby, which said election shall be made as hereinbefore provided; but whenever any employer or employee shall have elected to come under the provisions hereof, such election, when it shall have been made, shall bind such employer and employee for the rest of the then fiscal year.

History: En. Sec. 3, Ch. 96, L. 1915.

Cited or applied as section 3 (j), chapter 96, Laws of 1915, in Shea v. North-Butte Min. Co., 55 Mont. 522, 530, 179 Pac. 499.

2846. Compensation when employer has not elected. No compensation shall be paid to any employee, whether such employee has elected to come under this act or not, where his employer has failed to elect, and has failed to come under one or the other of the compensation plans herein provided.

History: En. Sec. 3, Ch. 96, L. 1915.

2847. Act applies to all inherently hazardous occupations as enumerated. This act is intended to apply to all inherently hazardous works and occupations within this state, and it is the intention to embrace all thereof in the four following sections, and the works and occupations enumerated in said sections are hereby declared to be hazardous, and any employer having any workmen engaged in any of the hazardous works or occupations herein listed shall be considered as an employer engaged in hazardous works and occupations as to all his employees.

History: En. Sec. 4, Ch. 96, L. 1915; amd. Sec. 2, Ch. 100, L. 1919.

2848. Construction work. Tunnels, bridges, trestles; subaqueous works, ditches, and canals (other than irrigation without blasting), dock

excavations, fire-escapes, sewers, house moving, house wrecking, iron or steel frame structures or parts of structures, electric light, or power plants, or systems, telegraph or telephone systems; pile-driving, steam railroads, steeples, towers, or grain elevators, not metal framed; dry-docks, without excavation; jetties, breakwaters, chimneys, marine railways, waterworks, or water systems; electric railways, cable railways, street railways, with or without rock work or blasting; erecting fire-proof doors or shutters; steam-heating plants; blasting; tanks, water-towers, or windmills, not metal framed; shaft sinking; concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; gas-works or systems; marble, stone, or brick work; road-making, with or without blasting; roof work; safe moving; slate work; plumbing work, inside or outside; metal smoke-stacks or chimneys; excavations not otherwise specified; blast-furnaces; street or other grading; advertising signs; ornamental work on buildings; ship or boat-building or rigging, with or without scaffolding; carpenter work not otherwise specified; installation of steam-boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble, mantel, stone, or tile setting; metal-ceiling work; mill or ship-wrighting; painting of building or structures; installation of automatic sprinklers; concrete laying in floors, foundations, or street paving; asphalt laying; covering steam-pipes or boilers; installation of machinery not otherwise specified; drilling wells, installing electrical apparatus or fire-alarm apparatus in buildings; house-heating or ventilating systems, glass setting; building hothouses; lathing, paper-hanging, plastering, wooden stair building.

History: En. Sec. 4, Ch. 96, L. 1915.

2849. Operation. (Including repair work) of logging, cable, electric, street, steam, or other railroads; dredges; interurban electric railroads using third-rail systems; electric light or power plants; quarries; telegraph systems; stone-crushers; blast-furnaces; smelters; coal-mines, gas-works; steamboats; tugs and ferries, mines other than coal; steam-heating or power plants; grain elevators; laundries; waterworks, paper-mills; pulp-mills; garbage and fertilizer works.

History: En. Sec. 4, Ch. 96, L. 1915.

2850. Factories using power-driven machinery. Stamping tin metal; bridge work; railroad, car, or locomotive making or repairing; cooperage; logging, with or without machinery; sawmills, shingle-mills, staves, veneer, box, lath, packing-cases, sash, doors, blinds, barrel, keg, pail, basket, tub, woodenware or wooden fibre ware, rolling-mills; making steam shovels or dredges; tanks, water-towers, asphalt; building material not otherwise specified; fertilizer; cement, stone, with or without machinery; kindling-wood, masts or spars, with or without machinery; canneries, metal stamping; creosoting works; excelsior; iron; steel; copper, zinc, brass, or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware, tile, brick, terra-cotta, fire-clay, pottery, earthenware, porcelain ware; peat fuel, briquettes; breweries; bottling works; boiler works; foundries; machine-shops not otherwise specified; cordage; working in food-stuffs; including oils, fruits, and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber, or textiles not otherwise

specified; making jewelry; making soap, tallow, lard, grease, condensed milk; creameries; printing, electrotyping, photo-engraving, engraving, and lithographing, sugar factories.

History: En. Sec. 4, Ch. 96, L. 1915.

2851. Miscellaneous work. Operating stock-yards, with or without railroad entry; packing-houses; wharf operations; artificial ice and refrigerating or cold-storage plants; tanneries; electric systems not otherwise specified; theater stage employees, including moving-picture machine operators; fireworks manufacturing, powder works.

History: En. Sec. 4, Ch. 96, L. 1915.

2852. Hazardous occupations not enumerated or hereafter arising. If there be or arise any hazardous occupation or work other than hereinbefore enumerated, it shall come under this act and its terms, conditions, and provisions as fully and completely as if hereinbefore enumerated.

History: En. Sec. 5, Ch. 96, L. 1915.

2853. Meaning of words employed in act. Unless the context otherwise requires, words and phrases employed in this act shall have the meanings hereinafter defined.

History: En. Sec. 6, Ch. 96, L. 1915.

2854. Factories defined. "Factories" means undertakings in which the business of working at commodities is carried on with power-driven machinery, whether in manufacture, repair, or change, and shall include the premises, yards, and plant of the concern.

History: En. Sec. 6, Ch. 96, L. 1915.

2855. Workshop defined. "Workshop" means any plant, yard, premises, room, or place where power-driven machinery is employed and manual labor is exercised by way of trade or gain, or otherwise in or incidental to the process of making, altering, repairing, printing, or ornamenting, finishing, or adapting for sale, or otherwise, any article, or part of article, machinery, or thing, over which premises, room, or place the employer of the person working therein has the right of access or control.

History: En. Sec. 6, Ch. 96, L. 1915.

2856. Mill defined. "Mill" means any plant, premises, room, or place where machinery is used; any process of machinery, changing, altering, or repairing any article or commodity for sale, or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses, and bunkers.

History: En. Sec. 6, Ch. 96, L. 1915.

2857. Mine defined. "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

History: En. Sec. 6, Ch. 96, L. 1915.

What is a "mine" within the meaning of compensation acts, see note in 11 A. L. R. 154.

2858. Quarry defined. "Quarry" means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, shale, gravel, or rock is cut or taken for manufacturing, building, or construction purposes.

History: En. Sec. 6, Ch. 96, L. 1915.

2859. Engineering defined. "Engineering work" means any work of construction, improvement, or alteration or repair of buildings, streets, highways, sewers, street railways, railroads, logging roads, interurban roads, harbors, docks, canals; electric, steam, or water-power plants; telegraph and telephone plants and lines; electric light and power lines, and includes any other work for the construction, alteration, or repair of which machinery driven by mechanical power is used.

History: En. Sec. 6, Ch. 96, L. 1915.

2860. "Reasonably safe place to work" defined. "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

History: En. Sec. 6, Ch. 96, L. 1915.

2861. "Reasonably safe tools and appliances" defined. "Reasonably safe tools and appliances" are such tools and appliances as are adapted to, and are reasonably safe for use for the particular purpose for which they are furnished, and shall embrace all safety devices and safeguards provided or prescribed by the "safety provisions" of the act for the purpose of mitigating or preventing a specific danger.

History: En. Sec. 6, Ch. 96, L. 1915.

2862. Employer defined. "Employer" means any person, firm, association, or corporation, and includes the state, counties, municipal corporations, cities under special charter and commission form of government, school districts, towns, or villages, and independent contractors, and shall include the legal representatives of a deceased employer.

History: En. Sec. 6, Ch. 96, L. 1915.

Cited or applied as section 6 (i), chapter 96, Laws of 1915, in Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 7, 155 Pac. 268, L. R. A. 1916D, 628; City of Butte v. Industrial Accident Board, 52 Mont. 75, 76, 156 Pac. 130.

2863. "Employee" and "workman" defined. "Employee" and "workman" are used synonymously, and means every person in this state, including a contractor other than "an independent contractor," who, after July 1, 1915, is engaged in the employment of an employer carrying on or conducting any of the industries classified in sections 2847 to 2852, inclusive, of this code, whether by way of manual labor or otherwise, or whether upon the premises or at the plant of such employer, or who is engaged in the course of his employment away from the plant of his employer; provided, however,

1. If the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or, if death results from such injury, beneficiaries or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such others; such election shall be made in advance of the commencement of the action.

2. If he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the industrial accident fund, or the employer or insurer, as the case may be.

3. Any such cause of action assigned to the state may be prosecuted or compromised by the board, in its discretion.

4. If such workman, his beneficiaries, or dependents, as the case may be, shall elect to proceed against the person responsible for the injury, such election shall constitute a waiver of any right to compensation under the provisions of this act.

History: En. Sec. 6, Ch. 96, L. 1915.

2864. "Injury" to include death. "Injury" means and shall include death resulting from injury.

History: En. Sec. 6, Ch. 96, L. 1915.

2865. "Beneficiary" defined. "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of sixteen years and an invalid child or invalid children over the age of sixteen years, or, if no surviving wife or husband, then the surviving child or children under the age of sixteen years, and any invalid child or children over the age of sixteen years in whom shall vest a right to receive compensation under this act.

History: En. Sec. 6, Ch. 96, L. 1915.

Cited or applied as section 6 (l), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

Who is dependent within Workmen's Compensation Act, see notes in Ann. Cas. 1913E, 480; Ann. Cas. 1918B, 479.

2866. "Major dependent" defined. "Major dependent" means if there be no beneficiaries as defined in the preceding section, the father and mother of the survivor of them, if actually dependent to any extent upon the decedent at the time of his injury.

History: En. Sec. 6, Ch. 96, L. 1915.

Cited or applied as section 6 (m), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

2867. "Minor dependent" defined. "Minor dependent" means if there be no beneficiary as defined in section 2865, and if there be no major dependent as defined in section 2866, the brothers and sisters, if actually dependent upon the decedent at the time of his injury.

History: En. Sec. 6, Ch. 96, L. 1915.

Cited or applied as section 6 (n), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

2868. "Invalid" defined. "Invalid" means one who is physically or mentally incapacitated.

History: En. Sec. 6, Ch. 96, L. 1915.

Cited or applied as section 6 (o), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

2869. "Child" defined, to include whom. "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

History: En. Sec. 6, Ch. 96, L. 1915.

2870. "Injury" or "injured" defined. "Injury" or "injured" refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease.

History: En. Sec. 6, Ch. 96, L. 1915.

2871. The singular and plural include both. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

History: En. Sec. 6, Ch. 96, L. 1915.

2872. Masculine includes all genders. Wherever the masculine gender is used, the feminine and neuter shall be included.

History: En. Sec. 6, Ch. 96, L. 1915.

2873. "Physician" to include "surgeon." The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession in this state.

History: En. Sec. 6, Ch. 96, L. 1915.

2874. "Week" defined. "Week" means six working days, but includes Sundays.

History: En. Sec. 6, Ch. 96, L. 1915.

2875. "Wages" defined. "Wages" mean the average daily wages received by the employee at the time of the injury for the usual hours of employment in a day, and overtime is not to be considered.

History: En. Sec. 6, Ch. 96, L. 1915.

2876. "Wife" or "widow" defined. "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the injury.

History: En. Sec. 6, Ch. 96, L. 1915.

2877. "Husband" or "widower" defined. "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her injury.

History: En. Sec. 6, Ch. 96, L. 1915.

2878. "Board" defined. "Board" means the industrial accident board of the state of Montana.

History: En. Sec. 6, Ch. 96, L. 1915.

2879. "Commissioner" defined. "Commissioner" means one of the members of the industrial accident board.

History: En. Sec. 6, Ch. 96, L. 1915.

2880. "Appointed member of the board" defined. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.

History: En. Sec. 6, Ch. 96, L. 1915.

2881. "Order" defined. "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified.

History: En. Sec. 6, Ch. 96, L. 1915.

2882. "General order" defined. "General order" shall mean and include such order made under the safety provisions of this act as applies generally throughout the state to all persons, employments, or places of

employment, or employees working in such places of employment classed as hazardous in this act.

History: En. Sec. 6, Ch. 96, L. 1915.

2883. "Local order" defined. "Local order" shall mean and include any ordinance, order, rule, or determination of any public corporation, or any order or direction of any other public official, board, or department upon any matter over which the industrial accident board has jurisdiction.

History: En. Sec. 6, Ch. 96, L. 1915.

2884. "Pay-roll" defined—Estimate to establish pay-roll. "Pay-roll," "annual pay-roll," or "annual pay-roll for the preceding year," means the average annual pay-roll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve times the average monthly pay-roll for the current year; provided, that an estimate may be made by the board for any employer starting in business where no average pay-rolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

History: En. Sec. 6, Ch. 96, L. 1915.

2885. "Year" defined. "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth day of the succeeding June.

History: En. Sec. 6, Ch. 96, L. 1915.

2886. "Public corporation" defined. "Public corporation" means the state, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

History: En. Sec. 6, Ch. 96, L. 1915.

Cited or applied as section 6 (gg), chapter 96, Laws of 1915, in Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 7, 155 Pac. 268, L. R. A. 1916D, 628.

2887. "Insurer" defined. "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

History: En. Sec. 6, Ch. 96, L. 1915.

2888. "Casual employment" defined. "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

History: En. Sec. 6, Ch. 96, L. 1915.

2889. "Plant of the employer" includes what. "The plant of the employer" shall include the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

History: En. Sec. 6, Ch. 96, L. 1915.

2890. "Independent contractor" defined. "An independent contractor" is one who renders service in the course of an occupation, repre-

senting the will of his employer only as the result of his work, and not as to the means by which it is accomplished.

History: En. Sec. 6, Ch. 96, L. 1915.

Employee of independent contractor as workman within compensation act, see note in Ann. Cas. 1918D, 709.

2891. Compensation to children, brothers and sisters, and invalid children—When ceases. In computing compensation to children and to brothers and sisters, only those under sixteen years of age, or invalid children over the age of sixteen years, shall be included, and, in the case of invalid children, only during the period in which they are under that disability (within the maximum time limitations elsewhere in this act provided), after which payment on account of such person shall cease. Compensation to children, or brothers or sisters (except invalids), shall cease when such persons reach the age of sixteen years.

History: En. Sec. 7, Ch. 96, L. 1915.

Cited or applied as section 7 (a), chapter 96, Laws of 1915, in Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 639, 194 Pac. 496.

2892. When compensation to beneficiaries, major or minor dependents, or widow ceases. If any beneficiaries or major or minor dependents of a deceased employee die, or if the widow or widower remarry, the right of such beneficiary or major or minor dependent or such widow or widower to compensation under this act shall cease.

History: En. Sec. 7, Ch. 96, L. 1915.

2893. Compensation not paid to non-resident major or minor dependents. No compensation under this act, except as otherwise provided by treaty, shall be paid to any major or minor dependents not residing within the United States at the time of the injury to the decedent.

History: En. Sec. 8, Ch. 96, L. 1915.

Validity of Workmen's Compensation Act as affected by provision for compensation to aliens, see note in L. R. A. 1917D, 62.

Recovery under workmen's compensation acts by non-resident alien dependents, see note in L. R. A. 1918F, 496.

2894. Compensation to beneficiary not residing in United States. Except as otherwise provided by treaty, no compensation in excess of fifty per centum of the compensation provided in this act shall be payable to any beneficiary not residing within the United States at the time of the injury to the decedent; provided, however, that no compensation shall be allowed to any non-resident, alien beneficiary who is a citizen of a government having compensation law which excludes citizens of the United States, either resident or non-resident, from partaking of the benefit of such law in the same degree as herein extended to non-resident beneficiaries.

History: En. Sec. 8, Ch. 96, L. 1915.

2895. Compromise with non-resident. Nothing in the preceding section shall prevent the compromise of any sums due a beneficiary not residing in the United States at the time of the injury to the decedent for a sum less than fifty per centum of the compensation provided in this act, upon the approval of the board of such compromise settlement.

History: En. Sec. 8, Ch. 96, L. 1915.

2896. No compensation to non-resident beneficiaries until when. Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this act shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the board. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

History: En. Sec. 8, Ch. 96, L. 1915.

2897. Payment to non-resident beneficiaries made to whom. Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul, or consular agent within the United States, representing the country in which such non-resident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the board, as the case may be.

History: En. Sec. 9, Ch. 96, L. 1915.

2898. Compensation paid to parent or guardian. Where payment is due to a child under sixteen years of age, or to a person adjudged incompetent, the same shall be made to the parent, or to the duly appointed guardian as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or board, as the case may be. In other cases, payment shall be made to the person entitled thereto, or to his duly authorized representative.

History: En. Sec. 9, Ch. 96, L. 1915.

2899. Claims must be presented within what time. In case of personal injury or death, all claims shall be forever barred unless presented in writing under oath to the employer, the insurer, or the board, as the case may be, within six months from the date of the happening of the accident, either by the claimant or some one legally authorized to act for him in his behalf.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919.

2900. Exception in case of minors and incompetents. No limitations of time, as provided in this act, shall run as against any injured workman who is mentally incompetent and without a guardian, or an injured minor under sixteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitation, as provided in the preceding section, shall begin to run on the date of the appointment of such guardian, or when such minor arrives at the age of sixteen years.

History: En. Sec. 10, Ch. 96, L. 1915.

2901. Employer liable when lets work to other than independent contractor. Where any employer procures any work to be done, wholly or in part for him, by a contractor other than an independent contractor, and the work so procured to be done is a part or process in the trade or business of such employer, then such employer shall be liable to pay all compensation under this act to the same extent as if the work were done without the

intervention of such contractor. And the work so procured to be done shall not be construed to be "casual employment."

History: En. Sec. 11, Ch. 96, L. 1915.

2902. Presumption when employer lets work by contract. Where any employer procures work to be done as specified in the preceding section, such contractor and his employees shall be presumed to have elected to come under that plan of compensation adopted by the employer, unless they shall have otherwise elected, as provided herein.

History: En. Sec. 11, Ch. 96, L. 1915.

2903. When contractor performing casual employment becomes the employer. Where any employer procures any work to be done, wholly or in part for him, by a contractor, where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer for the purposes of this act.

History: En. Sec. 11, Ch. 96, L. 1915.

2904. Work to be paid for in property other than money—Wages. Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the board in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed; provided, however, that where an employer procures any work to be done by any contractor, or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event, the employer shall not be liable for compensation, but such liability shall fall upon the contractor or subcontractor, as the case may be.

History: En. Sec. 11, Ch. 96, L. 1915.

2905. Compensation in case of death of employee—Determination of beneficiary, etc. If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary, or the major or minor dependents of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during or for which compensation was paid for the injury.

If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

The question as to who constitutes a beneficiary, or a major or minor dependent, shall be determined as of the date of the happening of the accident to the employee, whether death shall immediatly result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915.

2906. Examination of employee by physician—Request or order for—Physician may testify. Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician, who shall be provided and paid for by such

employer or insurer, and shall likewise submit to examination from time to time by any physician selected by the board, or any member or examiner, or referee thereof.

The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination, or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the board, who shall make or be present at any such examination, may be required to testify as to the results thereof.

History: En. Sec. 13, Ch. 96, L. 1915.

Provisions in workmen's compensation acts respecting medical examination of workmen, see notes in Ann. Cas. 1914C, 86; Ann. Cas. 1915C, 918; Ann. Cas. 1918B, 670.

Duty of injured employee to submit to an examination, see note in 6 A. L. R. 1270.

2907. Contracts or agreements for hospital benefits—Conditions governing. Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 2917, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.

Such hospital contract or agreements must provide for medical, hospital, and surgical attendance for such employee for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment.

No assessment of employees for such hospital contracts or benefits shall exceed one dollar per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose, that the actual cost of such service exceeds the said sum of one dollar per month, and any such finding of the board may be modified at any time when justified by a change of conditions, or otherwise, either upon the board's own motion, or the application of any party in interest.

No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this act to provide that where hospitals are maintained by employers such hospitals shall be no more than self supporting from assessments of employees, and that where hospitals are maintained by other than the employer, all sums derived by assessment of employees shall be paid in full to such hospital without deduction by the employer.

History: En. Sec. 14, Ch. 96, L. 1915.

2908. Hospitals to be under supervision of board. Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employees for sickness and injury, as provided in this act, shall be under the supervision of the board as to the services and treatment rendered such employees, and shall, from time to time, make reports of such services, attendances, treatments, receipts, and disbursements as the board may require.

History: En. Sec. 14, Ch. 96, L. 1915.

2909. Liability for treatment or malpractice in case of hospital service. Neither an employer, an insurer, nor the board, shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employee, or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the board. In any action for malpractice arising out of the operations of this act, the merits of such action shall be investigated by the industrial accident board, and the finding of the board in relation thereto shall be filed with the clerk of the court in which such action is pending.

History: En. Sec. 14, Ch. 96, L. 1915.

2910. Questions of law in certain actions. In any action to recover damages for any act connected with the treatment or care, or malpractice in treatment or care, of any sickness of or injury sustained by an employee, the question of whether or not due care was given by the defendants shall be a question of law for the court.

History: En. Sec. 15, Ch. 96, L. 1915.

2911. Whom liable for injuries under the different plans of act, and in what amounts. Every employer who shall become bound by and subject to the provisions of compensation plan number one, and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two, and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

History: En. Sec. 16, Ch. 96, L. 1915.

The phrase, "injury arising out of and in the course of his employment," means that to warrant payment of compensation, the facts must disclose that the injury or death, as the case may be, resulted from an industrial accident, arising out of and in the course of the employment. These terms are employed conjunctively, and not disjunctively, and the burden of proof is upon the claimant to establish, by a preponderance of the evidence, that the three of these conditions are met. Wiggins v. Industrial Accident Board, 54 Mont. 335, 342, 170 Pac. 9, Ann. Cas. 1918D, 1164, L. R. A. 1918F, 932.

The terms of the Workmen's Compensation Act are sufficiently comprehensive to include injury resulting from an act of God; thus, death resulting to an employee of a county, from lightning, while he is engaged at work on a public road, is death resulting from an industrial accident, but there can be no recovery therefor without proof that the injury causing death arose "out of" and "in the course of" the employment. Wiggins v. Industrial Accident Board, 54 Mont. 335, 342, 170 Pac. 9, Ann. Cas. 1918D, 1164, L. R. A. 1918F, 932.

An injury to a workman arises "out of" his employment if it is the result of exposure to a hazard peculiar to the employment, or of exposure to more than the normal risk to which the people of the community generally are subject. Wiggins v. Industrial Accident Board, 54 Mont. 335, 343, 170 Pac. 9, Ann. Cas. 1918D, 1164, L. R. A. 1918F, 932.

In determining whether a claimant was a dependent, the board is not concerned with problematical future conditions, but only with the condition of the claimant at the time of the injury to the decedent. Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 644, 194 Pac. 496.

2912. Compensation for injury producing temporary total disability. For an injury producing temporary total disability, fifty per centum of the wages received at the time of the injury, subject to the maximum compensation of twelve dollars and fifty cents per week and a minimum compensation of six dollars per week; provided, that if at the time of injury the employee received wages of less than six dollars per week, he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, but not, however, in any event, exceeding three hundred weeks.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 100, L. 1919.

2913. For total disability, permanent in character. For an injury producing total disability, permanent in character, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of twelve and one-half dollars per week, and a minimum compensation of six dollars per week; provided, that if at the time of the injury the employee received wages of less than six dollars per week, then he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, not exceeding four hundred weeks, after which time payment shall continue during disability at the rate of five dollars per week.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 5, Ch. 100, L. 1919.

2914. For partial disability. For an injury producing partial disability, one-half of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, not exceeding, however, one-half the maximum compensation allowed in cases of total disability, and not exceeding seventy-five per cent. of the total compensation provided in this act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding, however, one hundred and fifty weeks in cases of permanent partial disability, and fifty weeks in cases of temporary partial disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 6, Ch. 100, L. 1919.

2915. For injury causing death. Where the injury causes death, fifty per centum of the wages received at the time of the injury, to his beneficiaries, if any, residing within the United States at the date of the happening of the injury, or if residing outside of the United States, fifty per centum of such compensation, or if none, then forty per centum of the wages received at the time of the injury to his major dependents, if any, if residing in the United States at the date of the happening of the injury, or if none, then thirty per centum of the wages received at the time of the injury to his minor dependents, if any, residing within the United States at the date of the happening of the injury, subject to a maximum compensation of twelve and one-half dollars per week, and a minimum compensation of six dollars per week, for a period not exceeding four hundred weeks; provided, that if at the time of the injury the employee received wages of less than six dollars per week, the full amount of such wages per week, for a period of not exceeding four hundred weeks.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 7, Ch. 100, L. 1919.

2916. Additional compensation in case death occurs within six months. There shall be paid, in addition to other compensation if death occurs within six months of the happening of the injury, the reasonable burial expenses of the employee, not exceeding one hundred and twenty-five dollars. If the employee leaves no beneficiaries, or major or minor dependents, this shall be the only compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921.

2917. Medical and hospital services to be furnished. During the first two weeks after the happening of the injury, the employer or insurer, or the accident fund, as the case may be, shall furnish reasonable medical and hospital services and medicines as and when needed, in an amount not to exceed one hundred dollars in value, except as otherwise in this act provided, and when the employer is a party to a hospital contract, unless the employee shall refuse to allow them to be furnished.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 3, Ch. 196, L. 1921.

Liability of employer or insurance company for medical and hospital aid furnished to injured employee, see note in 7 A. L. R. 545.

2918. Compensation from what date paid. No compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of the preceding section, but if disability continues six weeks, compensation shall be paid from date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921.

2919. Compensation to run consecutively—Minor dependents not residing in United States. Compensation for all classes of injuries shall run consecutively and not concurrently, and as follows: first, the two weeks medical and hospital services and medicines as provided in section 2917, unless the employee is a contributor to a hospital fund, as otherwise in this act provided; after the first two weeks, compensation as provided in sections 2912, 2913 or 2914; following, either or none of the above, compensation as provided in section 2920; following any or either, or none of the above, if death results from the accident within six months of the date of the injury, burial expenses as provided in section 2916; following which, compensation to beneficiaries, if any; following which, if no beneficiaries, compensation to major dependents; following which, if no beneficiaries and no major dependents, compensation to minor dependents, if any; provided, that no compensation shall be paid to a major or minor dependent who does not reside within the United States, or who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependents, where there be more than one, shall be divided equally among them.

History: En. Sec. 16, Ch. 96, L. 1915.

2920. Compensation cases of specified injuries. In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act, other than that provided in section 2917, unless the employee is a contributor to a hospital fund as otherwise in this act provided, shall be fifty per cent. of the wages received at the time of the injury,

subject to a maximum compensation of twelve dollars and fifty cents per week, and a minimum compensation of six dollars per week; provided that if, at the time of the injury the employee received wages of less than six dollars per week, then he shall receive the full amount of such wages per week, and shall be paid for the following periods:

For the loss of:

One arm at or near shoulder, two hundred weeks;
One arm at the elbow, one hundred eighty weeks;
One arm between wrist and elbow, one hundred sixty weeks;
One hand, one hundred fifty weeks;
One thumb and the metacarpal bone thereof, sixty weeks;
One thumb at the proximal joint, thirty weeks;
One thumb at the second distal joint, twenty weeks;
One first finger and the metacarpal bone thereof, thirty weeks;
One first finger at the proximal joint, twenty weeks;
One first finger at the second joint, fifteen weeks;
One first finger at the distal joint, ten weeks;
One second finger and the metacarpal bone thereof, thirty weeks;
One second finger at the proximal joint, fifteen weeks;
One second finger at the second joint, ten weeks;
One second finger at the distal joint, five weeks;
One third finger and the metacarpal bone thereof, twenty weeks;
One third finger at the proximal joint, twelve weeks;
One third finger at the second joint, eight weeks;
One third finger at the distal joint, four weeks;
One fourth finger and the metacarpal bone thereof, twelve weeks;
One fourth finger at the proximal joint, nine weeks;
One fourth finger at the second joint, six weeks;
One fourth finger at the distal joint, three weeks;

One leg at or near the hip joint as to preclude the use of an artificial limb, one hundred eighty weeks;

One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb, one hundred fifty weeks;

One leg between the knee and ankle, one hundred forty weeks;
One foot at the ankle, one hundred twenty-five weeks;
One great toe with the metatarsal bone thereof, thirty weeks;
One great toe at the proximal joint, fifteen weeks;
One great toe at the second joint, ten weeks;

One toe other than the great toe with the metatarsal bone thereof, twelve weeks;

One toe other than the great toe at proximal joint, six weeks;
One toe other than the great toe at second or distal joint, three weeks;
One eye by enucleation, one hundred twenty weeks;
Total blindness of one eye, one hundred weeks;
Total loss of hearing of both ears, one hundred twenty weeks.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, in the absence of conclusive proof to the contrary, shall constitute total disability, permanent in character.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921.

2921. Hernia cases. A workman in order to be entitled to compensation for hernia must clearly prove:

(1) That the hernia is of recent origin;

(2) That its appearance was accompanied by pain;

(3) That it was immediately preceded by some accidental strain suffered in the course of the employment; and,

(4) That it did not exist prior to the date of the alleged injury.

If a workman, after establishing his right to compensation for hernia as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer, the insurer, or the board, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

History: En. Sec. 16, Ch. 96, L. 1915.

Compensation for death or injury from over-exertion and excitement, see note in 6 A. L. R. 1256.

Refusal to submit to surgical operation as affecting right to compensation under act, see note in Ann. Cas. 1915D, 482; 6 A. L. R. 1260.

2922. Paralysis of limbs considered loss thereof. For the purpose of section 2920, the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of said section, the complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

History: En. Sec. 16, Ch. 96, L. 1915.

What constitutes loss of limb or part thereof within act, see notes in Ann. Cas. 1918A, 536; Ann. Cas. 1918D, 179.

2923. Adjustment of compensation in case of further injuries. Should a further accident occur to a workman who is already receiving compensation hereunder, or who has been previously the recipient of a payment or payments under this act, his further compensation shall be adjusted according to the other provisions of this act, and with regard to the combined effect of his injuries and his past receipt of compensation.

History: En. Sec. 16, Ch. 96, L. 1915.

2924. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established, or compensation terminated in any case, where the maximum payments for disabilities as provided in this act have not been reached, such changes may be adjusted for future application of compensation in accordance with the provisions hereof, or, in a proper case, terminate the payments.

History: En. Sec. 16, Ch. 96, L. 1915.

Increase, decrease, termination or suspension of allowance under act, see notes in Ann. Cas. 1916E, 889; Ann. Cas. 1917E, 469; Ann. Cas. 1918B, 733.

2925. Payments made how. All payments of compensation, as provided in this act, shall be made monthly, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915.

2926. Monthly payments converted into a lump sum. The monthly payments provided for in this act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at

the rate of five per centum per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary, or major or minor dependents, as the case may be, and shall rest in the discretion of the board, both as to the amount of such lump sum payment and the advisability of such conversion. The board is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act; and all settlements and compromises of compensation provided in this act shall be absolutely null and void without the approval of the board.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919.

Lump sum award under Workmen's Compensation Act, see note in Ann. Cas. 1918D, 694.

2927. Assignment or attachment of payments. No payments under this act shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts.

History: En. Sec. 17, Ch. 96, L. 1915.

2928. Liability in case of bankruptcy or failure is first lien. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this act, every liability which may be due under this act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this act, the deficiency shall be a lien upon all the property of such employer or insurer within this state, and shall be prorated with other lienable claims, and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915.

Insolvency of insurer or employer as affecting liability for compensation, see note in 8 A. L. R. 1346.

2929. Waivers invalid. No agreement by an employee to waive any rights under this act for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915.

2930. Misrepresenting pay-roll. Any employer who shall misrepresent to the board the amount of a pay-roll upon which the premiums or assessments under compensation plan number three are to be levied, or upon which fees for factory inspection, subsequent inspection, or reinspection, as elsewhere provided in this act, are based, shall be liable to the state in ten times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the state. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited.

History: En. Sec. 17, Ch. 96, L. 1915.

2931. Act not to apply to railroads engaged in interstate commerce. The provisions of this act shall not apply to any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this act.

History: En. Sec. 17, Ch. 96, L. 1915.

Employees within provision applicable to the "operation of railroads," see note in 7 A. L. R. 1160.

2932. Duplicate receipts paid for injuries to be filed—Statements of medical expenditures. Every employer coming under the provisions of compensation plan number one, and every insurer coming under the provisions of compensation plan number two, shall, on or before the fifteenth day of each and every month, file with the industrial accident board duplicate receipts for all payments made during the previous month to injured workmen or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical, and hospital services, and for the burial of injured workmen.

History: En. Sec. 17, Ch. 96, L. 1915.

2933. Notice of claims for injuries other than death. No claims to recover compensation under this act for injuries not resulting in death shall be maintained unless, within sixty days after the occurrence of the accident which is claimed to have caused the injury, notice in writing, stating the name and address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury shall be equivalent to such service.

History: En. Sec. 17, Ch. 96, L. 1915.

Notice of injury under compensation act, see notes in Ann. Cas. 1917D, 867, 881, 883, 886; Ann. Cas. 1918C, 1042; L. R. A. 1916A, 83, 244; L. R. A. 1917D, 135; L. R. A. 1918E, 556.

Waiver of want of notice of injury required under compensation act, see notes in Ann. Cas. 1917D, 876, 886.

2934. Employers and insurers required to file reports of accidents. Every employer of labor and every insurer is hereby required to file with the board, under such rules and regulations as the board may, from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the board in such form and such detail as the board shall from time to time prescribe, and shall make specific answers to all questions required by the board under its rules and regulations, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

History: En. Sec. 17, Ch. 96, L. 1915.

2935. Confidential information used, how. No information furnished to the board by an employer or an insurer shall be open to public inspection, or made public except on order of the board, or by the board or a member of the board, in the course of a hearing or proceeding. Any officer or employee of the board who, in violation of the provisions of this section, divulges any information, shall be guilty of a misdemeanor.

History: En. Sec. 17, Ch. 96, L. 1915.

2936. American experience table of mortality used. Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American experience table of mortality shall be used.

History: En. Sec. 17, Ch. 96, L. 1915.

2937. Deduction from wages of any part of premium a misdemeanor—Hospital contributions. It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages or earnings of his workmen, or any of them, and the making or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.

History: En. Sec. 17, Ch. 96, L. 1915.

2938. Hearings and investigations—Technical rules. All hearings and investigations before the board, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the board, and in the conduct thereof neither the board nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings or in the manner of taking testimony shall invalidate any order, decision, award, rule, or regulation made, approved, or confirmed by the board.

History: En. Sec. 18, Ch. 96, L. 1915.

2939. Depositions may be taken. The board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts.

History: En. Sec. 18, Ch. 96, L. 1915.

2940. Powers of board. The board is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

History: En. Sec. 18, Ch. 96, L. 1915.

2941. Powers to issue writs and process—Fees for serving. The board, and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board or any member thereof shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

History: En. Sec. 18, Ch. 96, L. 1915.

Cited or applied as section 18 (d), chapter 96, Laws of 1915, in Shea v. North-Butte Min. Co., 55 Mont. 522, 537, 179 Pac. 499.

2942. Power to administer oaths, certify official acts, issue subpoenas—Witness fees and mileage. The board and each member thereof, its sec-

retary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear by order of the board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

History: En. Sec. 18, Ch. 96, L. 1915.

2943. Power of district court concerning production of testimony—Contempt. The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any wit ness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than ten days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided

in this section is cumulative, and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

History: En. Sec. 18, Ch. 96, L. 1915.

Cited or applied as section 18 (f), chapter 96, Laws of 1915, in Shea v. North-Butte Min. Co., 55 Mont. 522, 537, 179 Pac. 499.

2944. Certified copies as evidence. Copies of official documents and orders filed or deposited according to law in the office of the board, certified by a member of the board, or by the secretary under the official seal of the board, to be true copies of the original, shall be evidence in like manner as the originals.

History: En. Sec. 18, Ch. 96, L. 1915.

2945. Apportionment of costs and disbursements. The costs and disbursements, incurred in any proceeding or hearing before the board, or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board.

History: En. Sec. 18, Ch. 96, L. 1915.

2946. Books, records, and pay-rolls to be open to inspection. The books, records, and pay-rolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the board or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the pay-roll, the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state, and paid into the industrial administration fund.

History: En. Sec. 19, Ch. 96, L. 1915.

2947. Jurisdiction of board to hear disputes and controversies. All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and heard and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

History: En. Sec. 20, Ch. 96, L. 1915.

2948. Presumption as to legality of rules, orders, findings, etc., of board. All orders, rules, and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the board or upon review.

History: En. Sec. 20, Ch. 96, L. 1915.

2949. Time for filing—Final findings and awards. After a final hearing by the board, it shall within thirty days make and file its findings upon all

facts involved in the controversy, and its award, which shall state its determination as to the right of the parties.

History: En. Sec. 20, Ch. 96, L. 1915.

2950. Power of board to award compensation and time and manner of payment. The board in its award may fix and determine the total amount of compensation to be paid, and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid, and order payment thereof during the continuance of such disability; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.

History: En. Sec. 20, Ch. 96, L. 1915.

2951. When a nominal disability indemnity may be awarded. If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an incapacity has resulted, the board may, instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time.

History: En. Sec. 20, Ch. 96, L. 1915.

2952. Jurisdiction to rescind or amend any order, decision, award, etc. The board shall have continuing jurisdiction over all its orders, decisions, and awards, and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award, shall have the same effect as original orders or awards.

History: En. Sec. 20, Ch. 96, L. 1915.

2953. Record of proceedings to be kept and testimony to be taken down—Attorneys. A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney. In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board.

History: En. Sec. 20, Ch. 96, L. 1915.

2954. Collateral attack not permitted. No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided therein.

History: En. Sec. 20, Ch. 96, L. 1915.

Cited or applied as section 20 (h), chapter 96, Laws of 1915, in Willis v. Pilot Butte Min. Co., 58 Mont. 26, 35, 190 Pac. 124.

2955. Application for rehearing. At any time within twenty days after the service of any order or decision of the board, any party or parties

aggrieved thereby may apply for a rehearing upon one or more of the following grounds, and upon no other grounds:

(1) That the board acted without or in excess of its powers;

(2) That the order, decision, or award was procured by fraud;

(3) That the evidence does not justify the findings;

(4) That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing;

(5) That the findings do not support the order, decision, or award;

(6) That the order, decision, or award is unreasonable.

History: En. Sec. 21, Ch. 96, L. 1915.

2956. Board may at any time diminish or increase an award. Nothing contained in the preceding section shall, however, be construed to limit the right of the board, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested, to review, diminish, or increase, within the limits provided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

History: En. Sec. 21, Ch. 96, L. 1915.

2957. Application for rehearing—Contents—Rules of procedure. The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers said order, decision, award, rule, or regulation to be unjust, or unlawful, and shall in other respects conform to such rules and regulations as the board may prescribe. The board shall have full power and authority to make and prescribe rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order, and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order.

History: En. Sec. 21, Ch. 96, L. 1915.

2958. Application for rehearing or appeal shall not operate as stay. An application for rehearing or the appeal hereinafter provided shall not excuse any employer, employee, or other person from complying with or obeying any order or requirement of the board, or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the board or the court may direct.

History: En. Sec. 21, Ch. 96, L. 1915.

2959. Appeal to district court. Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, and within twenty days after notice thereof, any party affected thereby may appeal to the district court of the judicial district of the state of Montana, including the county in said state wherein the employer may have his place of residence, or if such employer be a corporation, may have its principal office or place of business, or if said appeal be prosecuted by an injured workman or his

dependents, such appeal may be taken to the district court wherein is located the county within which such workman was injured, which said appeal shall be for the purpose of having the lawfulness of the original order, decision, or award, or the order, decision, or award on rehearing inquired into and determined.

History: En. Sec. 22, Ch. 96, L. 1915.

On an appeal to the district court from an award made by the industrial accident board, the court should not reverse the findings of the board unless the evidence clearly preponderates against them, the board having been in a better position to determine of the credibility of the witnesses and the weight to be given to their testimony than can the court from an inspection of the record. Morgan v. Butte Central Min. etc. Co., 58 Mont. 633, 640, 194 Pac. 496.

Review on appeal of facts under compensation act, see notes in Ann. Cas. 1916B, 475; Ann. Cas. 1918B, 647; L. R. A. 1917D, 186.

2960. How appeal taken—Notice—Record—Trial. Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such industrial accident commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board, then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the board, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

History: En. Sec. 22, Ch. 96, L. 1915.

The power given by this section is that of review rather than that of retrial. Willis v. Pilot Butte Min. Co., 58 Mont. 26, 34, 190 Pac. 124.

2961. Appearances—Setting aside conclusions, orders, etc., of board—Judgment and findings. The board and each party to the action or proceeding before the board shall have the right to appear in the proceeding, and it shall be the duty of the board to so appear. If the court shall find from such trial, as aforesaid, that the findings and conclusions of the board are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the board, or that any finding and conclusion, or any order, rule, or requirement of the board is unreasonable, the court shall set aside such finding, conclusion, order,

judgment, decree, rule, or requirement of said board, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises.

History: En. Sec. 22, Ch. 96, L. 1915.

Cited or applied as section 22 (c), chapter 96, Laws of 1915, in Willis v. Pilot Butte Min. Co., 58 Mont. 26, 35, 190 Pac. 124.

2962. Appeals to supreme court. Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the state of Montana from any final order, judgment, or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court, without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried anew by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

History: En. Sec. 22, Ch. 96, L. 1915.

This section is invalid to the extent that it attempts to confer authority on the supreme court to try the cause "anew" as though the matter was originally before the court. Willis v. Pilot Butte Min. Co., 58 Mont. 26, 34, 190 Pac. 124.

2963. Appropriations to carry out provisions of act. There is hereby appropriated out of the state treasury the sum of fifty thousand dollars, or so much thereof as may be necessary, to be known as the industrial administration fund, out of which the salaries, traveling, and office expenses of the board shall be paid, and all other expenses incident to the administration of this act.

There is hereby appropriated out of the industrial accident fund such sums as may be necessary to pay the compensation provided for in this act.

History: En. Sec. 23, Ch. 96, L. 1915.

Cited or applied as section 23 (a), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

2964. Court to give liberal construction to act. Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: En. Sec. 24, Ch. 96, L. 1915.

Cited or applied as section 24 (a), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 58 Mont. 75, 78, 156 Pac. 130.

2965. Effect of decision holding any part of act unconstitutional. If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act, so long as sufficient remains of the act to render the same operative and reasonably effective for carrying out the main purpose and intention of the legislature

in enacting the same, as such purpose and intention may be disclosed by the act.

History: En. Sec. 24, Ch. 96, L. 1915.

Though part of this act may be invalid, that does not require the conclusion that any other part of it is invalid, if, after the invalid part is eliminated, enough is left to accomplish all the purposes for which the legislation was enacted, particularly when this section is considered. Shea v. North-Butte Min. Co., 55 Mont. 522, 538, 179 Pac. 499.

Effect of partial invalidity of Workmen's Compensation Act, see note in Ann. Cas. 1916D, 68.

2966. Money in industrial accident fund held in trust. The moneys coming into the industrial accident fund shall be held in trust for the purpose for which such fund is created, and if this act shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915.

Cited or applied as section 24 (c), chapter 96, Laws of 1915, in Willis v. Pilot Butte Min. Co., 58 Mont. 26, 40, 190 Pac. 124.

2967. Pending actions not affected by act. This act shall not affect any action pending or any cause of action existing on the thirtieth day of June, 1915.

History: En. Sec. 24, Ch. 96, L. 1915.

2968. Annual report—Copies for general distribution. The board shall, not later than the first day of October of each year, make a report to the governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution.

History: En. Sec. 25, Ch. 96, L. 1915.

2969. When act to take effect. This act shall take effect and be in force from and after its passage and approval, except as to its compensation provisions, which shall not take effect until the first day of July, 1915.

History: En. Sec. 25, Ch. 96, L. 1915.

2970. When and how employer may elect to adopt—Direct payment to employee.

COMPENSATION PLAN NUMBER ONE.

Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become, subject to and be bound by compensation plan No. 1, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the said board, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

History: En. Sec. 30, Ch. 96, L. 1915.

2971. Proof of solvency of employer electing plan No. 1 to be filed. Every such employer now or hereafter engaged in the state of Montana, in

the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

History: En. Sec. 30, Ch. 96, L. 1915.

2972. Employer permitted to carry on business and settle directly with employee—Renewal of application. If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation plan No. 1, shall, at least thirty days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

History: En. Sec. 30, Ch. 96, L. 1915.

2973. Additional proof of solvency—Revocation of order. The board may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten or more than twenty days, after and upon a full hearing, revoke any order or approval theretofore made.

History: En. Sec. 30, Ch. 96, L. 1915.

2974. Requiring security of employer. If said industrial accident board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as said board shall find is reasonable and necessary to meet all liabilities of such employer, which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board, and may be a certain estimated per centum of said employer's last preceding annual pay-roll, or a certain per centum of the established amount of his annual pay-roll for said fiscal year or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county,

municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall, at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

History: En. Sec. 30, Ch. 96, L. 1915.

2975. Failure of employer to pay compensation—Duty of board. Upon the failure of said employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of such state accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this act, and it shall be its duty, in so far as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds, or foreclose and liquidate said securities.

History: En. Sec. 30, Ch. 96, L. 1915.

2976. When employer to make deposit or security to guarantee payment of compensation. Within thirty days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability, in such sum as the board may direct; provided, however, that if sufficient securities are already on deposit with the said board, or if the said board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915.

2977. When employer may be relieved from liability. Any employer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

History: En. Sec. 30, Ch. 96, L. 1915.

2978. Employer electing plan No. 2 to insure his liability.

COMPENSATION PLAN NUMBER TWO.

Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

History: En. Sec. 35, Ch. 96, I. 1915.

Nature and purpose of industrial insurance, see note in Ann. Cas. 1918D, 1186.

Constitutionality of compulsory industrial insurance, see note in 37 L. R. A. (N. S.) 466.

2979. Duty of employer electing plan number two—Amount of insurance necessary. Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the board written acceptance of the provisions of compensation plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amount so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and necessary investigation, and the said employer shall furnish to such board all information which it may require.

History: En. Sec. 35, Ch. 96, L. 1915.

2980. Policies to contain what. All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

History: En. Sec. 35, Ch. 96, L. 1915.

2981. Agreement to be contained in policies of insurance—Deposit of bonds. No such policy shall be issued unless it contains the agreement of

the insurer that it will promptly pay to the person entitled to compensation all the instalments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the state of Montana, or of any school district, county, city, or town in the state of Montana, in an amount not less than five thousand dollars or more than twenty thousand dollars, as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability; and thereafter said insurer must make an additional deposit to meet any deficiency caused thereby.

History: En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919.

2982. Policies made subject to this act—Form of insurance. Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board, and as otherwise provided by law.

History: En. Sec. 35, Ch. 96, L. 1915.

2983. Renewals. Every renewal of such policy shall be made and delivered to said board at least thirty days prior to the expiration of the expiring policy.

History: En. Sec. 35, Ch. 96, L. 1915.

2984. Deposits by insurer with board. Within thirty days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the treasurer of the board for the protection and guarantee of the payment of such liability in such sum as the board may direct; provided, that if the board deems the amount on deposit by said insurer under the provisions of section 2981 sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

History: En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919.

2985. How insurer relieved from liability. Any insurer against whom liability may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the treasurer of the board; or

(2) By purchasing an annuity within the limitations provided by law

in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

History: En. Sec. 35, Ch. 96, L. 1915.

2986. Cancellation of insurance policy. No policy of insurance issued under the provisions of compensation plan No. 2 shall be canceled within the time limited for its expiration except upon thirty days' notice to the employer in favor of whom such policy is issued, and to the board, unless such policy sought to be canceled shall have been sooner replaced by other insurance.

History: En. Sec. 35, Ch. 96, L. 1915.

2987. Report of insurance companies to board. Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

History: En. Sec. 35, Ch. 96, L. 1915.

2988. Policies to contain clause agreeing to do what—Approval or change. Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the board, and shall contain the clauses, agreements, and promises required by this act.

History: En. Sec. 35, Ch. 96, L. 1915.

2989. Deposits under plan No. 2 as security. Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safe-keeping of such deposit, and shall at any time, upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

History: En. Sec. 35, Ch. 96, L. 1915.

2990. What necessary in electing plan No. 3—Percentage of pay-roll to be paid in under plan.

COMPENSATION PLAN NUMBER THREE.

Every employer, subject to the provisions of compensation plan No. 3 shall, in the manner and at the times herein specified, pay into the state

treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual pay-roll specified in this section; which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows:

Class 1. Broom or brush manufacturing, without sawmill; theatre stage employees; moving-picture operators; electrotyping; engraving; lithographing; photo-engraving; stereotyping; embossing; bookbinding; printing; jewelry manufacturing; not otherwise specified; sixty-five one-hundreths of one per centum.

Class 2. Cloth, textile, and wool manufacturing, not otherwise specified; wharf employees, other than stevedores and longshoremen; eight-tenths of one per centum.

Class 3. Manufacturing alcohol, drugs, other than ammonia; candy, crackers, saddles, harness, leather novelties, mattresses, not including springs or wire, paint, varnish, wagons, buggies, carriages, sleighs, cutters; operation of tugs and steamboats; manufacturing roofing paper and articles of paper not otherwise specified, paper boxes, automobiles, motor-trucks, hardware; working in rubber, not otherwise specified; manufacturing boots and shoes; manufacturing articles of and working in leather not otherwise specified; one and three-tenths per centum.

Class 4. Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paper-hanging; calcimining; whitewashing; making willow baskets; setting tiles; mantles and marble work, inside work only; making grease, lard, soap, tallow; inside plumbing work; installing heating systems; painting and decorating, inside work only; metal ceiling work; one and four-tenths per centum.

Class 5. Manufacturing glass; operating breweries, bottling works, grain warehouses, grain elevators; manufacturing articles of brass, copper, lead, and zinc; operating machine-shops, not otherwise specified; lathing, plastering; canneries of meat, fruit, vegetables, or fish, not including can manufacturing; cutting stone or paving blocks, other than in quarries, with or without machinery; installing electrical apparatus inside; installing fire-alarm apparatus inside; covering boilers or steam-pipes; concrete-laying in floors, street-paving or sidewalks, not otherwise specified; laying asphalt and other paving not otherwise specified; including shop and yard; manufacturing canoes and rowboats; well-drilling; constructing and repairing of paving bricks or blocks; one and five-tenths per centum.

Class 6. Operating laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, show-cases, office and store furniture and fixtures; cabinet-making; manufacture of wire mattresses, bedsprings, wooden coffins, caskets, rough wooden boxes for coffins; building hothouses, working in foodstuffs, fruits, edible oils or vegetables, not otherwise classified; operating flour-mills, chop mills, feed mills; one and six-tenths per centum.

Class 7. Manufacturing wood fibre ware; installing automatic sprinklers or ventilating systems; setting glass; erecting fire-proof doors and shutters inside of buildings; operating tanneries, sugar factories; beveling glass; manufacturing peat fuel; building wooden stairs; manufacturing brick, including kilns and buildings and diggings in pits, brickettes,

brooms with sawmills, earthenware, fire-clay, porcelain ware, pottery, tile, terra-cotta; brush making with sawmills; one and eight-tenths per centum.

Class 8. Manufacturing of ammonia; operating waterworks, gas-works; grading, either of streets or otherwise, or road-making, without blasting; construction of plank road, plank street or plank sidewalk; operating creosoting works, pile-treating works; treating ties or other timber products; plumbing, both at and away from the shop, including house connections, without blasting; construction of waterworks, gas-works, and coke-ovens, including laying of mains and connections, without blasting; one and nine-tenths per centum.

Class 9. Manufacturing artificial ice; operating refrigerator plants, cold-storage plants, foundries, packing-houses, including slaughtering; manufacturing agricultural implements, threshing machinery, traction-engines, harvesting machinery; manufacturing asphalt; operating steam-heating and power-plants; manufacturing gas or gasoline engines; operating ferries; stone crushing, not at quarries; boat or ship-building, other than canoes or rowboats, without scaffolds; laying hot flooring compositions, not otherwise specified; operating stock-yards; two per centum.

Class 10. Operating paper-mills, pulp-mills; longshoring, stevedoring, manufacturing fertilizers; operating garbage works; incinerators, crematories, lime-kilns or burners, no quarrying; installing boilers, steam-engines, dynamos, machinery not otherwise specified; putting up belts for machinery; manufacturing barrels, kegs, pails, staves, tubs, excelsior, veneer, packing-cases, sash, doors, and blinds; operation and maintenance of inter-urban railways, without third rail; two and two-tenths per centum.

Class 11. Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; two and one-quarter per centum.

Class 12. Operation of smelters; manufacturing of metallic coffins; manufacturing of iron or steel; boat or ship rigging; planing-mills, independent; cement manufacturing; operating blast-furnaces; two and three-tenths per centum.

Class 13. Street or road-making, with blasting; manufacturing wood baskets; kindling-wood, window and door screens, cordage and rope; manufacturing and refining oil; placing wires in conduits; two and four-tenths per centum.

Class 14. Concentrating and amalgamating of ores; woodworking, not otherwise specified; operating gravel bunkers; hauling gravel; operating gravel pits; operating wood-saws; painting, exterior work; operating boiler-works; making steam-shovels; boilers; shipwrighting; operating sawmills, lath-mills; bridge-work factories; operation of and work in mines, other than coal; two and five-tenths per centum.

Class 15. Operating rolling-mills; manufacturing tanks, not otherwise specified; erecting and repairing advertising signs; harvesting and storing of ice, including loading on cars; making and repairing of locomotives and railroad cars; cutting stone at stone-yards connected with quarries; boat or ship-building with scaffolds; logging operations, with or without machinery; booming or driving logs, ties, or other timber products; operating shingle-mills; operating quarries; two and three-quarters per centum.

Class 16. Operating dredges; construction of telephone and telegraph

systems; construction of dams and reservoirs, electric light and power-plants, water-works and water-systems; installing furnaces; constructing blast-furnaces; sewer-building, maximum depth of excavation at any point seven feet; operation and maintenance of steam railways, including logging railways; operating coal-mines; three per centum.

Class 17. Operating drydocks, including floating drydocks; ornamental metalwork within buildings; electric railway construction, without rock-work or blasting; railroad construction, including street and cable railways, without rockwork or blasting; building canals, without rockwork or blasting; installing freight or passenger elevators; operation of telephone and telegraph systems; making dredges; constructing drydocks; three and one-quarter per centum.

Class 18. Carpenters not otherwise specified; constructing grain elevators, not metal-framed; stump pulling with donkey-engines; steam, electric and cable railway construction, with rock-work or blasting; construction of logging railways, with rockwork or blasting; operation and maintenance of electric railways using third rail, and street railways, all systems, including electric and cable; operation and maintenance of electric light and power-plants, including transmission systems and extensions of lines; electric systems, not otherwise specified; three and one-half per centum.

Class 19. Pile-driving; clearing land with blasting; galvanized iron or tin-works; marblework; fire-proofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; three and three-quarters per centum.

Class 20. Constructing breakwaters, marine railways, and jetties; installation and repair of electrical apparatus, not otherwise specified, outside work only; stamping of metal or tin; building trestles and tunnels other than mining; shaft-sinking, not otherwise specified; four per centum.

Class 21. Moving safes, boilers, machinery; construction of tanks, water-towers, windmills, not metal frame; plumbers making house connections with blasting; roofwork; slate work; stonework; stone-setting; brickwork construction, not otherwise specified; construction of canals, with rockwork or blasting; bridge-building, wooden; construction of floating docks; constructing chimneys of metal or concrete; four and one-half per centum.

Class 22. Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer-building, where maximum depth of excavation at any point exceeds seven feet; blasting, not otherwise specified; manufacturing of fireworks; five per centum.

Class 23. Erecting fire-escapes, fire-proof doors, and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; six per centum.

Class 24. Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; subaqueous works; caisson works; six and one-half per centum.

Class 25. House-moving, house-wrecking; construction or repair of steeples; construction of brick chimneys; six and three-quarters per centum.

Class 26. Manufacturing powder, dynamite, and other explosives, not otherwise specified; ten per centum.

Class 27. Any employer and his employees engaged in non-hazardous work or employment, by their joint election, filed with and approved by the board, may accept the provisions of compensation plan No. 3. In such event, such employer and employees shall be known as class 27, the rate of assessment in which shall be one-half of one per centum.

History: En. Sec. 40, Ch. 96, L. 1915.

Cited or applied as section 40, chapter 96, Laws of 1915, in Lewis and Clark County v. Industrial Accident Board, 52 Mont. 6, 12, 155 Pac. 268, L. R. A. 1916D, 628.

2991. Computation of assessments. If a single establishment or work comprises several occupations listed in the preceding section in different classifications, the assessment shall be computed according to the pay-roll of each occupation if clearly separable; otherwise an average rate of assessment shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards, provided that in no case shall any assessment levied under the provisions of this act be for a less amount than two and one-half dollars.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921.

2992. What classification advisory only and subject to rearrangement, etc. The classification of hazardous occupations in section 2990 and the rates of premium or assessment therein fixed are advisory only, and the board is hereby given full power and authority to rearrange, revise, add to, take from, change, modify, increase, or decrease any classification or rate named in section 2990, as in its judgment or experience may be necessary or expedient; provided, that no change in the classification or rates prescribed in said section shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until thirty days after the date of the order or decision of the board making such change, except that in case of new industries, or industries not enumerated in section 2990, the board shall have the right to make an immediate classification thereof and establish a rate therefor.

History: En. Sec. 40, Ch. 96, L. 1915.

2993. Intent and purpose of plan No. 3—Fund to be paid for what purpose only—Accounts. It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation, or employment coming under the provisions of said plan shall be liable and pay for all injuries happening to employees coming under the provisions of said plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the industrial accident fund, which fund shall be devoted exclusively to the payment of all valid claims for injuries happening in each industry, trade, occupation, or employment coming under the provisions of compensation plan No. 3; provided, that accounts shall be kept with each industry, trade, occupation, or employment in accordance with the foregoing classifications, or otherwise, as the board may direct, both as to receipts and disbursements, for the purpose of providing information and statistics necessary for determining any changes in such rates or classifications.

History: En. Sec. 40, Ch. 96, L. 1915.

2994. Initial payment July 15, 1915. There shall be collected from all classes as initial payment into the industrial accident fund, on or before the fifteenth day of July, 1915, one-fourth of the premium assessment for that fiscal year, and one-twelfth thereof at the first of each month beginning with October 1, 1915; provided, that if such fund shall have a sufficient balance on hand at the end of the first three months, or any month thereafter, to meet the requirements of the industrial accident fund, no assessment shall be called for such month.

History: En. Sec. 40, Ch. 96, L. 1915.

2995. Manner and time of making payments by employers. The first payment shall be collected upon the pay-roll of the months of April, May, and June, 1915. At the end of each calendar year an adjustment of the account shall be made upon the basis of the actual pay-roll. Any shortage shall be made good within thirty days thereafter. Every employer who shall enter into business at any intermediate day shall make his payments in the same manner and upon the same basis before commencing operations; the amount of such payments shall be calculated upon his estimated pay-roll, and an adjustment shall be made on or before February 1st in the year following, in the manner above provided.

History: En. Sec. 40, Ch. 96, L. 1915.

2996. In case of default, rates to be advanced twenty-five per cent. Any employer who is in default in the observance of any order of the board, issued pursuant to the provisions of sections 2990 to 2995, inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

History: En. Sec. 40, Ch. 96, L. 1915.

2997. Changes in classification of risks to be equalized. Any change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the calendar year, shall be equalized by the board within thirty days after the end of such year in proportion to its duration in accordance with the schedules provided in this act.

History: En. Sec. 40, Ch. 96, L. 1915.

2998. Deficiency in industrial accident fund. If, at the end of any year, it shall be seen that the contribution to the industrial accident fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class, in proportion to their respective payments for the previous year.

History: En. Sec. 40, Ch. 96, L. 1915.

2999. Amount to be set apart when required payment reasonably certain. Upon the happening of an accident where death or the nature of the injury renders the amounts of future payments certain, or reasonably certain, the board shall forthwith cause the treasurer of the board to set apart out of the industrial accident fund a sum of money, to be calculated on the basis of the maximum sum required to pay the compen-

sation accruing on account of such injury, which will meet such required payments, not exceeding, however, the sum of four thousand dollars for any one case.

History: En. Sec. 40, Ch. 96, L. 1915.

3000. Investment of reserve—Payment of instalments. The treasurer of the board shall invest such reserve in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school district in the state of Montana, or any other security which may be approved by said board, and out of the same and its earnings shall be paid the monthly instalments, and any lump sum, then or thereafter arranged for; provided, however, that when there is sufficient money in the industrial accident fund to meet such compensation payments, any surplus remaining may be placed in the industrial reserve fund and invested by the board in the securities specified in this section.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921.

3001. Treasurer to keep accounts of segregations. The treasurer of the board shall keep an accurate account of all such segregations of the industrial accident fund, and upon direction of the board shall divert from the main fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915.

3002. Collection in case of default by employer. If any employer shall default in any payment to the industrial accident fund, the sum due may be collected by an action at law in the name of the state, and such right of action shall be cumulative.

History: En. Sec. 40, Ch. 96, L. 1915.

Cited or applied as section 40 (m), chapter 96, Laws of 1915, in City of Butte v. Industrial Accident Board, 52 Mont. 75, 79, 156 Pac. 130.

3003. Injury happening while employer is in default. For any injury happening to any of his workmen during default in any payment to the industrial accident fund, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the industrial accident fund the amount of such default, together with the penalty prescribed by section 2996.

History: En. Sec. 40, Ch. 96, L. 1915.

Neglect of statutory duty by employer as permitting action by employee for personal injuries notwithstanding compensation act, see note in Ann. Cas. 1918D, 334.

3004. Assignment of cause of action to state. The person entitled to sue under the provisions of the preceding section shall have the option of proceeding by suit or taking under this act. If such person take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the industrial accident fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

History: En. Sec. 40, Ch. 96, L. 1915.

3005. Prosecution or settlement of cause of action. Any cause of action assigned to the state under the preceding section may be prosecuted or compromised by the board, in its discretion.

History: En. Sec. 40, Ch. 96, L. 1915.

3006. Application for compensation under plan No. 3. Where a workman is entitled to compensation under compensation plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the workman.

History: En. Sec. 40, Ch. 96, L. 1915.

3007. Payment of physician. For a proper compliance with the provisions of the preceding section, the physician, after approval by the board, shall be paid out of the industrial administration fund, one and one-half dollars for each case.

History: En. Sec. 40, Ch. 96, L. 1915.

3008. Application in case of death. Where death results from the injury, the parties entitled to compensation under compensation plan No. 3, or some one in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the board.

History: En. Sec. 40, Ch. 96, L. 1915.

3009. What included in computing compensation in hazardous employment. In computing the pay-roll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this act, shall be included, whether it be in the form of salary, wage, piecework, overtime, or any allowance in the way of profit-sharing premium, or otherwise, and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915.

3010. Disbursements out of industrial accident fund—Employer to pay warrant. Disbursements out of the industrial accident fund shall be made by the treasurer of the board as the board may order. If at any time there shall not be sufficient money in the accident fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six per centum per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

History: En. Sec. 40, Ch. 96, L. 1915.

3011. Earnings and interest on deposits—Treasurer to make no profit. All earnings made by the industrial accident fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the accident fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars, or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

History: En. Sec. 40, Ch. 96, L. 1915.

3012. Unsafe places for workmen forbidden.

SAFETY PROVISIONS.

No employer shall construct, maintain, or operate, or cause to be constructed, maintained, or operated any place of employment that is not safe.

History: En. Sec. 50, Ch. 96, L. 1915.

3013. Removal of safety devices, etc., forbidden. No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for protection of any employee in such employment or place of employment, or fail or neglect to do anything reasonably necessary to protect the life and safety of himself and other employees.

History: En. Sec. 50, Ch. 96, L. 1915.

Failure to use safety appliances as serious and wilful misconduct barring recovery under compensation act, see notes in 4 A. L. R. 121; 9 A. L. R. 1377.

3014. Jurisdiction and supervision of board over employment and places of employment. The board is vested with full power and jurisdiction over, and shall have such supervision of every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe, and requiring the protection of the life and safety of every employee in such employment or place of employment.

History: En. Sec. 50, Ch. 96, L. 1915.

3015. Powers of board regarding safety of employees. The board shall have power, in addition to other powers herein granted, by general or special orders, rules, or regulations, or otherwise:

1. To declare and prescribe such safety devices, safeguards, or other means or methods of protection as are well adapted to render employees and places of employment safe;

2. To fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means and methods of protection, as may be necessary for the protection of the life and safety of employees;

3. To fix and order such reasonable standards for the construction,

repair, and maintenance of places of employment as shall render them safe;

4. To require the performance of any act necessary for the protection of life and safety of employees;

5. To declare and prescribe the general form of industrial accident reports, the accidents to be reported, and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the board from requiring supplemental accident reports; provided, however, that where, by the laws of the state of Montana, the manner or method of carrying on any business, or the rules or regulations in relation thereto, or the character or kind of safety devices has been prescribed, no other or additional requirements shall be made by the board, but it shall be the duty of the board to see that the employer lives up to and obeys said laws.

History: En. Sec. 50, Ch. 96, L. 1915.

3016. Notice of hearing for purpose of considering and issuing general safety orders. Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders, the board shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation, published and circulated in the state. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any general order issued by the board after a hearing has been had.

History: En. Sec. 50, Ch. 96, L. 1915.

3017. Places defined as hazardous to be inspected once each year. After July 1, 1915, every place of employment of a work or occupation defined by sections 2847 to 2852, inclusive, to be hazardous shall be inspected at least once during each year by an inspector or examiner appointed by the board. Such inspection shall be for the purpose of determining the condition and operation of such places of employment, as regards the safety of employees working therein, and the use of safeguards, safety appliances, and reasonably safe tools and appliances.

History: En. Sec. 51, Ch. 96, L. 1915.

3018. Report of inspectors. A report of such inspection shall be filed in the office of the board, and a copy thereof given the employer.

History: En. Sec. 51, Ch. 96, L. 1915.

3019. Certificate of safety of inspected places. Each place of employment inspected as provided in section 3017, and found in a satisfactory condition, shall receive from the board, upon payment of the inspection fees hereinafter provided for, a certificate to that effect, which certificate must be prominently displayed, under glass, in one of the principal places of the establishment so inspected.

History: En. Sec. 51, Ch. 96, L. 1915.

3020. When board may order safety devices installed. If, after such inspection and report thereof to the board, it shall be found that any such place of employment is not constructed, maintained or operated as provided in this act, the board shall order the installation, use, mainte-

nance, and operation, within such reasonable time as the board may direct, of such safety devices, safeguards, and other means and methods of protection as may be necessary to reasonably insure the safety of the workmen employed therein, subject to the provisions of the preceding section.

History: En. Sec. 51, Ch. 96, L. 1915.

3021. When board or inspector may order place of employment closed and put in safe condition. If, after such inspection, the board or any inspector or examiner thereof shall find such place of employment in such an unsafe condition as to constitute an immediate menace to the safety of the workmen employed therein, the board, or any inspector or examiner thereof, may order any such place of employment closed, or the work therein to cease, until such safety devices, safeguards, and other means and methods, or changes or removals, as may be ordered by the board, or any inspector or examiner thereof, shall have been installed, repaired, changed, or removed, and such place of employment put in such condition as will reasonably insure the safety of the workmen employed therein.

History: En. Sec. 51, Ch. 96, L. 1915.

3022. Fee for annual inspection to be paid by employer. For each annual inspection made under the provisions of this section, the employer shall pay, at the time of such inspection, a fee of five cents for each one thousand dollars or fraction thereof of his annual pay-roll for the preceding year; provided, that no inspection fee under this section shall be less than five dollars.

History: En. Sec. 52, Ch. 96, L. 1915.

3023. Fees in subsequent inspections. The fees for any subsequent or reinspection made during any year in which an annual inspection shall have been made shall be:

Where the annual pay-roll for the preceding year shall have been not more than twenty-five thousand dollars, five dollars;

Where the annual pay-roll for the preceding year shall have been more than twenty-five thousand dollars, but not more than one hundred thousand dollars, ten dollars;

Where the annual pay-roll for the preceding year shall have been more than one hundred thousand dollars, but not more than five hundred thousand dollars, twenty dollars;

Where the annual pay-roll for the preceding year shall have been more than five hundred thousand dollars, but not more than one million dollars, forty dollars;

Where the annual pay-roll for the preceding year shall have been more than one million dollars, fifty dollars.

History: En. Sec. 52, Ch. 96, L. 1915.

3024. Inspection fees and fines to be paid monthly into what fund. All fees received by the board for inspection, or for subsequent or reinspection, and all fines imposed or collected for a violation of the safety provisions of this act, shall be paid monthly to the state treasurer, who shall credit such payment to the industrial administration fund.

History: En. Sec. 52, Ch. 96, L. 1915.

3025. Orders concerning places and employments found to be unsafe. Whenever the board shall find that any employment or place of employment is not safe, or that the practice or means or methods of operation or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employees in such employments and places of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employments and places of employment, and may in said order direct that such additions, repairs, improvements, or changes be made; and such safety devices and safeguards be furnished, provided, and used as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in such order.

History: En. Sec. 53, Ch. 96, L. 1915.

3026. Board may grant time within which to comply with any order. The board may, upon application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the board for an extension of time, which the board shall grant if it finds such an extension of time necessary.

History: En. Sec. 53, Ch. 96, L. 1915.

3027. Board may summarily investigate places believed to be unsafe. Whenever the board shall learn, or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employee, it may summarily investigate the same, with or without notice or hearings, and enter and serve such order as may be necessary relative thereto.

History: En. Sec. 53, Ch. 96, L. 1915.

3028. Compliance with orders, directions, rules, etc., enjoined. Every employer, employee, and other person shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the board, and shall do everything necessary or proper in order to secure compliance with, and observance of every such order, decision, rule, or regulation.

History: En. Sec. 53, Ch. 96, L. 1915.

3029. Act not to deprive any other public corporation, board, or department of jurisdiction. Nothing contained in this act shall be construed to deprive any other public corporation, board, or department of any power or jurisdiction over or relative to any place of employment; provided, that whenever the board shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the board of a copy thereof with the secretary or clerk of any such public corporation to which, or within whose jurisdiction it may apply, establish a minimum requirement concerning the matters covered by such order, and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the board.

History: En. Sec. 53, Ch. 96, L. 1915.

3030. Orders, rules, findings, etc., of board as evidence. Every order of the board, general or special, its rules or regulations, findings, or decisions shall be admissible in evidence in any prosecution for, or suit to prevent the violation of any of the provisions of this act, and shall be presumed to be reasonable. This presumption is, however, a rebuttable presumption.

History: En. Sec. 53, Ch. 96, L. 1915.

3031. Board may investigate cause of all industrial accidents—Orders and recommendations concerning same. The board may investigate the cause of all industrial accidents occurring in any employment or place of employment, or directly or indirectly arising from or connected therewith, resulting in personal injury or death; and the board shall have the power to make such orders or recommendations with respect to such accidents as may be just and reasonable; provided, that neither the order nor the recommendation of the board, nor any accident report filed with the board, shall be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of such injury or death.

History: En. Sec. 53, Ch. 96, L. 1915.

3032. When rate upon place may be advanced fifty per cent. If, by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of this act, and such employer shall be under compensation plan No. 3, the board, in addition to any other penalty provided by this act, shall advance the rate upon such place of employment fifty per centum, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment, and such employer shall have obtained a certificate of the inspector or examiner provided for herein.

History: En. Sec. 53, Ch. 96, L. 1915.

3033. Violation of safety provisions a misdemeanor. Every employer, employee, or other person, who either individually or acting as an officer, agent, or employee of a corporation, or other person, violates any safety provisions contained in this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who directly or indirectly, knowingly induces another so to do, is guilty of a misdemeanor.

History: En. Sec. 54, Ch. 96, L. 1915.

CHAPTER 214.

CONSOLIDATION OF BOILER AND MINE INSPECTION UNDER CONTROL OF INDUSTRIAL ACCIDENT BOARD.

Section 3034. Consolidation Boiler, Mine and Coal Mine Inspectors.
3035. Same—Appointment by Industrial Accident Board.
3036. Salaries of Inspectors.
3037. Districting of State for Purposes of Boiler Inspection—Rules and Regulations—Reports.
3038. Inspection Fees.
3039. Laws Continued in Force and Repealed.

3034. Consolidation boiler, mine and coal mine inspectors. The offices of inspector of boilers, the office of inspector of mines, and the office of state coal mine inspector are hereby combined and placed under the general supervision of the industrial accident board.

History: En. Sec. 1, Ch. 92, L. 1917; amd. Sec. 1, Ch. 47, L. 1921.

3035. Same—Appointment by industrial accident board. The industrial accident board shall appoint not to exceed four inspectors of boilers, one coal mine inspector and two inspectors of quartz mines, all of whose terms of office shall be at the pleasure of the industrial accident board.

History: En. Sec. 2, Ch. 92, L. 1917; amd. Sec. 2, Ch. 47, L. 1921.

3036. Salaries of inspectors. The said officers shall receive such annual salaries to be fixed by the industrial accident board, and approved by the governor; all of said officers to be paid monthly.

History: En. Sec. 3, Ch. 92, L. 1917.

3037. Districting of state for purposes of boiler inspection—Rules and regulations—Reports. The industrial accident board shall district the state for boiler inspection and shall assign one inspector of boilers to each such district, and may from time to time change the boundaries of said districts and change said inspector of boilers to other districts, and said board shall have the power and it shall be its duty to provide rules and regulations under which said inspectors of boilers, inspectors of mines, and coal mine inspector shall perform their duties; and the board may require them, in addition to their statutory duties, to make the annual inspections, reports, and collections required by the safety provisions of sections 3017 to 3019, 3021, 3022, and 3023 of this code.

History: En. Sec. 4, Ch. 92, L. 1917.

3038. Inspection fees. All fees collected by the inspectors of boilers, the inspectors of mines, and the coal mine inspector shall remain the same in amounts as now fixed by law, and when same are collected they shall be paid into the state treasury and credited to the industrial administration fund as other inspection fees of the industrial accident board are now paid and credited.

History: En. Sec. 5, Ch. 92, L. 1917.

3039. Laws continued in force and repealed. All laws that now prescribe the qualifications, powers, and duties of the inspectors of boilers, inspector of steamboats, inspectors of mines, and coal mine inspector, not inconsistent with the provisions of this act, are hereby continued in full force and effect, and all other acts and parts of acts contrary to the provisions of this act are hereby repealed.

History: En. Sec. 55, Ch. 96, L. 1915; amd. Sec. 6, Ch. 92, L. 1917.

CHAPTER 215.

REPORT OF ALIEN EMPLOYEES TO INDUSTRIAL ACCIDENT BOARD.

Section 3040. Reports of Aliens Employed to Be Made Quarterly to Industrial Accident Board.
3041. Blank Forms for Reports to Be Furnished.
3042. Duty of Employees to Furnish Information.
3043. Rules and Regulations—Failure to Comply With Law a Misdemeanor.

3040. Reports of aliens employed to be made quarterly to industrial accident board. It shall hereafter be the duty of every person, association, or corporation employing more than fifty persons at one time, within the state of Montana, to make out and file with the industrial accident board a regular quarterly report showing the names, ages, and residence of all their employees who are not citizens of the United States, and also of all employees who do not read and speak the English language. All such reports shall be made upon printed blank forms to be furnished by the industrial accident board, and shall in addition to the foregoing facts disclose the following, to-wit:

1. The country of which said employee is a citizen;
2. The period of time which said employee has resided in the United States;
3. The period of time which said employee has been in the service of said employer;
4. Whether said employee be married or single, and if married, the residence of employee's wife and family;
5. What steps, if any, employee has taken to become a citizen of the United States;
6. What steps, if any, employee has taken to familiarize himself with the English language;
7. Such further and additional facts and information as shall be prescribed and required by said board.

History: En. Sec. 1, Ch. 134, L. 1919.

3041. Blank forms for reports to be furnished. It shall be the duty of the industrial accident board to prepare, or cause to be prepared, all blank printed forms that shall be necessary to comply with the provisions hereof, which said blanks shall be furnished to all said employers, upon application therefor to said industrial accident board.

History: En. Sec. 2, Ch. 134, L. 1919.

3042. Duty of employees to furnish information. For the purpose of carrying out the provisions of this act, all employers of labor are hereby designated, for the purpose of receiving the information provided for in this act, agents and representatives of the industrial accident board, and it shall be the duty of all employees of such employers to furnish to the employers, upon their request, for and on behalf of said industrial accident board, all information necessary to enable the employers to make out and furnish the report or reports required by this act. In case of the failure or refusal of any employee to furnish to his employer the information provided for in this act, such fact shall be reported by the employer to the industrial accident board, and the industrial accident board is hereby authorized and empowered to cause such employee to appear before the industrial accident board, at such time and place as they may determine, and furnish the information required under the provisions of this act.

History: En. Sec. 3, Ch. 134, L. 1919.

3043. Rules and regulations—Failure to comply with law a misdemeanor. The industrial accident board shall have full power and author-

ity to make and prescribe all reasonable rules and regulations, and to pre scribe all necessary penalties to secure a strict compliance with the provisions of this act, and every employer or employee or other person, who shall fail or refuse to comply with the provisions of this act, or with any rule or regulation of the industrial accident board, shall be deemed guilty of a misdemeanor.

History: En. Sec. 4, Ch. 134, L. 1919.

CHAPTER 216.

VOCATIONAL REHABILITATION AND EDUCATION.

Section 3044. Acceptance Act of Congress Vocational Rehabilitation.
3045. Custody of Moneys in Vocational Rehabilitation Fund.
3046. Designation of State Board to Co-operate With Federal.
3047. Duty of State Board.
3048. Persons Disabled in Industry Defined.
3049. Powers and Duties of State Board.
3050. Receipt of Gifts and Donations.
3051. Appropriations.

3044. Acceptance act of congress vocational rehabilitation. The state of Montana does hereby, through its legislative authority, accept the provisions and benefits of the act of congress, entitled: "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June 2, 1920, and will observe and comply with all the requirements of such act.

History: En. Sec. 1, Ch. 149, L. 1921.

3045. Custody of moneys in vocational rehabilitation fund. The state treasurer is hereby designated and appointed custodian of all moneys received by the state from appropriations made by the congress of the United States for the vocational rehabilitation of persons disabled in industry, or otherwise, and is authorized to receive gifts and donations and provide for the proper custody of the same said moneys, together with all the money herein appropriated, and all other moneys otherwise provided by law for the said purpose, shall constitute a fund to be called the vocational rehabilitation fund; and the state treasurer shall make disbursement therefrom upon the order of the state board for vocational education.

History: En. Sec. 2, Ch. 149, L. 1921.

3046. Designation of state board to co-operate with federal. The board heretofore designated or created as the state board for vocational education to co-operate with the federal board for vocational education in the administration of the provisions of the vocational education act, approved February 23, 1917, is hereby designated as the state board for the purpose of co-operating with the said federal board in carrying out the provisions and the purposes of said federal act, providing for the vocational rehabilitation of persons disabled in industry or otherwise.

History: En. Sec. 3, Ch. 149, L. 1921.

3047. Duty of state board. It shall be the duty of the state board empowered to co-operate as aforesaid, and the state industrial accident board to formulate a plan of co-operation in accordance with the provi-

sions of this act and said act of congress, such plan to become effective when approved by the governor of the state.

History: En. Sec. 4, Ch. 149, L. 1921.

3048. Persons disabled in industry defined. "Persons disabled in industry or otherwise," shall, for the purposes of this act, mean any person, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, disease, or injury, is or may be expected to be totally or partially incapacitated for remunerative occupation, and who may reasonably be expected to be fit to engage in a remunerative occupation after completing a vocational rehabilitation course. To be eligible to receive vocational rehabilitation from the state board, such persons must have been domiciled within the state for one year or more, or reside in the state at the time of sustaining disability. No portion of any appropriations made for the purposes of this act shall be used by any institution for handicapped persons except for the special training of such individuals entitled to the benefits of this act as shall be determined by the state board.

History: En. Sec. 5, Ch. 149, L. 1921.

3049. Powers and duties of state board. The state board heretofore created as the state board for vocational education is hereby authorized and directed to co-operate with the federal board for vocational education in the administration of said act of congress; to administer any legislation pursuant thereto enacted by this state and direct the disbursement and administer the use of all funds provided by the federal government and this state for the vocational rehabilitation of persons disabled in industry or otherwise; to appoint such assistants as may be necessary to administer the provisions of this act and said act of congress in this state and fix the compensation of such assistants; to make studies and investigations relating to the vocational rehabilitation of persons disabled in industry or otherwise and to formulate plans for the vocational rehabilitation of such persons; to make surveys with the co-operation of the state industrial accident board, to ascertain the names and condition of persons disabled in industry or otherwise within the state; to provide that all such persons shall be properly visited by representatives of the state board with the view of determining whether or not vocational rehabilitation is feasible; to acquaint all such persons susceptible of vocational rehabilitation with the rehabilitation facilities afforded by the state and to counsel them regarding the selection of a suitable vocation; to register all such persons electing to take advantage of the benefits of rehabilitation offered and to prescribe and provide such training as may be necessary to insure their vocational rehabilitation; to maintain a record of all such persons, together with the measures taken for their rehabilitation; to utilize in the rehabilitation of persons disabled in industry or otherwise such existing educational facilities of the state as may be advisable and practicable, including public and private educational institutions, public or private establishments, plants, factories, etc., and the services of persons specially qualified for the instruction of physically handicapped persons; to promote and aid in the establishment of schools and classes for the vocational rehabilitation of persons disabled in industry or otherwise;

to supervise the training of such persons and confer with their relatives and other persons interested concerning any matter affecting their vocational rehabilitation; to provide for the placement in suitable gainful occupations of persons completing courses of training provided by the board, including supervision for a reasonable time after placement; to utilize the facilities of such state agencies, both public and private, as may be practicable in securing employment for such persons and any such public agency is hereby authorized and directed to co-operate with the state board for vocational education for the purpose stated: to co-operate with any agency of the federal government or of the state or of any county or other municipal authority within the state or any other agency, public or private, in carrying out the purposes of this act; to make such rules and regulations as may be necessary for the administration of this act and said act of congress within the state and report annually to the governor the conditions of vocational rehabilitation within the state, such report to designate the educational institutions, establishments, plants, factories, etc., in which training is being given, and to contain a detailed statement of the expenditures of the state and federal funds in the rehabilitation of persons disabled in industry or otherwise.

History: En. Sec. 6, Ch. 149, L. 1921.

3050. Receipt of gifts and donations. The state board for vocational education is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons disabled in industry or otherwise as in the judgment of the said state board are proper and consistent with the provisions of this act. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted annually to the governor of the state by said state board.

History: En. Sec. 7, Ch. 149, L. 1921.

3051. Appropriations. There shall be appropriated a sum of money available for each fiscal year not less than the maximum sum which may be allotted to the state for the purpose set forth in said federal act, and there is hereby appropriated for such purposes out of any moneys in the treasury not otherwise appropriated for each of the fiscal years ending 1922 and 1923 respectively, the sum of ten thousand dollars.

History: En. Sec. 8, Ch. 149, L. 1921.

CHAPTER 217.

BOARD OF ARBITRATION AND CONCILIATION.

Section 3052. State Board of Arbitration.
3053. Who May Be Appointed.
3054. Oath of Members and Organization of Board.
3055. Settlement of Controversies.
3056. Application, How Made.
3057. Report.
3058. The Decision—When Binding.
3059. Parties May Agree to Special Board of Arbitration.
3060. Compensation.

3052. State board of arbitration. There is a state board of arbitration and conciliation consisting of three members, whose term of office is two years and until their successors are appointed and qualified. The board must be appointed by the governor, with the advice and consent of the senate. If a vacancy occurs at any time the governor shall appoint some one to serve out the unexpired term, and he may in like manner remove any member of said board.

History: En. Sec. 1670, Rev. C. 1907.

Note.—A territorial board of arbitration and conciliation was created by act of February 28, 1887, 5th Division Compiled Statutes 1887, sections 82 to 88. This act was superseded by sections 3330 to 3338, Political Code 1895, appearing as sections 1670 to 1678, Revised Codes 1907.

3053. Who may be appointed. One of the board must be an employer, or selected from some association representing employers of labor, and one of them must be a laborer, or selected from some labor organization, and not an employer of labor, and the other must be a disinterested citizen.

History: Sec. 1671, Rev. C. 1907. See also history of Sec. 3052.

3054. Oath of members and organization of board. The members of the board must, before entering upon the duties of their office, take the oath required by the constitution. They shall at once organize by the choice of one of their number as chairman. Said board may appoint and remove a clerk of the board, who shall receive such compensation as may be allowed by the board, but not exceeding five dollars per day for the time employed. The board shall, as soon as possible after its organization, establish such rules or modes of procedure as are necessary, subject to the approval of the governor.

History: Sec. 1672, Rev. C. 1907. See also history of Sec. 3052.

3055. Settlement of controversies. Whenever any controversy or dispute, not involving questions which may be the subject of a civil action, exists between an employer (if he employs twenty or more in the same general line of business in the state) and his employees, the board must, on application as is hereinafter provided, visit the locality of the dispute and make inquiry into the cause thereof, hear all persons interested therein, who may come before them, advise the respective parties what, if anything, ought to be done, by either or both, to adjust said dispute, and the board must make a written decision thereon. The decision must at once be made public, and must be recorded in a book kept by the clerk of the board, and a statement thereof published in the annual report, and the board must cause a copy thereof to be filed with the clerk of the county where the dispute arose.

History: Sec. 1673, Rev. C. 1907. See also history of Sec. 3052.

3056. Application, how made. The application to the board of arbitration and conciliation must be signed by the employer, or by a majority of his employees in the department of the business in which the controversy or difference exists, or their duly authorized agent, or by both parties, and shall contain a concise statement of the grievances complained of, and a promise to continue on in business or at work without any lockout or strike until the decision of said board, if it shall be made within four weeks of the date of filing said application. When an appli-

cation is signed by an agent claiming to represent a majority of such employees, the board shall satisfy itself that such agent is duly authorized in writing to represent such employees, but the names of the employees giving such authority shall be kept secret by said board. As soon as may be after the receipt of said application, the secretary of said board shall cause public notice to be given for the time and place for the hearing thereon; but public notice need not be given when both parties to the controversy join in the application and present therewith a written request that no public notice be given. When such request is made, notice shall be given to the parties interested in such manner as the board may order; and the board may, at any stage of the proceedings, cause public notice to be given, notwithstanding such request. When notice has been given as aforesaid, each of the parties to the controversy, the employer on one side, and the employees interested on the other side, may in writing nominate, and the board may appoint, one person to act in the case as expert assistant to the board. The two persons so appointed shall be skilled in and conversant with the business or trade concerning which the dispute has arisen. It shall be their duty, under the direction of the board, to obtain and report to the board information concerning the wages paid, the hours of labor, and the methods and grades of work prevailing in manufacturing establishments, or other industries or occupations, within the state, of a character similar to that in which the matters in dispute have arisen. Said expert assistants shall be sworn to the faithful discharge of their duty; such oath to be administered by any member of the board, and a record thereof shall be preserved with the record of the proceedings in the case. They shall be entitled to receive from the treasury of the state such compensation as shall be allowed and certified by the board not exceeding.....dollars per day, together with all necessary traveling expenses. Nothing in this act shall be construed to prevent the board from appointing such other additional expert assistant or assistants as it may deem necessary, who shall be paid in like manner. Should the petitioner or petitioners fail to perform the promise made in said application, the board shall proceed no further thereupon without the consent of the adverse party. The board shall have power to summon as witness any operative or employee in the department of business affected, and any person who keeps the records of wages earned in those departments, and to examine them under oath, and to require the production of books containing the record of wages paid. Summons may be signed and oaths administered by any member of the board.

History: Sec. 1674, Rev. C. 1907. See also history of Sec. 3052.

3057. Report. Upon the receipt of said application and after such notice, the board shall proceed as before provided, and render a written decision, which shall be open to the public inspection, shall be recorded upon the records of the board, and published at the discretion of the same in an annual report to be made to the governor on or before the first day of December in each year.

History: Sec. 1675, Rev. C. 1907. See also history of Sec. 3052.

3058. The decision—When binding. Any decision made by the board is binding upon the parties who join in the application for six months, or

until either party has given the other notice in writing of his intention not to be bound by the same at the expiration of sixty days therefrom. The notice must be given to employees by posting the same in three conspicuous places in the shop, office, factory, store, mill, or mine where the employees work.

History: Sec. 1676, Rev. C. 1907. See also history of Sec. 3052.

3059. Parties may agree to special board of arbitration. The parties to any controversy or difference as described in section 3055 of this code may submit the matters in dispute, in writing, to a local board of arbitration and conciliation; such board may be either mutually agreed upon, or the employer may designate one of the arbitrators, the employees, or their duly authorized agent, another, and the two arbitrators so designated may choose a third, who shall be chairman of the board. Such board shall, in respect to the matters referred to it, have and exercise all the powers which the state board might have and exercise, and its decision shall have whatever binding effect may be agreed upon by the parties to the controversy in written submission. The jurisdiction of such board shall be exclusive in respect to the matters submitted to it, but it may ask and receive the advice and assistance of the state board. The decision of such board shall be rendered within ten days of the close of any hearing held by it; such decision shall at once be filed with the clerk of the county in which the controversy or difference arose, and a copy thereof shall be forwarded to the state board and entered on its records. Each of such arbitrators shall be entitled to receive from the treasury of the county in which the controversy or difference that is the subject of the arbitration exists, if such payment shall be approved by the commissioners of said county, the sum of three dollars for each day of actual service, not exceeding ten days for any one arbitration. Whenever it is made to appear to the mayor of any city or two commissioners of any county, that a strike or lockout such as described hereafter in this section is seriously threatened or actually occurs, the mayor of such city, or said commissioners of such county, shall at once notify the state board of the fact. Whenever it shall come to the knowledge of the state board, either by notice from the mayor of a city, or two or more commissioners of a county, as provided in this section, or otherwise, that a strike or lockout is seriously threatened or has actually occurred in any city or county of this state, involving an employer and his present or past employees, if at the time he is employing or up to the occurrence of the strike or lockout was employing not less than twenty persons in the same general line of business in any city, town, or county in this state, it shall be the duty of the state board to put itself in communication as soon as may be with such employer and employees, and endeavor by mediation to effect an amicable settlement between them, or to endeavor to persuade them, providing that a strike or lockout has not actually occurred or is not then continuing, to submit the matters in dispute to a local board of arbitration and conciliation as above provided, or to the state board; and said state board may, if it deems it advisable, investigate the cause or causes of such controversy, and ascertain which party thereto is mainly responsible or blameworthy for the existence or continuance of the same, and may make and publish a report finding such cause or causes, and

assigning such responsibility or blame. The board shall have the same powers for the foregoing purposes as are given it by section 3055 of this code. Witnesses summoned by the state board shall be allowed the sum of fifty cents for each attendance, and the further sum of twenty-five cents for each hour of attendance in excess of two hours, and shall be allowed five cents a mile for travel each way from their respective places of employment or business to the place where the board is in session. Each witness shall certify in writing the amount of his travel and attendance, and the amount due him shall be certified to the state board of examiners for auditing, and the same shall be paid as other expenses of the state from any moneys in the state treasury.

History: Sec. 1677, Rev. C. 1907. See also history of Sec. 3052.

3060. Compensation. The arbitrators hereby created must be paid five dollars for each day of actual service and their necessary traveling expenses and necessary books or records, to be paid out of the treasury of the state, as by law provided.

History: Sec. 1678, Rev. C. 1907. See also history of Sec. 3052.

CHAPTER 218.

PROTECTION OF STREET-CAR EMPLOYEES.

3061. Enclosures for Street-Car Motormen.
3062. Penalties.
3063. Duties of County Attorney to Prosecute Violations of This Act.
3064. Vestibules of Street-Cars to Be Heated.
3065. Penalty for Violation of Act.
3066. Brakes on Street-Cars.
3067. Penalty for Failure to Provide.

3061. Enclosures for street-car motormen. It shall be unlawful for any person or persons, partnership or corporation, or any agent or employee of such person, or persons, of any officer, agent or employee of such copartnership or corporation, owning or operating any street-railway in this state, using steam, cable, electric or other cars to cause, permit or require to be used upon said railway between November first of each year and May first of the following year any car or cars upon which the constant service, attention, or care of any employee is required, unless such car or cars shall be provided with a proper and sufficient enclosure constructed of wood, iron, glass or other suitable material, in such manner as to protect such employee or employees from exposure to the inclemencies of the weather. Such enclosures shall be so constructed as not to obscure the vision of the person operating the car, and during a fog or fall of snow sufficient to obscure the view of the motorman he may be allowed to remove the glass in his immediate front so that such obstruction shall not prevent the safe operation of the car. The type of cars known as open cars or summer cars must be equipped with a wind-shield constructed of glass, iron, wood, or other suitable material extending completely across the front of said car to protect such employees from exposure to the inclemencies of the weather.

History: En. Sec. 1, Ch. 78, L. 1907; re-en. Sec. 1727, Rev. C. 1907; (see also Ch. 104, L. 1913); amd. Sec. 1, Ch. 51, L. 1921.

Validity of statute requiring street-railway to provide vestibule, seat or other convenience for motorman, see notes in 2 Ann. Cas. 781; Ann. Cas. 1914D, 616.

3062. Penalties. Any person or persons, partnership, or corporation owning, operating, or superintending, or managing any such line of street-railway, or managing or superintending officer or agent thereof, who shall be found guilty of a violation of the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars or more than one hundred dollars. Each and every day that any such person or persons cause or permit any of their employees to operate such cars in violation of the provisions of the preceding section shall be deemed a separate offense.

History: En. Sec. 3, Ch. 78, L. 1907; Sec. 1729, Rev. C. 1907.

3063. Duties of county attorney to prosecute violations of this act. It is hereby made the duty of the county attorney of any county in which any street-railway is situated and operated, upon information given to him by any person that any person or persons, partnership, or corporation has violated any of the provisions of this act, to promptly prosecute such person or persons, partnership, or corporation for such violation.

History: En. Sec. 4, Ch. 78, L. 1907; Sec. 1730, Rev. C. 1907.

3064. Vestibules of street-cars to be heated. From and after November 1, 1913, it shall be unlawful for any corporation, person, or association, owning or controlling or operating any street-railway, electric car, or trolley-car within the state of Montana, to run or operate its cars in the regular service of carrying passengers, during the months of November, December, January, February, and March, without first providing that the vestibule of such cars shall be heated in the same manner as the interior of said cars at all times.

History: En. Sec. 1, Ch. 44, L. 1913.

3065. Penalty for violation of act. Any corporation, person, or association owning, controlling, or operating any street-railway, electric, or trolley-car, failing to comply with the provisions of this act, shall be liable to a fine of ten dollars per car for each day operated in violation of the provisions of this act.

History: En. Sec. 2, Ch. 44, L. 1913.

3066. Brakes on street-cars. On or before September 1, 1913, all double-track street-railway, electric cars or trolley-cars, so called, conveying passengers in the state of Montana, shall be fitted with at least two independently operating brakes, one of which must be mechanical, such as air-brake, electric short-circuiting brake, or electric-magnetic brake.

History: En. Sec. 1, Ch. 80, L. 1913.

Validity of ordinance requiring street-cars to be equipped with safety brakes, see note in 1913B, 660.

3067. Penalty for failure to provide. Any corporation or person owning and operating street-railway cars, electric or trolley cars, failing to comply with the provisions of this act, shall be liable to a fine of ten dollars per car for each day operated without such equipment.

History: En. Sec. 2, Ch. 80, L. 1913.

CHAPTER 219.

HOURS OF LABOR.

Section 3068. Hours of Labor—Hoisting Engineers.
3069. Penalties.
3070. Hours of Labor of Jailors in Certain Counties.
3071. Hours of Labor—Underground Miners.
3072. Same—Smeltermen.
3073. Penalty.
3074. Hours of Telephone Operators.
3075. Penalty for Violation of Preceding Section.
3076. Hours of Labor for Female Employees.
3077. Seats for Female Employees.
3078. Violation of Two Preceding Sections a Misdemeanor—Penalty.
3079. Hours of Labor for State and Municipal Governments, Mines, Mills, and Smelters.
3080. Penalty.
3081. Railway Employees—Hours of Labor.
3082. Penalties.
3083. Act Not to Apply to Relief or Wreck Trains.

3068. Hours of labor—Hoisting engineers. On and after the first day of May, A. D. 1903, it shall be unlawful for any person or persons, company, or corporation, to operate or handle, or to induce, persuade, or prevail upon any person or persons to operate or handle, for more than eight hours in twenty-four hours of each day, any hoisting-engine at or in any mine. This act shall apply only to such plants as are in continuous operation or are operated sixteen or more hours in twenty-four hours of each day, or at or in any mine where said hoisting-engine develops fifteen or more horsepower, or at or in any mine wherein there are fifteen or more men employed underground in twenty-four hours of each day; provided, however, that the provisions of this act shall not apply to any person or persons operating any hoisting-engine more than eight hours in each twenty-four hours for the purpose of relieving another employee in case of sickness or other unforseen cause or causes.

History: En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907.

Constitutionality of statutes limiting length of day's labor, see notes in 1 Ann. Cas. 82; 3 Ann. Cas. 1143; 6 Ann. Cas. 902; 9 Ann. Cas. 208; 11 Ann. Cas. 90; 13 Ann. Cas. 959; Ann. Cas. 1912D, 393; Ann. Cas. 1914D, 1263; Ann. Cas. 1916C, 1009; Ann. Cas. 1918A, 1046; 19 L. R. A. 141; 12 L. R. A. (N. S.) 1130; L. R. A. 1915F, 829.

3069. Penalties. Any person or persons, company, or corporation, who shall violate any of the provisions of this act, shall, upon conviction, be punished by a fine of not less than ten dollars nor more than one hundred dollars; and each and every day that such person or persons, company, or corporation may continue to violate any of the provisions of this act shall be considered a separate and distinct offense, and shall be punishable as such.

History: En. Sec. 2, Ch. 53, L. 1903; re-en. Sec. 1735, Rev. C. 1907.

3070. Hours of labor of jailors in certain counties. From and after the first day of April, 1909, eight hours shall constitute a day's work for jailors in counties of the first, second, and third classes, except in cases of emergency and when the peace and safety of the community require

that such jailors work for a longer period than eight hours in any twenty-four.

History: En. Sec. 1, Ch. 93, L. 1909.

Cited or applied as section 4063, Political Code, before amendment, in Jobb v. County of Meagher, 20 Mont. 424, 435, 51 Pac. 1034; as section 3119, Revised Codes, as amended, in State ex rel. Hay v. Hindson, 40 Mont. 353, 106 Pac. 362.

3071. Hours of labor—Underground miners. The period of employment of working-men in all underground mines or workings, including railroad or other tunnels, shall be eight hours per day, except in cases of emergency where life and property is in imminent danger.

History: En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911.

3072. Same—Smeltermen. The period of employment of working-men in smelters, stamp-mills, sampling works, concentrators, and all other institutions for the reduction of ores, and refining of ores or metals, shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

History: En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907.

3073. Penalty. Any person or persons, body corporate, agent, manager, or employer, who shall violate any of the provisions of the two preceding sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be subject to a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment in the county jail for a period of not less than one month, or more than six months, or by both such fine and imprisonment.

History: En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907.

3074. Hours of telephone operators. On all lines of public telephones, operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons, to run or operate a telephone board or boards for more than nine hours in twenty-four hours, in cities or towns having a population of three thousand inhabitants, or over; provided, however, that the provisions of this act shall not apply to any person or persons, operator or operators, operating any telephone board or boards more than nine hours in each twenty-four for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

History: En. Sec. 1, Ch. 75, L. 1909.

3075. Penalty for violation of preceding section. Any owner, lessee, company, or corporation, who shall violate any of the provisions of this act shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this act shall be considered a separate and distinct offense and shall be punished as such.

History: En. Sec. 2, Ch. 75, L. 1909.

3076. Hours of labor for female employees. No female shall be employed in any manufacturing, mechanical, or mercantile establishment,

telephone exchange room, or office, or telegraph office, laundry, hotel, or restaurant in this state, for more than eight hours in any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four of any one day; provided, that females may be employed in retail stores to work not to exceed ten hours in any one day for one week immediately preceding Christmas day.

History: En. Sec. 1, Ch. 108, L. 1913; amd. Sec. 1, Ch. 18, L. 1917; re-en. Sec. 1, Ch. 70, L. 1917.

3077. Seats for female employees. Every employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

History: En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917.

Validity of statute regulating employment of adult females in other respects than number of hours of labor, see notes in 12 Ann. Cas. 799; Ann. Cas. 1914D, 533; Ann. Cas. 1916D, 1065; Ann. Cas. 1918D, 1001.

3078. Violation of two preceding sections a misdemeanor—Penalty. Any employer who shall require any female to work in any of the places mentioned in section 3076, more than the number of hours provided in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats, as provided in section 3077, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than fifty dollars nor more than two hundred dollars, or be imprisoned in the county jail for a period of not less than ten nor more than sixty days, or both such fine and imprisonment.

History: En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917.

3079. Hours of labor for state and municipal governments, mines, mills, and smelters. A period of eight hours shall constitute a day's work on all works or undertakings carried on or aided by any municipal, county, or state government, school districts of the first class, and on all contracts let by them, and for all janitors, engineers, firemen, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any municipal, county, or state government, school districts of the first class, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing, or treatment of coal.

History: En. Sec. 1, Chap. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917. Cal. Pol. C., Secs. 3244 and 3245.

This statute, prior to its amendment, was held to be constitutional. State v. Livingston Concrete etc. Mfg. Co., 34 Mont. 570, 87 Pac. 980, 9 Ann. Cas. 204.

If a statute makes a requirement, or prohibits a thing, for the benefit of a person or class of persons, one injured by reason of a violation of it, if free from fault himself, is entitled to main-

tain an action against him by whose disobedience he has suffered injury; and this is true whether the statute is penal in its character or not, a violation of the statute being negligence per se, or legal negligence. Melville v. Butte-Balaklava Copper Co., 47 Mont. 1, 6, 130 Pac. 441. See Kelley v. John R. Daily Co., 56 Mont. 63, 73, 181 Pac. 326.

Under the rule that an action does not lie at the suit of one who must base his claim, in whole or in part, on the violation of a criminal or penal law of the state, a miner who was killed while working in violation of a statute providing that eight hours shall constitute a day's work in mines, under penalty of fine and imprisonment in the county jail, could not, if he had survived his injuries, recover damages in an action brought for that purpose. Melville v. Butte-Balaklava Copper Co., 47 Mont. 1, 7, 130 Pac. 441.

Cited or applied as section 1739, Revised Codes, before amendment, in State v. Hughes, 38 Mont. 468, 471, 100 Pac. 610.

Statutory restriction of hours of labor upon public works, see notes in 1 Ann. Cas. 46; 10 Ann. Cas. 721; Ann. Cas. 1912A, 773; 8 L. R. A. (N. S.) 131; 24 L. R. A. (N. S.) 201; 34 L. R. A. (N. S.) 767.

3080. Penalty. Every person, corporation, stock company, or association of persons who violates any of the provisions of the preceding section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 50, L. 1905; re-en. Sec. 2, Ch. 108, L. 1907; Sec. 1740, Rev. C. 1907.

The inhibition contained in this section includes both employer and employee, and renders both subject to the penalty whenever the former causes the employee to work, and the latter works for a period longer than eight hours. State v. Livingston Concrete etc. Mfg. Co., 34 Mont. 570, 577, 87 Pac. 980, 9 Ann. Cas. 204; Melville v. Butte-Balaklava Copper Co., 47 Mont. 1, 6, 130 Pac. 441.

The person who occupies a position of authority over one engaged as an employee, and who exercises control over him, is the employer who comes within the prohibition of the eight-hour law. State v. Hughes, 38 Mont. 468, 472, 100 Pac. 610.

One who does not sustain the relation of employer to any of the men employed by subcontractors is not answerable for the conduct of the latter in requiring their men to work more than eight hours per day. State v. Hughes, 38 Mont. 468, 473, 100 Pac. 610.

3081. Railway employees—Hours of labor. On all lines of steam railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state, shall not at any time exceed sixteen consecutive hours, or to be on duty for more than sixteen hours in the aggregate in any twenty-four hour period. At least eight hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators, and agents acting as operators, are again ordered or required to go on duty; provided, however, that nothing in this section shall be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade, or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

History: En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907.

Until congress has acted, the regulation of the hours of railway employees is

a matter for state control, under the exercise of its police power to provide for the public safety and to preserve the health and lives of the employees, and a federal statute, effective at a future date, does not supersede existing state legislation. State v. Northern Pac. Ry. Co., 36 Mont. 582, 584, 93 Pac. 945, 13 Ann. Cas. 144, 15 L. R. A. (N. S.) 134.

In Northern Pac. Ry. Co. v. State of Washington, 222 U. S. 370, 56 L. Ed. 237, 32 Sup. Ct. 160, held the state loses control upon the enactment of a federal statute, though not effective until a subsequent date.

Evidence held insufficient to support a verdict finding the defendant railway company guilty of a violation of the provisions of this section and the following section, prohibiting railroads from requiring their trainmen to work for more than sixteen consecutive hours. State v. Northern Pacific Ry. Co., 41 Mont. 557, 558, 111 Pac. 141.

Regulation by state of hours of labor of railroad employees as interference with interstate commerce, see notes in Ann. Cas. 1917A, 981; 29 L. R. A. (N. S.) 240; 52 L. R. A. (N. S.) 267.

3082. Penalties. Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic, or other railroad or railway official, who shall order or require any locomotive engineer, locomotive fireman, conductor, trainman, operator, or agent acting as operator, to labor contrary to the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment of not less than thirty days or more than sixty days in the county jail; and all railroad or railway corporations operating lines of railroads or railways in whole or in part in this state shall be liable in damages for all injuries to any person or persons resulting from violations of the provisions of said section.

History: En. Sec. 2, Ch. 5, L. 1907; Sec. 1742, Rev. C. 1907.

Cited or applied as section 2, Laws of 1907, in State v. Northern Pacific Ry. Co., 36 Mont. 582, 585, 93 Pac. 945, 13 Ann. Cas. 144, 15 L. R. A. (N. S.) 134; as section 1742, Revised Codes, in State v. Northern Pacific Ry. Co., 41 Mont. 557, 558, 111 Pac. 141.

3083. Act not to apply to relief or wreck trains. The provisions of section 3081 of this code shall not apply to relief or wreck trains.

History: En. Sec. 3, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907.

CHAPTER 220.

PAYMENT OF WAGES—PROTECTION OF DISCHARGED EMPLOYEES.

Section 3084. Semi-Monthly Payment of Wages.
3085. Penalty for Failure to Pay at Times Specified in Law.
3086. Discharged Employee—Wages, When Payable.
3087. Period Within Which Employee May Recover Penalties.
3088. Contracts in Violations of Act Void.
3089. Judgment for Wages Shall Include Attorney's Fee.
3090. Equal Pay for Women for Equivalent Service.
3091. Violation of Preceding Section a Misdemeanor—Penalty.
3092. Protection of Discharged Employees.
3093. Blacklisting Prohibited.
3094. Employee to Be Furnished Reason for Discharge.

3084. Semi-monthly payment of wages. From and after June 1, 1919, every employer of labor (except agricultural labor), whether a person, copartnership, or corporation, in the state of Montana, shall pay to his employee the wages earned each and every fifteen days in lawful money of the United States, or checks on banks convertible into cash on demand full face values thereof, and all such wages shall be due and payable, and shall be paid by such persons, copartnership, or corporation not later than

the fifth and twentieth day of each calendar month for all such wages earned up to and within five days of the date of such payment; provided, however, that if at such time of payment any employee shall be absent from the regular place of labor, he shall be entitled to such payment at any time thereafter; provided further, that this act shall not affect any person, copartnership, or corporation, foreign or domestic, who shall have already established, and shall continue to maintain, a semi-monthly or weekly pay-day.

History: En. Sec. 1, Ch. 11, L. 1919.

Police power to regulate wages, see notes in 122 A. S. R. 903; 139 A. S. R. 864.

Validity of statutes regulating time of payment of wages, see notes in 9 Ann. Cas. 238; 13 Ann. Cas 482; Ann. Cas. 1916B, 135.

3085. Penalty for failure to pay at times specified in law. Whenever any employer, whether a person, copartnership, or corporation, fails to pay any of his employees, as provided in the preceding section, then a penalty shall attach to such person, copartnership, or corporation, and become due such employees as follows: A sum equivalent to a penalty of five per cent. of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due.

History: En. Sec. 2, Ch. 11, L. 1919.

3086. Discharged employee—Wages, when payable. Whenever any employee is discharged from the employ of any such person, copartnership, or corporation, except agricultural, on leaving said employment, then all the unpaid wages of such employee shall immediately become due and payable on demand, and if such person, copartnership, or corporation fails to pay any such discharged employee, within twenty-four hours after such discharge and demand, all the wages due and payable to him, then the same penalty of five per cent. shall attach to said person, copartnership, or corporation, and become due such employee as provided in the preceding section, provided, however, that if the employer shall, within the period herein specified, tender in money to such discharged employee, the full amount of the wages lawfully due such employee, the penalty herein provided shall not attach.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921.

3087. Period within which employee may recover penalties. Any employee may recover all such penalties as are provided for the violation of section 3085 of this code, which have accrued to him, at any time within six months succeeding such default or delay in the payment of such wages.

History: En. Sec. 4, Ch. 11, L. 1919.

3088. Contracts in violations of act void. Any contract or agreement made between any person, copartnership, or corporation and any parties in his, its, or their employ, whose provision shall be in violation, evasion, or circumvention of this act, shall be unlawful and void; but such employee may sue to recover his wages earned, together with such five per

cent. penalty, or separately to recover the penalty, if the wages have been paid.

History: En. Sec. 5, Ch. 11, L. 1919.

3089. Judgment for wages shall include attorney's fee. Whenever it shall become necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due, as provided for by this act, then such judgment shall include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

History: En. Sec. 6, Ch. 11, L. 1919.

3090. Equal pay for women for equivalent service. It shall be unlawful for any person, firm, state, county, municipal, or school district, public or private corporation, to employ any woman or women in any occupation or calling within the state of Montana for salaries, wages, or compensation which are less than that paid to men for equivalent service or for the same amount or class of work, or labor in the same industry, school, establishment, office, or place of any kind or description.

History: En. Sec. 1, Ch. 147, L. 1919.

Validity of law fixing wages of women and minors, see notes in Ann. Cas. 1916A, 225.

3091. Violation of preceding section a misdemeanor—Penalty. Any person, firm, state, county, municipal, or school district officers, or public or private corporation, violating any of the provisions of section 3090 of this code, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense.

History: En. Sec. 2, Ch. 147, L. 1919.

3092. Protection of discharged employees. If any person, after having discharged an employee from his service, prevents, or attempts to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, such person is punishable as provided in section 11219 of the Penal Code, and is liable in punitive damages to such discharged person, to be recovered by civil action; no person is prohibited from informing, by word or writing, any person to whom such discharged person or employee has applied for employment, a truthful statement of the reason for such discharge.

History: Ap. p. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907.

3093. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist, or any person does blacklist, any discharged employee, or attempts by word or writing, or any other means whatever, to prevent any discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with another person, except as provided for in the next preceding section, such company or corporation or person is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in civil action; and is also punishable as provided in section 11219 of the Penal Code.

History: Ap. p. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907.

Blacklisting employees, see notes in 63 L. R. A. 289; 3 L. R. A. (N. S.) 1118; L. R. A. 1916C, 222.

3094. Employee to be furnished reason for discharge. It is the duty of any person, after having discharged any employee from his service, upon demand by such discharged employee, to furnish him in writing a full, succinct, and complete statement of the reason of his discharge, and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person, or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this chapter.

History: Ap. p. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907.

Constitutionality of statute requiring the employer to furnish discharged employee with a statement of the cause of his discharge, see notes in 18 Ann Cas. 348; L. R. A. 1917B, 1115.

CHAPTER 221.

PROHIBITION AGAINST CHILD LABOR.

Section 3095. Employment of Children Under Sixteen Years in Certain Occupations Prohibited.
3096. Liability of Parent.
3097. Record of Children Under the Age of Sixteen Years.
3098. Age Certificates.
3099. Enforcement of Act.
3100. Penalties.
3101. Prohibiting Employment of Children in Mines.
3102. Employment of a Child in a Mine.
3103. Parent Permitting Employment Guilty of Misdemeanor.
3104. Penalties.

3095. Employment of children under sixteen years in certain occupations prohibited. Any person, company, firm, association, or corporation engaged in business in this state, or any agent, officer, foreman, or other employee having control or management of employees, or having the power to hire or discharge employees, who shall knowingly employ or permit to be employed any child under the age of sixteen years, to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine, mill, smelter, workshop, factory, steam, electric, hydraulic, or compressed-air railroad, or passenger or freight elevator, or where any machinery is operated, or for any telegraph, telephone, or messenger company, or in any occupation not herein enumerated which is known to be dangerous or unhealthful, or which may be in any way detrimental to the morals of said child, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746, Rev. C. 1907.

Cited or applied as section 1746, Revised Codes, in Flaherty v. Butte Electric Ry. Co., 42 Mont. 89, 95, 111 Pac. 348.

Validity and construction of child labor statutes, see notes in 9 Ann. Cas. 1108; 15 Ann. Cas. 473; Ann. Cas. 1913E, 339.

Restrictions on hours of labor of children, see notes in 17 L. R. A. (N. S.) 602, 24 L. R. A. (N. S.) 1121.

3096. Liability of parent. Any parent, guardian, or other person having the care, custody, or control of any child under the age of sixteen years, who shall permit, suffer, or allow any such child to work or perform service for any person, company, firm, association, or corporation doing business in this state, or who shall permit or allow any such child over whom he has such care, custody, or control to retain such employ-

ment as is prohibited in the preceding section whether under contract of employment or not, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907.

3097. Record of children under the age of sixteen years. The commissioner of labor and industry shall compile and preserve in his office from reports made to him by the county superintendent of schools, as otherwise provided, a full and complete list of the name, age, date of birth, and sex of each child, and the names of the parents or guardians of each child under the age of sixteen years who is now or may hereafter become a resident of this state, and such list shall be the official record of the age of children in this state.

History: En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907.

Note.—The commissioner of labor and industry mentioned in this and the two succeeding sections was abolished by chapter 216, Laws of 1921.

3098. Age certificates. Upon obtaining the age of sixteen years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom such child may seek employment. The employer, if such employment be given, must countersign the certificate and return the same to the commissioner of said bureau, who shall keep the same on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by section 3095, any child without such certificate showing the child to be at least sixteen years of age, shall be guilty of a misdemeanor and punishable as hereinafter provided, should such child prove to be less than sixteen years of age.

History: En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907.

3099. Enforcement of act. To enforce this act the commissioner of labor and industry, the bureau of child and animal protection, and all county attorneys shall, each upon their own volition, or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations.

History: En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907.

3100. Penalties. Every person, firm, company, association, or corporation who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907.

3101. Prohibiting employment of children in mines. Any person, corporation, stock company, or association of persons, owning or operating any underground mine, or any officer, agent, foreman, or boss, having the control or management of employees, or having the power to hire or discharge employees, who shall employ, or knowingly permit to be employed, any child under the age of sixteen years, for work or service in any such mine, or the underground workings thereof, or permit or

allow any such child to render or perform any work or service whatever in such mine, whether under contract of employment or otherwise, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 16, L. 1905; re-en. Sec. 1752, Rev. C. 1907.

3102. Employment of a child in a mine. Every person who receives or employs any child under fourteen years of age in any underground works or mine, or in any similar business, is punishable by a fine not exceeding one thousand dollars.

History: En. Sec. 15, 5th Div. Comp. Stat. 1887; amd. Sec. 474, Pen. C. 1895; re-en. Sec. 8349, Rev. C. 1907.

3103. Parent permitting employment guilty of misdemeanor. Any parent, guardian, or other person having the care, custody, or control of any child under the age of sixteen years, who shall permit, suffer, or allow such child to work in any mine having underground workings, or who shall permit or allow any such child over whom they may have such care, custody, or control to retain employment in any such mine, or who, after having knowledge that any such child has taken employment in any such mine, or is performing work or service therein, whether under contract of employment or not, shall fail forthwith to notify the person or corporation owning or operating such mine, or some officer, foreman, or employee thereof having the power to hire or discharge employees, of the age of such child, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 2, Ch. 16, L. 1905; re-en. Sec. 1753, Rev. C. 1907.

3104. Penalties. Any person or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 16, L. 1905; re-en. Sec. 1754, Rev. C. 1907.

CHAPTER 222.

DENTISTRY—REGULATION OF PRACTICE.

Section 3105. Dentist Must Obtain Certificate.
3106. Board of Dental Examiners—Creation, Qualifications, Appointment, and Term of Office.
3107. Official Seal—Officers—Meetings—Official Bonds—Powers—Vacancies.
3108. Dentists From Other States—Exchange Certificates.
3109. Examination of Applicants to Practice Dentistry.
3110. Certificate Must Be Filed.
3111. Dental Register.
3112. Persons Regarded as Practicing Dentistry.
3113. Examination Fee—Annual Dues of Dentists.
3114. Compensation and Report.
3115. Violation of Law Regulating Dentistry.

3105. Dentist must obtain certificate. It shall be unlawful for any person, who is not at the time of the passage of this act engaged in the practice of dentistry in this state, to commence such practice unless he or she shall have obtained a certificate, as hereinafter provided.

History: En. Sec. 620, Pol C. 1895; re-en. Sec. 1573, Rev. C. 1907.

The practice of dentistry is a proper subject for police regulation. Johnson v.

City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1059, 16 Ann. Cas. 974.

Professions subject to license regulations, see note in 129 A. S. R. 291; 1 Ann. Cas. 18.

Statute requiring dentist to take out license as impairing vested rights of previous practitioners, see notes in 5 Ann. Cas. 1005; 19 Ann. Cas. 833; Ann. Cas. 1914B, 399.

Judicial review of action in respect to licenses, see note in 20 L. R. A. 355.

Right of corporation to practice dentistry, see note in 19 Ann. Cas. 882.

Validity of statute providing for revocation of license of dentist, see note in 5 A. L. R. 94.

3106. Board of dental examiners—Creation, qualifications, appointment, and term of office. A board of dental examiners, to consist of five practicing dentists, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of said board shall be appointed by the governor from the state at large. The term for which the members of said board shall hold their office shall be five years, except that the members of said board first appointed under this act shall hold their office for the term of one, two, three, four, and five years, respectively, and until their successors be duly appointed, the tenures of which terms shall be determined by lot. In case of a vacancy in said board, such vacancy shall be filled by the governor, from the state at large. Not more than two members of the said board shall be appointed from any one county. Each person appointed as a member of the board of dental examiners shall qualify by taking the oath prescribed by the constitution for state officers.

History: En. Sec. 621, Pol. C. 1895; re-en. Sec. 1574, Rev. C. 1907.

3107. Official seal—Officers—Official bonds—Powers—Vacancies. Said board shall have an official seal. Said board shall at its annual meeting choose from its members a president, vice-president, secretary, and a judiciary committee; it shall meet at least once each year, and as much oftener, and at such times and places, as may be necessary. The secretary and treasurer shall give such bonds as the board may designate. The president and secretary shall have the power to administer oaths; and said board shall have the power to hear testimony as to all matters relating to the duties imposed upon it by law. If any member of the board shall, without cause, absent himself from two of its regular meetings, consecutively, his office shall be deemed vacant, and such vacancy shall be filled by appointment as hereinbefore provided. A majority of said board shall at all times constitute a quorum, and the proceedings thereof shall at all reasonable times be open to inspection.

History: En. Sec. 1, p. 112, L. 1901; re-en. Sec. 1575, Rev. C. 1907; amd. Sec. 1, Ch. 132, L. 1909.

3108. Dentists from other states—Exchange certificates. Any dentist who has been in legal practice for five years or more in any state in the United States, which has an exchange certificate law with that of Montana, and is a reputable dentist of good moral character, and who is desirous of making a change of residence into another state, may apply to the examining board of the state in which he resides for a new certificate, which shall attest his moral character and professional attainments, and said certificate, if granted, may be deposited with the examining board of the state of Montana, and said board in exchange therefor (may) grant him a license to practice dentistry in the state of Montana. A fee of

fifty dollars will be charged for each exchange certificate, and proceeds therefrom to be paid into the treasury of the state dental board of Montana.

History: En. Sec. 2, Ch. 132, L. 1909.

Validity of statute affecting right to practice dentistry of one who has practiced in another state, see note in L. R. A. 1915D, 538.

3109. Examination of applicants to practice dentistry. Any person who desires to begin the practice of dentistry in the state of Montana after the passage of this act shall appear before said board of examiners at any of its regular or special meetings for examination. To be eligible for such examinations the applicant shall give satisfactory evidence of having practiced dentistry for five years, or shall present a diploma from a reputable dental college. The examination shall be conducted in English, and shall be thorough, practical, and sufficient to test the ability of the applicant to practice dentistry. It shall include: Operative and prosthetic dentistry, osteology, dental and general anatomy, histology, bacteriology, physiology, pathology, chemistry, metallurgy, materia medica, therapeutics, orthodontia, and anaesthetics. Demonstrations in operative and prosthetic dentistry, prognosis, and diagnosis will be required. All applicants must furnish their own material for demonstration. If the examinations prove satisfactory to said board of dental examiners, they shall issue a certificate of registration to the person examined. All certificates issued by the board shall be signed by its president, secretary, and a majority of the board present, and shall have its official seal attached thereto.

History: En. Sec. 2, p. 112, L. 1901; re-en. Sec. 1577, Rev. C. 1907; amd. Sec. 3, Ch. 132, L. 1909.

3110. Certificate must be filed. Every person who shall receive a certificate of registration from said board shall, within sixty days after the issuance thereof, cause his or her certificate to be filed with the clerk of the county of his or her residence, or with the clerk of any other county or counties in which he or she may desire to engage in the practice of dentistry. The clerk of the county shall charge for registering such certificate the regular fee for such services, and after registering the certificate, shall return it to the person to whom the same was originally issued. Any person who shall fail to register his or her certificate shall be liable for practicing dentistry without license.

History: En. Sec. 625, Pol. C. 1895; re-en. Sec. 1578, Rev. C. 1907.

3111. Dental register. It shall be the duty of the county clerk to keep a book to be entitled "Dental Register," which book shall contain a complete alphabetical list of all certificates of registration filed in his office, and which books shall be provided with columns, giving the name and residence of the dentist, together with the date of the certificate, and the date of its filing with the clerk, and the date of revocation.

History: En. Sec. 626, Pol. C. 1895; re-en. Sec. 1579, Rev. C. 1907.

3112. Persons regarded as practicing dentistry. All persons shall be held to be practicing dentistry, within the meaning of this act, who shall receive a fee or salary, or other rewards, paid either to him or to another person for operations or parts of operations, of any kind, in the treat-

ment of diseases or lesions of the human teeth or jaws, or in the correction of the malpositions thereof. But nothing in this chapter shall be construed to permit the performance of independent dental operations by unlicensed persons under the cover of the name of a registered practitioner or in his office.

History: En. Sec. 628, Pol. C. 1895; re-en. Sec. 1581, Rev. C. 1907; amd. Sec. 5, Ch. 132, L. 1909.

3113. Examination fee—Annual dues of dentists. In order to provide means for carrying out and maintaining the provisions of this act, the board of dental examiners shall charge each person applying to or appearing before said board for examination a fee of twenty-five dollars. In case the applicant fails to secure a certificate from said board, he may appear again before said board for another examination, and when the applicant has passed and certificate issued, an additional fee of twenty-five dollars will be charged. Every registered dentist shall, in each and every year, pay to the board of dental examiners a fee of four dollars as his annual dues, such payment to be made on or before the first day of May of each year. In case of default of such payment by any person, his or her certificate may be revoked by the board of dental examiners, upon thirty days' notice from the secretary, to the person holding such certificate, unless within said thirty days said annual dues shall be paid, together with such penalties as the board may impose, and the board is expressly authorized to impose a penalty of one dollar as a consideration for each year, for allowing the certificate to remain unrevoked. In case any registered dentist absents himself from the state for a period of one or more years, he may be reinstated by the payment of a fee of one dollar for each year absent.

History: En. Sec. 4, p. 113, L. 1901; Sec. 1582, Rev. C. 1907; amd. Sec. 6, Ch. 132, L. 1909.

3114. Compensation and report. Out of the funds coming into the possession of the said board, each of the members of said board may receive as compensation the sum of five dollars for each day actually engaged in the duties of his office, together with all legitimate and necessary expenses incurred in attending the meetings of said board. No part of the compensation or other expenses of the said board shall be paid out of the state treasury The fees coming into the treasury of said board shall be paid out upon the warrant of the president and the secretary thereof, in payment of the compensation and expenses of said board in carrying out the provisions of this act. Said board shall make an annual report of its proceedings to the governor of this state for the year ending on the thirty-first day of December preceding the making of said report. Said report shall be filed with the governor on or before the fifteenth day of January of each year.

History: En. Sec. 630, Pol. C. 1895; re-en. Sec. 1583, Rev. C. 1907.

3115. Violation of law regulating dentistry. Any person who shall violate any of the provisions of this act, or shall knowingly or falsely claim to have or hold a certificate of registration, license, diploma, or degree granted by a society or board of dental examiners, or shall falsely, and with intent to deceive the public, claim or pretend to be the gradu-

ate of any incorporated reputable dental college, or shall have registered under one name and practiced dentistry under another name, with intent to deceive the public, shall be deemed guilty of a misdemeanor, and upon conviction may be fined one thousand dollars, and not less than five hundred dollars, or imprisonment for not less than six months nor more than one year, or may be punished by both such fine and imprisonment. All fines thus received shall be paid into the common school fund of the county in which such conviction takes place.

History: En. Sec. 631, Pol. C. 1895; re-en. Sec. 1584, Rev. C. 1907; amd. Sec. 7, Ch. 132, L. 1909.

Cited or applied as section 1584, Revised Codes, before amendment, in Johnson v. City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1059, 16 Ann. Cas. 974.

Practice without license as a continuing offense, see note in 42 L. R. A. (N. S.) 768.

CHAPTER 223.

MEDICINE—REGULATION OF PRACTICE.

Section 3116. Qualifications, Appointment, and Term.
3117. Organization of Board—Register.
3118. Examination of Applicants.
3119. Examination of Applicants for Certificates—Revocation of Certificates—Appeals From Decision of Board.
3120. Certificate Must Be Recorded.
3121. Exceptions.
3122. Practicing Medicine Without Certificate—Penalties.
3123. Fees for Examination Before State Board.
3124. Compensation—Medical Board Fund.

3116. Qualifications, appointment, and term. The governor, with the advice and consent of the senate, shall appoint seven learned, skilled, and capable physicians, who shall have been residents of the state of Montana for not less than two years preceding their appointment, not more than two of whom shall be from the same county, and who have attended three courses of lectures, and are graduates of accredited colleges of medicine, who shall constitute the board of examiners for the purposes of this article. The physicians so appointed shall hold their respective offices for seven years; provided, that the terms in office of those constituting the present board shall not be affected by the provisions of this act; and the terms of their successors shall be so arranged as to succeed the present incumbents as their terms expire; and provided, also, that all the vacancies occurring shall be likewise filled by appointment by the governor, with the advice and consent of the senate. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session.

Note.—The first board of medical examiners was created by sections 1 to 9, pp. 175 to 178, Laws of 1889. This act was amended by sections 600 to 608, Political Code 1895. The law is here given as it appears with amendments subsequent to 1895.

History: En. Sec. 600, Pol. C. 1895; re-en. Sec. 1585, Rev. C. 1907.

The practice of medicine is a proper subject for police regulation. Johnson v. City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1059, 16 Ann. Cas. 974.

The act regulating the practice of medicine is not unconstitutional as denying the equal protection of the laws, in that it discriminates in favor of osteopathic practitioners. State v. Dodd, 51 Mont. 100, 149 Pac. 481.

In a prosecution for engaging in the practice of osteopathy without first having a license, an allegation that the defendant engaged in the practice "without first having obtained a certificate or license from the state board," etc., is material, and must be established by the state beyond a reasonable doubt; but the

evidence as to that matter is sufficient where the record of the secretary of such board discloses that the defendant had never applied to the board for a license or certificate, and there is no evidence to contradict it. State v. Hopkins, 54 Mont. 52, 64, 166 Pac. 304, Ann. Cas. 1918D, 956.

Cited or applied as section 600, Political Code, in State ex rel. State Board of Medical Examiners v. District Court, 26 Mont. 121, 122, 66 Pac. 754.

Statutory regulation of practice of medicine, see notes in 1 Ann. Cas. 18; 7 Ann. Cas. 157.

Regulation of practice of medicine and dentistry as affected by fourteenth amendment of federal constitution, see note in 25 A. S. R. 890.

3117. Organization of board—Register. The board of medical examiners must, on the first Tuesday of April of each year, elect from among their number a president, secretary, and treasurer, and must have a seal. Four members of said board shall constitute a quorum. The president and secretary have the power to administer oaths in examination of applicants for certificates, and witnesses called before the board in the transaction of business under the provisions of this act. The board of examiners must hold meetings for examinations at the seat of government on the first Tuesdays of April and October of each year, and at such other times and at the same and other places as the board may determine. The board must keep a record of all proceedings thereof, and also a register of all applicants for a certificate, with the age of the applicant, time spent in the study of medicine, and the name and location of all the institutions granting to such applicant degrees or certificates of lectures attended in medicine or surgery. The register must also show whether such applicant was rejected, or has received a certificate under this act; such register is prima facie evidence of all the matters therein kept.

History: En. Sec. 601, Pol. C. 1895; re-en. Sec. 1586, Rev. C. 1907.

Where, in a prosecution for engaging in the practice of osteopathy without having first procured a license, it is material to allege that the defendant was not a duly licensed practitioner of medicine or surgery, there is sufficient evidence that he was not such a practitioner where his name does not appear upon the register of applicants to the board of medical examiners for a certificate to practice, such register being required to be kept by this section, and where the record has been identified as one required by law to be kept, the presumption attaches, under section 10606, that it has been correctly kept. State v. Hopkins, 54 Mont., 52, 65, 166 Pac. 304, Ann. Cas. 1918D, 956.

Cited or applied as section 601, Political Code, in State ex rel. Seres v. District Court, 19 Mont. 501, 506, 48 Pac. 1104.

3118. Examination of applicants. Every person hereafter wishing to practice medicine or surgery in any of the departments of this state shall apply to said board for a certificate so to do. Every person applying shall present his or her diploma to the said board of examiners for verification as to its genuineness; if the diploma is found to be genuine, and is issued by a medical school legally organized and in good standing, whose teachers are graduates of a legally organized school, which fact said board of examiners shall determine, and if the person presenting and claiming said diploma be the person to whom the same was originally granted, at a time and place designated by said board, or at a regular meeting of said board, said applicant shall submit to an examination in the following branches, to-wit: Anatomy, physiology, materia medica, therapeutics, practice of medicine, surgery, obstetrics, diseases of women and children, diseases of the nervous system, diseases of the eye and ear; and present evidence of having attended four courses of lectures of at

least six months each, but such evidence of having attended four courses of lectures shall not be required of the applicants graduating prior to July 1, 1898. Said board shall cause such examination to be both scientific and practical, and of sufficient thoroughness and severity to test the candidate's fitness to practice medicine and surgery; when desired, such examination may be conducted in the presence of the dean of any medical school, or the president of any medical society in this state. After examination, such board, if the candidate has been found qualified, shall grant a certificate to such candidate to practice medicine and surgery in the state of Montana; which said certificate can be granted only by the consent of not less than four members of said board, and which said certificate shall be signed by the president and secretary of said board, and attested by the seal thereof; provided, however, that in all cases where an applicant for a certificate under this section shall produce and exhibit to said board of examiners a certificate from a board of medical examiners, duly appointed and existing under the laws of any state of the United States, and recognizing certificates or licenses from this state, certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state issuing said certificate, and that said board issuing said certificate has subjected the applicant to a thorough examination to ascertain this fact, or certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state issuing said certificate; and to the further fact, if such is the case, that said applicant was exempt from examination under the provisions of the law of said state, by reason of his residence in said state in the active practice of medicine and surgery at the time of the passage in said state of said law requiring the examination of applicants to practice medicine and surgery; he or she may, at the discretion of said board of examiners, upon paying the fee required of applicants for examination under the provisions of section 3123, and otherwise complying with all the requirements of this article, receive from said board of examiners a certificate to practice medicine and surgery within this state, and upon filing said certificate with the county clerk of the county in which he resides, as is provided in section 3120, he shall be a legally qualified practitioner of medicine and surgery in this state; provided, also, that during any period intervening between the sessions of said board of examiners, any person desiring to practice medicine in this state may present his or her diploma to the president or secretary of said board, who may issue a certificate good until the next regular meeting of said board; and provided further, that all physicians and surgeons who hold certificates granted by the now existing board of medical examiners, or who are now legally entitled to practice medicine and surgery in this state, shall be exempt from the provisions of this section.

History: Ap. p. Sec. 602, Pol. C. 1895; amd. Sec. 1, Ch. 13, L. 1903; re-en. Sec. 1587, Rev. C. 1907.

Cited or applied as section 602, Political Code, before amendment, in State ex rel. Seres v. District Court, 19 Mont. 501, 505, 48 Pac. 1104; State v. Morris, 22 Mont. 1, 2, 55 Pac. 360; as section 1587, Revised Codes, in State v. Dodd, 51 Mont. 100, 103, 149 Pac. 481.

3119. Examination of applicants for certificates—Revocation of certificates—Appeals from decision of board. No person not heretofore

licensed to do so shall be permitted to practice medicine in the state of Montana, unless he shall have first been subjected to a thorough examination as to his qualifications, learning, and professional skill by the state board of medical examiners, nor until he has been issued a certificate by such board, after such examination, admitting him to practice as a physician and surgeon in the state of Montana. The board may refuse to grant a certificate for unprofessional, dishonorable, or immoral conduct. Before a certificate can be refused for such cause, the board must serve in writing upon the applicant a copy of any charge or charges against him, and appoint a day for hearing, at which the applicant or any witness in his behalf may appear and give testimony in refutation of such charges. In case the board, after such hearing, refuse a certificate to the applicant, the decision specially stating the ground upon which such refusal was made must be reduced to writing and a copy thereof delivered to the applicant upon demand. Upon a like hearing the board may refuse a certificate to any one who may publicly profess to cure or treat disease, injury, or deformity, in such a manner as to deceive the public. The hearing provided for herein must take place within twenty days after the service of the copy of the charges upon the applicant, unless further time is granted to the applicant, and the decision of the board must not be later than ten days after the day of hearing. If the decision is not rendered within said period of ten days, the applicant is not subject to any penalties for practicing without a certificate during the time that elapses before the decision is made. The board, with the concurrence of four members thereof, may revoke a certificate for unprofessional, dishonorable, or immoral conduct. Before such revocation can take place, a written complaint, specifically stating the charges against the person whose certificate is sought to be revoked, must be delivered to the board, and a copy thereof be served upon such person twenty days before the time fixed by the board for the hearing of such charges. The board must fix the time and place for the hearing, at which the person charged may appear and produce testimony in refutation of such charges. If, after such hearing, the board revoke the certificate of such person, the ground upon which such revocation is made must be specifically stated by the board in writing, and a copy thereof delivered, on demand, to the person whose certificate is revoked. In all cases of the refusal or the revocation of a certificate to practice medicine by said board, the person aggrieved thereby may appeal from the decision of the board as hereinafter provided. An appeal may be taken from the action of the state board of medical examiners in refusing to issue a certificate to practice medicine and surgery to any applicant after examination, or from the action of said board in revoking the certificate of any physician or surgeon, to the district court of the county in which such revocation or refusal was made. The appeal is taken by serving notice of appeal upon the secretary of the board of medical examiners and the attorney-general of the state, within thirty days after notice from the board of medical examiners of its decision, and by filing within the same time with the clerk of the proper district court a verified copy of the decision from which appeal is taken, together with a verified copy of any charge or charges preferred against the applicant and filed with the board of medical examiners. The appel-

lant is required, at the time of filing such appeal, to furnish and file with the clerk of the court a good and sufficient bond, to be approved by the clerk of the court, with two good and sufficient sureties, in the sum of three hundred dollars, guaranteeing the payment of all costs of the appeal should the case be decided against the appellant, and the costs shall consist of the sheriff's fees for serving jurors, jurors' fees, and the fees of the clerk of the court. Such appeal shall thereafter be tried by the district court before a jury of six physicians—not less than two of whom shall be of the same school of medicine as the appellant—and in case such jury cannot be obtained in the county where the case is tried, the judge of such court shall order subpoenas for physicians from any adjoining county or counties, which subpoenas shall be served by the sheriff of such adjoining county upon receipt, after the clerk of the court where the subpoena is issued shall have sent by registered mail such subpoena to such sheriff. Bias or prejudice or fixed opinion shall constitute a ground of challenge to a juror for cause, and the appellant and the medical board shall each have the right to peremptorily challenge not more than two of such jurors. When the jury shall have been selected and sworn to try the cause, they constitute a higher examining board for the purpose of inquiring into whether or not the judgment of the board of medical examiners should be affirmed or overruled upon the issues presented to such board, and such jury may make such examination of the appellant as they may deem necessary or desirable. It shall take four of the jury to render a verdict, and no members of the medical board is qualified to act as a juror. The attorney-general is hereby made the attorney for said board. Jurymen subpoenaed under this act shall be entitled to mileage at the rate of ten cents per mile for each and every mile by them actually traveled in attending upon the court, and of three dollars per day for their services.

History: Ap. p. Sec. 603, Pol. C. 1895; amd. Sec. 1, Ch. 95, L. 1903; amd. Sec. 1, Ch. 100, L. 1907; Sec. 1588, Rev. C. 1907.

Though the board of medical examiners is empowered to revoke a certificate for unprofessional, dishonorable or immoral conduct, it cannot arbitrarily revoke the certificate of a physician without reasonable notice of the charge against him and the time and place of the trial. State v. Schultz, 11 Mont. 429, 434, 28 Pac. 343.

Whether acting under its general constitutional powers or as exercising a special and limited jurisidiction derived exclusively from the statute, the district court has no power to allow an applicant to practice medicine pending his appeal from a refusal of the state board of medical examiners to grant him a certificate. State ex rel. State Board of Medical Examiners v. District Court, 26 Mont. 121, 124, 66 Pac. 754.

The application of a physician to the district court to have the action of the state board of medical examiners, in revoking his license for alleged unprofessional and dishonorable conduct, judicially determined, is a special proceeding, from the judgment in which an appeal lies to the supreme court, if taken within one year; but he cannot, after the time for the appeal has elapsed, have the judgment reviewed and annulled on writ of review. State ex rel. Gattan v. District Court, 39 Mont. 134, 136, 101 Pac. 961.

Cited or applied as section 603, Political Code, before amendment, in State ex rel. Seres v. District Court, 19 Mont. 501, 503, 48 Pac. 1104; State ex rel. Riddell v. District Court, 27 Mont. 103, 106, 69 Pac. 710; as section 1588, Revised Codes, in State ex rel. Hackshaw v. District Court, 48 Mont. 477, 481, 138 Pac. 1100; Thien v. Wiltse, 49 Mont. 189, 194, 141 Pac. 146.

Validity of statute providing for revocation of license of physician or surgeon, see notes in 5 A. L. R. 94; 1 L. R. A. (N. S.) 811.

Grounds for revoking physician's license, see notes in 8 L. R. A. (N. S.) 585; 17 L. R. A. (N. S.) 439; 30 L. R. A. (N. S.) 783; L. R. A. 1915D, 1218.

3120. Certificate must be recorded. Every person obtaining a certificate from the board must, within sixty days from the date thereof, have the same recorded in the office of the county clerk in the county wherein he resides; if he removes from one county to another to practice medicine or surgery, his certificate must immediately be recorded in the county to which he removes. The county clerk must indorse upon the certificate the date of record, and he is entitled to charge and receive his usual fees for such services, the fee to be paid by the applicant. Until the certificate be recorded, as provided by this section, the physician practicing under it is subject to the penalties prescribed in the Penal Code for practicing without a certificate.

History: En. Sec. 604, Pol. C. 1895; re-en. Sec. 1589, Rev. C. 1907.

3121. Exceptions. This act shall not apply to midwives of skill and experience, commissioned surgeons of the United States army and navy in the discharge of their official duties, nor to physicians and surgeons in actual consultation from other states and territories.

History: En. Sec. 605, Pol. C. 1895; re-en. Sec. 1590, Rev. C. 1907.

Cited or applied as section 1590, Revised Codes, in State v. Wood, 53 Mont. 566, 570, 165 Pac. 592.

3122. Practicing medicine without certificate—Penalties. Any person practicing medicine or surgery within this state without first having obtained a certificate to practice, as provided by law, and after his certificate to practice has been revoked, or contrary to the provisions of this article, shall for each violation of the provisions of this code, or any act relating to the practice of medicine or surgery in this state, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars nor less than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding one year, nor less than ninety days, or by both said fine and imprisonment, as the court may determine. Any person shall be regarded as practicing within the meaning of this article who shall append or affix the letters M. B. or M. D., or the title of Dr. or Doctor, or any other sign or appellation in a medical sense to his or her name, who shall publicly profess to be a physician or a surgeon, who shall publicly profess either on his own behalf, in his own name, in his trade name, or on behalf of any other person, corporation, association, partnership, either as manager, bookkeeper, solicitor, or other agent, to cure, treat, relieve, or palliate any ailment, disease, or infirmity of the mind or body of another by using or prescribing any drug, medicine, or surgical treatment, or who shall recommend, prescribe, or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or bodily injury, or other deformity, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation; provided, however, that nothing in this section shall be construed to restrain or restrict any legally licensed osteopathic practitioner practicing under the laws of this state. Nothing in this act shall prohibit any legally licensed pharmacist or mercantile dealer from selling any drugs or medicines which are now

allowed to be sold under the laws of the state of Montana or the United States.

History: En. Sec. 606, Pol. C. 1895; amd. Sec. 1, Ch. 101, L. 1907; Sec. 1591, Rev. C. 1907.

By the adoption of the proviso relating to osteopaths, their status was not affected so as to permit them to practice medicine or surgery, and the section is not open to the objection that it denies to every person, except osteopaths, the right to practice medicine or surgery without a certificate from the state board of medical examiners. State v. Dodd, 51 Mont. 100, 105, 149 Pac. 481; State v. Wood, 53 Mont. 566, 571, 165 Pac. 592; State v. Hopkins, 54 Mont. 52, 59, 166 Pac. 304, Ann. Cas. 1918D, 956.

A conviction upon an information drawn under this section, which undertook to state the circumstances of the offense with unnecessary particularity, and in doing so confined the charge to the giving of a particular prescription, held not justified by the evidence. State ex rel. Gilmore v. Dist. Court, 45 Mont. 335, 122 Pac. 922, Ann. Cas. 1914A, 469.

Cited or applied as section 606, Political Code, before amendment, in State v. Morris, 22 Mont. 1, 2, 55 Pac. 360.

3123. Fees for examination before state board. Candidates for examination shall pay in advance to the secretary of the board of medical examiners a fee of twenty-five dollars, which fee shall defray the entire expense of said candidates for examination before the aforesaid board of examiners. Any one failing to pass the required examination shall be entitled to a second examination within six months, without fee. And the moneys so received shall be turned over to the state treasurer, to be by him deposited in the medical board fund, as hereinafter provided.

History: Ap. p. Sec. 607, Pol. C. 1895; amd. Sec. 1, Ch. 114, L. 1907; Sec. 1592, Rev. C. 1907.

3124. Compensation—Medical board fund. Each member of the board is hereby allowed the sum of five dollars per day and mileage while in the active and necessary discharge of his duties. And there is hereby established a fund to be known as the medical board fund. And a sum of fifteen hundred dollars is hereby annually appropriated out of any moneys in the state treasury not otherwise appropriated to meet the expenses incurred in carrying out the provisions of this act. The state treasurer is hereby directed and required to set such sum apart to the credit of such fund, subject to the orders and disbursements as herein provided for. The money in such fund shall only be paid out by warrant on said fund on an order drawn by the secretary of said board, countersigned by the president. The rate of mileage and attendance before said board shall be the same as is now allowed in justice of the peace courts. And the board must report annually on the first Monday in November to the governor, which report must show all the transactions of the board, giving the number of applications received, and from whom received, the number of certificates granted and rejected, and the names of those receiving certificates and those rejected, giving the reasons therefor, the amount of money received, the expenses, the fees and mileage paid, and by whom received, and the amount of money remaining in said fund.

History: En. Sec. 608, Pol. C. 1895; re-en. Sec. 1593, Rev. C. 1907.

Cited or applied as section 608, Political Code, in State ex rel. State Board of Medical Examiners v. District Court, 26 Mont. 121, 122, 66 Pac. 754; as section 1593, Revised Codes, in Johnson v. City of Great Falls 38 Mont. 369, 374, 99 Pac. 1059, 16 Ann. Cas. 974; State v. Hopkins, 54 Mont. 52, 57, 166 Pac. 304, Ann. Cas. 1918D, 956.

CHAPTER 224.

OSTEOPATHY—REGULATION OF PRACTICE.

Section 3125. Board of Osteopathic Examiners—Appointment and Term of Office.
3126. Officers of Board—Certificates of Qualification.
3127. Unlawful to Practice Without Certificate.
3128. Temporary Certificates.
3129. Subjects of Examination—Appeal.
3130. Certificate Does Not Authorize the Practice of Surgery.
3131. Record of License.
3132. Practice of Osteopathy Without License Prohibited.
3133. Revocation of Certificate.
3134. Compensation of Board.
3135. Graduates May Be Licensed Without Examination.
3136. Definition of Term Practicing Osteopathy.
3137. Osteopathy Not Practice of Medicine.

3125. Board of osteopathic examiners—Appointment and term of office. The governor of this state shall appoint a board as soon as possible after the passage of this act, to be known as the state board of osteopathic examiners. Said board shall consist of three qualified, practicing resident osteopaths, each of whom shall be a graduate of a legally authorized school of osteopathy; each member of said board shall serve thereon for a term of four years, and until his successor is appointed, except in cases of the first board, on which one shall serve for four years, one for three years, and one for two years, as specified in their appointment. In case of vacancy by death or otherwise, there shall be appointed in like manner a person to serve through such unexpired term.

Note.—The first board of osteopathic examiners was created by house bill No. 38, pp. 48 to 51, Laws of 1901. This act was superseded by chapter 51, Laws of 1905, appearing as sections 1594 to 1600, Revised Codes 1907. The law is here given as it appears in the Revised Codes 1907, with amendments.

History: En. Sec. 1594, Rev. C. 1907.

The practice of osteopathy a proper subject for police regulation. Johnson v. City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1059, 16 Ann. Cas. 974.

In a prosecution of a chiropractor for practicing osteopathy without a license, this statute was held not repugnant to the state constitution on the ground that there is nothing in the titles of the acts constituting the statute indicating an intention to include "chiropractic"; the latter, like the former, having to do with the art of healing by the use of the hands, falls within the definition of "osteopathy," and is therefore included within it. State v. Hopkins, 54 Mont. 52, 56, 166 Pac. 304, Ann. Cas. 1918D, 956.

The statute regulating the practice of osteopathy is not invalid as arbitrary and unreasonable class legislation, contrary to the fourteenth amendment to the federal constitution; neither does it make an arbitrary classification denying the right of citizens to engage in a lawful occupation, and is therefore not an abuse of the police power of the state. State v. Hopkins, 54 Mont. 52, 59, 166 Pac. 304, Ann. Cas. 1918D, 956.

Cited or applied as section 1594, Revised Codes, in State v. Wood, 53 Mont. 566, 569, 165 Pac. 592; State v. Dodd, 51 Mont. 100, 105, 149 Pac. 481.

Validity of special regulation of osteopathy, see note in Ann. Cas. 1917B, 798.

Application of statutes regulating practice of medicine to osteopathists, see notes in 3 L. R. A. (N. S.) 763; 24 L. R. A. (N. S.) 103; 25 L. R. A. (N. S.) 1297; L. R. A 1917C, 822.

Discriminatory regulation of osteopathists, see note in 1 Ann. Cas. 19.

Osteopath as a physician within meaning of statute in relation to vital statistics, see note in 8 A. L. R. 1070.

3126. Officers of board—Certificates of qualification. Said board of osteopathic examiners shall elect a president, a secretary, and treasurer on the first Tuesday in March each year, from among their number, and shall have a common seal, and its president and secretary shall have power to

administer oaths. Said board shall hold meetings for the examinations at the state capitol on the first Tuesday in March and September of each year, and such other meetings as may be deemed necessary, each session thereof not to exceed three days, and shall issue a certificate of qualification to all applicants having a diploma from a legalized, recognized, and regularly conducted school of osteopathy as such, at the time it was issued, or who pass required examinations as provided by section 3128. Said certificates shall be signed by the president and secretary of said board, and attested by its seal, and shall be conclusive of the right of the lawful holder thereof to practice osteopathy in this state. Said board shall keep a record of all proceedings; also a register of all applicants for a license, together with his or her name and age and time spent in the study and practice of osteopathy, and the name and location of the school or institute of osteopathy from which said applicant holds a diploma; and shall keep a register which shall show the names of all applicants licensed; and those who are rejected under this act. Said books shall be prima facie evidence of all matters recorded therein.

History: En. Sec. 1595, Rev. C. 1907. See also history of Sec. 3125.

The record of the applicants for license, required by this section to be kept by the secretary of the board of osteopathic examiners, showing that defendant had never applied for a license or a temporary certificate, was, in the absence of contradiction, sufficient to support the charge that he had been practicing without a license. State v. Hopkins, 54 Mont. 52, 64, 166 Pac. 304, Ann. Cas. 1918D, 956.

3127. Unlawful to practice without a certificate. It shall be unlawful for any person to practice osteopathy in this state without a license from said board; provided, that all persons practicing osteopathy within this state prior to the passage of this act and holding a diploma from a legally authorized school of osteopathy of good repute as such, and wherein the course of study comprises twenty months or four terms of five months each, may be licensed to practice osteopathy in the state by submitting to said board of osteopathic examiners such diploma and satisfying such board that they are legal holders thereof, or by undergoing an individual examination as hereinafter provided at a regular meeting of said board for examination. The fee for such license shall be twenty dollars, payable to the secretary of said board of examiners when application is made for certificates; provided, that in case of failure of any applicant to pass a satisfactory examination, he will be entitled to a second examination without charge at the next succeeding meeting of the board; provided, that all graduates of a reputable school of osteopathy who present themselves for examination and a license, and who have graduated later than April, 1907, shall present satisfactory evidence to the board of having actually attended such a school for a period of not less than three school years of nine months each; provided, that all graduates of reputable schools of osteopathy who present themselves for examination, and who have graduated later than January, 1919, shall present satisfactory evidence to the board of having actually attended such a school for a period of not less than four school years of eight months each, which was preceded by a four-years' high school course or its scholastic equivalent.

History: En. Sec. 1596, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919. See also history of Sec. 3125.

Cited or applied as section 1596, Revised Codes, in State v. Wood, 53 Mont. 566, 569, 165 Pac. 592.

In a prosecution for practicing osteopathy without a license, the state is not required to negative the defendant's possession of the temporary certificate referred to in this section, this being a matter of defense. State v. Wood, 53 Mont. 566, 569 et seq., 165 Pac. 592; State v. Hopkins, 54 Mont. 52, 64, 166 Pac. 304, Ann. Cas. 1918D, 956.

An information charging one with practicing osteopathy without first obtaining a license need not allege that he had procured a temporary certificate permitting him to practice, this being a matter of defense. State v. Hopkins, 54 Mont. 52, 64, 166 Pac. 304, Ann. Cas. 1918D, 956.

Note: Sections 3138 to 3154 of this code now legalize the practice of chiropractice. All annotations to cases differentiating chiropractic from osteopathy are eliminated from this code.

3128. Temporary certificates. The secretary of the board of osteopathic examiners may upon examination, grant a certificate to an applicant to practice osteopathy until the next meeting of said board when he shall report the facts, at which time the temporary certificate shall expire, but such temporary certificate shall not be granted by the secretary of said board after the board has once rejected the applicant.

History: En. Sec. 1597, Rev. C. 1907. See also history of Sec. 3125.

3129. Subjects of examination—Appeal. All persons, after March 1, 1901, commencing the practice of osteopathy in this state, in any of its branches, shall apply to said board for a license to do so, and such applicant at the time and place designated by said board, shall submit to an examination in the following branches, to-wit: Anatomy, physiology, chemistry, pathology, gynecology, obstetrics, and theory and practice of osteopathy, and such other branches as are taught in well regulated and recognized schools of osteopathy and deemed advisable by said board and shall present evidence of having actually attended for at least twenty months, or four terms of five months each a legally authorized and regularly conducted school of osteopathy, recognized by said board of osteopathic examiners, except as otherwise provided in section 3126 of this code. All examination papers on subjects peculiar to osteopathy shall be examined and their sufficiency passed upon by members of said board, whose decision shall be final thereon subject, however, to the right of appeal, which appeal shall be to the district court of the county in which the examination is held and said district court shall review such examination without a jury and shall have the right to take testimony thereon and the decision of such district court shall be also subject to the right of appeal to the supreme court by any persons aggrieved thereby, and upon such appeal the supreme court shall have the right to consider questions of both law and fact, and said board shall cause such examination to be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy. After examination the board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the state of Montana, which license shall be granted by not less than two members of such board, attested by the seal thereof. For the support and maintenance of said board, the fee for such examintion and license shall be twenty dollars, which shall be paid in advance to the secretary of said board to defray the expenses thereof.

History: En. Sec. 1598, Rev. C. 1907. See also history of Sec. 3125.

3130. Certificate does not authorize the practice of surgery. The certificate provided for in the preceding section shall not authorize the

holder thereof to prescribe or use drugs in the practice of osteopathy, or to perform major or operative surgery; and any person holding a certificate under this act, who shall prescribe or use drugs in the practice of osteopathy, or who shall perform major or operative surgery, shall be deemed guilty of a misdemeanor; provided, that nothing in this act shall be so construed as to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the state board of medical examiners of the state of Montana.

History: En. Sec. 1599, Rev. C. 1907. See also history of Sec. 3125.

3131. Record of license. The person receiving such license shall have it recorded in the office of the county clerk in the county in which he or she resides, and the record shall be indorsed thereon. In case the person so licensed shall remove to another county to practice, the holder shall record the license in a like manner in the county into which he or she removed, and the county clerk is entitled to charge and receive the usual fee for making such record.

History: En. Sec. 1600, Rev. C. 1907. See also history of Sec. 3125.

3132. Practice of osteopathy without license prohibited. Any person practicing osteopathy in this state without first obtaining a license herein provided for, or contrary to the provisions of this act, or who, for the purpose of obtaining such license, shall falsely represent himself or herself to be the holder of a diploma as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, nor less than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding one year, nor less than ninety days, or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this act.

History: En. Sec. 8, p. 51, L. 1901; amd. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; sec. 1601, Rev. C. 1907.

3133. Revocation of certificate. Any such certificate may be revoked by said board, upon satisfactory proof of fraud, or misrepresentation in procuring the same, or for any violation of the provisions of this act, or any gross immorality by the holder of such certificate.

History: En. Sec. 9, p. 51, L. 1901; re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907.

3134. Compensation of board. Out of the funds coming into the possession of said board each of the members of said board may receive as compensation the sum of five dollars for each day actually engaged in the duties of their office, together with all legitimate and necessary expenses incurred in attending the meetings of said board. No part of the compensation or other expenses of said board shall be paid out of the state treasury. The fees coming into the treasury of said board shall be paid out upon a warrant of the president and secretary thereof in payment of the compensation and expenses of said board in carrying out the provisions of this act. Said board shall make an annual report of its proceedings to the governor of the state for the year ending on the thirty-first day of December preceding the making of said report. Said report shall

be filed with the governor on or before the fifteenth day of January of each year.

History: En. Sec. 10, p. 51, L. 1901; re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907.

3135. Graduates may be licensed without examination. Every graduate of a reputable school of osteopathy, who has been strictly examined and thereafter licensed to practice osteopathy in another state, may be licensed to practice osteopathy in this state upon the production to the board of his or her diploma, and the license obtained in such other state and satisfactory evidence of good moral character, and the payment of all legal fees required of other applicants; but the board may examine the applicant as to his or her qualifications.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907.

3136. Definition of term practicing osteopathy. Every person shall be deemed practicing osteopathy within the meaning of this act who shall:

1. Append to, or use in connection with his or her name the words "doctor of osteopathy, or diplomat of osteopathy, or osteopath, or osteopathist, or osteopathic practitioner, or osteopathic physician," or words of like import, or any abbreviation thereof, or the letters "D. O."; or who shall

2. Profess publicly to, or who shall, either on his own behalf, in his own name, or in his trade-name, or in behalf of any other person, corporation, association, partnership, either as manager, bookkeeper, practitioner, or agent, treat, cure, alleviate, or relieve any ailment or disease of either mind or body, or cure or relieve any fracture or misplacement or abnormal condition, or bodily injury or deformity, by any treatment, or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts, by the use of the hands, or mechanical appliances, in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect, in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received, or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section shall be construed to restrain or restrict any legally licensed physician or surgeon in the practice of his profession.

History: Ap. p. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; Sec. 1605, Rev. C. 1907.

This section does not authorize an osteopath to practice medicine or surgery, but requires him to confine his practice to treatment by the use of the hands or mechanical appliances. State v. Dodd, 51 Mont. 100, 106, 149 Pac. 481.

Unless an exception found in a statute is part of the definition of the offense sought to be described, the state is not required to negative such exception in an indictment or information. The proviso contained in the second subdivision of the above section is not such an exception, since neither physician nor surgeon can practice osteopathy without first obtaining a license therefor. State v. Wood, 53 Mont. 566, 569 et seq., 165 Pac. 592; State v. Hopkins, 54 Mont. 64, 166 Pac. 304, Ann. Cas. 1918D, 956.

In an indictment or information the state is not required to negative the exception contained in subdivision 5 of this section. State v. Wood, 53 Mont. 566, 165 Pac. 592.

A physician or surgeon is not entitled, under the statute, to practice osteopathy without a license from the state board of osteopathic examiners. State v. Hopkins, 54 Mont. 52, 59, 166 Pac. 304, Ann. Cas. 1918D, 956.

3137. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body, commonly known as osteopathy, is hereby declared not to be the practice of medicine or surgery within the meaning of sections 3116 to 3124, inclusive of this code, and not subject to the provisions of said sections.

History: En. Sec. 11, p. 51, L. 1901; re-en. sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907.

Cited or applied as section 1606, Revised Codes, in Johnson v. City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1069, 16 Ann. Cas. 974; State v. Hopkins 54 Mont. 52, 57, 166 Pac. 304, Ann. Cas. 1918D, 956.

Osteopathy as a medical or surgical profession, see note in 1 Ann. Cas. 51.

CHAPTER 225.

CHIROPRACTIC—REGULATION OF PRACTICE.

Section 3138. State Board of Chiropractic Examiners Created—Qualifications of Members.
3139. Appointment of Board—Term of Office—Future Appointments.
3140. Organization of Board—Meetings—Powers and Duties.
3141. Practicing Without License—License Without Examination—Temporary Permits.
3142. Applications to Practice—Fees for License.
3143. Examinations—Subjects Embraced in.
3144. Definition of Chiropractic.
3145. Duties of Chiropractic Practitioners.
3146. Rights and Limitations Governing Practice.
3147. Refusal and Revocation of License—Proceedings—Reinstatement.
3148. Recordation of License—Failure or Refusal to Record.
3149. License of Chiropractors—Renewal.
3150. Disposition of Fees—Receipts and Disbursements—Per Diem and Mileage.
3151. Bond of Treasurer—Dismissal of Members of Board.
3152. Admission to Practice of Persons From Other States.
3153. Penalty for Violation of Act.
3154. Limitations Upon Construction of Act.

3138. State board of chiropractic examiners created—Qualifications of members. There is hereby created and established a board to be known as the state board of chiropractic examiners, and said board shall be composed of three practicing chiropractors of integrity and ability, who shall be residents of the state of Montana, and who shall have practiced chiropractic continuously in the state of Montana for a period of at least one year. No two members of said board shall be graduated from the same school or college of chiropractic.

Note.—Sections 3138 to 3154 initiative measure enacted by the people at election of November, 1918. Effective under governor's proclamation December 28, 1918.

Validity of special regulation of chiropractic treatment of disease, see note in Ann. Cas. 1917B, 798.

Chiropractic as practice of medicine, see notes in Ann. Cas. 1913C, 484; Ann. Cas. 1916A, 858; Ann. Cas. 1917E, 1165; Ann. Cas. 1918D, 961.

Application of statutes regulating the practice of medicine to treatment known as chiropractic, see notes in 33 L. R. A. (N. S.) 179; L. R. A. 1917C, 823.

3139. Appointment of board—Term of office—Future appointments. The governor of the state of Montana shall, within thirty days after the taking effect of this act, appoint three chiropractors, who shall possess the qualifications specified in section 3138, to constitute the members of said board. Said members shall be so classified by the governor that the term of office of one shall expire in one year, one in two years, and one in three years from the date of appointment. Annually thereafter

the governor shall appoint one member, who shall be a licensed chiropractic practitioner and possessed of the qualifications specified in section 3138, to serve for a period of three years and shall fill all vacancies in said board caused by death or otherwise as soon as practicable.

History: See history of Sec. 3138.

3140. Organization of board—Meetings—Powers and duties. Said board of chiropractic examiners shall convene within thirty days after their appointment and elect annually a president, vice-president, and a secretary-treasurer from their membership.

The board shall hold a regular meeting on the first Tuesday of October in each year at the capital of the state, and shall hold special meetings at such times and places as the board, or a majority of the members thereof, may designate; provided, that not more than four meetings shall be held in any one year. A majority of the board shall constitute a quorum.

Said board shall have authority to administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. They shall adopt a seal, which shall be affixed to all licenses issued by them, and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this law, which shall be without prejudice, partiality, or discrimination as to the different schools of chiropractic. The secretary of said board shall keep a record of the proceedings of the board, which shall at all times be open to public inspection. Said board shall also keep on file with the secretary of state a copy of their rules and regulations for public inspection.

A license to practice chiropractic within this state shall be issued to the individual members of said board at the first meeting of said board upon payment of the regular fee as provided for in this act.

History: See history of Sec. 3138.

3141. Practicing without license—License without examination—Temporary permits. It shall be unlawful for any person to practice chiropractic in this state without first obtaining a license as provided in this act; provided, however, that all persons practicing chiropractic within this state for three months prior to the passage of this law, and holding a diploma or certificate from a legally chartered school of chiropractic of good repute, may be licensed to practice chiropractic in this state by submitting to said board of chiropractic examiners said diploma or certificate, and satisfying said board that they are the legal holders thereof, or by taking the examination herein provided for at any regular or special meeting of said board; and, provided further, that when application for examination for license is regularly filed with the board, as provided in the next section, the board may issue to the applicant a temporary permit to practice, good until the next meeting of the board.

History: See history of Sec. 3138.

3142. Applications to practice—Fees for license. Any person wishing to practice chiropractic in this state, after March 15, 1919, shall make application to said board of chiropractic examiners, through the secretary-treasurer thereof, upon such form and in such manner as may be pre-

scribed and directed by the board, at least fifteen days prior to any meeting of said board. Each applicant shall be a graduate of a chartered school of chiropractic, in which he actually attended a course of study of at least three years of nine months each, preceded by a four-years' high school course. Application shall be in writing, and shall be signed by the applicant in his own hand writing, and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, the length of time he has been engaged in practice, accompanying the same with proofs thereof, in the shape of diplomas, certificates, etc., and shall accompany said application with satisfactory evidence of good character and reputation.

There shall be paid to the secretary-treasurer of the state board of chiropractic examiners by each applicant for a license, a fee of twenty-five dollars, ten dollars of which shall accompany application, and the remaining fifteen dollars shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application.

History: En. initiative measure November, 1918; amd. Sec. 1, Ch. 224, L. 1919.

3143. Examinations—Subjects embraced in. Examinations for license to practice chiropractic shall be made by said board according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. Such application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed to the members of the board until after the examination papers are graded.

All examinations shall be made in writing, the subjects of which shall be as follows: Anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed from time to time by the board to meet new conditions. A license shall be granted to all applicants who shall correctly answer seventy-five per centum of all questions asked, and if any applicant shall fail to answer correctly sixty per centum of the questions on any branch of said examination, he or she shall not be entitled to a license.

History: See history of Sec. 3138.

3144. Definition of chiropractic. Chiropractic is the science that teaches that disease results from anatomic disrelation, and teaches the art of restoring anatomic relation by a process of adjusting by the use of the hand.

No other means of securing health shall be construed to be chiropractic except the application of the inherent qualities at the time in the patient or appertaining to the chiropractor.

History: See history of Sec. 3138.

3145. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, shall report to the proper health officers the same as other practitioners.

History: See history of Sec. 3138.

3146. Rights and limitations governing practice. Chiropractors licensed under this act shall have the right to practic that science defined as chiropractic under section 3144 of this code, in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix Dr. or Doctor as a title, but shall not in any way imply that they are regular physicians or surgeons. They shall not prescribe for or administer to any person any medicine or drugs, nor practice medicine or surgery, nor osteopathy; except that the use of antiseptics for purposes of sanitation and hygiene, and to prevent infection and contagion, shall be permitted.

History: See history of Sec. 3138.

3147. Refusal and revocation of license—Proceedings—Reinstatement. The state board of chiropractic examiners may refuse to grant or revoke a license to practice chiropractic in this state, or may cause a licentiate's name to be removed from the records in the office of the recorder of deeds in this state, upon any of the following grounds, to-wit: The employment of fraud or deception in applying for a license or in passing an examination provided for in this act; the practice of chiropractic under a false or assumed name, or the impersonation of another practitioner of like or different name; the conviction of a crime involving moral turpitude; habitual intemperance in the use of ardent spirits, narcotics, or stimulants, to such an extent as to incapacitate him or her for the performance of their professional duties. Any person who is a licentiate, or who is an applicant for a license to practice chiropractic, against whom any of the foregoing grounds for revoking or refusing a license is presented to said board with a view of having the board revoke or refuse to grant a license, shall be furnished with copy of the complaint, and shall have a hearing before said board in person or by attorney, and witnesses may be examined by said board respecting the guilt or innocence of said accused.

Said board may at any time within two years of the refusal, revocation, or concellation of registration under this section, by a majority vote, issue a new license or grant a license to the person affected, restoring him to or conferring upon him all the rights and privileges of, and pertaining to the practice of chiropractic as defined and regulated by this act. Any person to whom such rights and privileges have been restored shall pay to the secretary-treasurer the sum of twenty-five dollars upon issuance of a new license.

History: See history of Sec. 3138.

3148. Recordation of license—Failure or refusal to record. Every person who shall receive a license from the state board of chiropractic examiners shall have it recorded in the office of the recorder of deeds of the county of which he resides, and shall likewise have it recorded in the counties to which he shall subsequently remove for the purpose of practicing chiropractic.

The failure or refusal on the part of the holder of a license to have it recorded before he or she shall be in the practice of chiropractic in this state, after having been notified by the state board of chiropractic examiners to do so, shall be sufficient grounds to revoke or cancel a license and render it null and void. The recorder shall keep for public inspection, in

a book provided for that purpose, a complete list and description of the licenses recorded by him. When any such licenses shall be presented to him for record, he shall stamp upon the face thereof his signed memorandum of the date when such license was presented for record.

History: See history of Sec. 3138.

3149. License of chiropractors—Renewal. All persons practicing chiropractic within this state shall pay, on or before the first day of September of each year after a license is issued to them, as herein provided, to said board of chiropractic examiners, a renewal license fee of five dollars. The secretary-treasurer shall, thirty days or more before September first of each year, mail to all practicing chiropractors in this state, a notice of the fact that the renewal fee will be due on or before September first. If any practicing chiropractor shall fail and neglect or refuse to pay to the board of chiropractic examiners the renewal license tax imposed by this act, thirty days after the same is due and payable, it shall be the duty of the secretary-treasurer to take such action for the collection of the same as is required of the county treasurer in cases of non-payment of other licenses, as provided by section 2414 of this code, and the provisions of said section and of section 2416 of this code shall control all said proceedings so far as the same were applicable hereto.

History: En. Sec. 12, initiative measure November, 1918; amd. Sec. 1, Ch. 90, L. 1921.

3150. Disposition of fees—Receipts and disbursements—Per diem and mileage. All examinations and renewal fees received by the state board of chiropractic examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the said state treasurer shall place said money so received in a special fund of the state board of chiropractic examiners and shall pay the same out in warrants drawn by the auditor of the state thereof, upon vouchers issued and signed by the president and the secretary-treasurer of said board. Said money so received and placed in said fund may be used by the state board of chiropractic examiners in defraying their expenses in carrying out the provisions of this act.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year he shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of ten dollars for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of three cents per mile for each mile necessarily traveled in going to and from any meeting of said board.

Such per diem and mileage and such other incidental expenses necessarily connected with said board shall be paid out of the fund of the state board of chiropractic examiners, and not otherwise.

History: See history of Sec. 3138.

3151. Bond of treasurer—Dismissal of members of board. The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper. Upon sufficient proof to the governor of the

inability or misconduct of a member of the board, said member shall be dismissed, and the governor shall appoint as his successor some licensed chiropractor practicing in this state, who shall be a graduate of a different school than those represented on the board.

History: See history of Sec. 3138.

3152. Admission to practice of persons from other states. Persons licensed to practice chiropractic under the laws of any other state having chiropractic educational requirements equal to this act, may, in the discretion of the board, be issued a license to practice in this state without examination, upon payment of the fee of twenty-five dollars as herein provided.

History: See history of Sec. 3138.

3153. Penalty for violation of act. Any person who shall practice, or attempt to practice chiropractic, or any person who shall buy, sell, or fraudulently obtain any diplomas, or license to practice chiropractic whether recorded or not, or who shall use the title chiropractor, D. C. Ph. C., or any word or title to influence belief that he is engaged in the practice of chiropractic, without first complying with the provisions of this act, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days or more than six months, or by both such fine and imprisonment.

History: See history of Sec. 3138.

3154. Limitations upon construction of act. Nothing in this act contained shall be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of his profession. The practice of chiropractic as herein defined, is hereby declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining the same, and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining the same. Duly licensed chiropractors shall not be subject to the provisions of sections 3125 to 3137, inclusive, of this code, nor liable to any prosecution thereunder.

History: See history of Sec. 3138.

CHAPTER 226.

OPTOMETRY—REGULATION OF PRACTICE.

Section 3155. Practice of Optometry Defined.
3156. Unlawful to Practice Optometry Without Certificate.
3157. Creation of State Board of Examiners in Optometry.
3158. Organization and Meeting of Board.
3159. Examination of Applicants to Practice.
3160. Certificate to Issue to Persons Now Engaged in Practice.
3161. Exemptions—Annual Renewal of Registration.
3162. Registration of Certificate in County.
3163. Failure to Apply for Certificate—Forfeiture of Right.
3164. Certificate to Be Displayed in Office.
3165. Compensation of Members of Board of Examiners.
3166. Revocation of Certificate.
3167. Penalties for Violation of Act.
3168. Jurisdiction of Justices of the Peace.
3169. Act Not to Apply to Physicians and Surgeons.

3155. Practice of optometry defined. The practice of optometry is defined as follows, namely: The employment of subjective and objective mechanical means, without the use of drugs, to determine the accommodative and refractive states of the eye, and the scope of the functions in general.

Note.—Sections 3155 to 3169 were enacted as chapter 138, Laws of 1907, appearing as sections 1607 to 1621, Revised Codes 1907.

History: En. Sec. 1607, Rev. C. 1907.

The practice of optometry is a proper subject for police regulation. Johnson v. City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1059, 16 Ann. Cas. 974.

Application to optometrists of statutes regulating practice of medicine, see note in L. R. A. 1917C, 826; 9 Ann. Cas. 203.

3156. Unlawful to practice optometry without certificate. From and after the first day of April, 1907, it shall be unlawful for any person to practice optometry in the state of Montana, unless he shall first have obtained a certificate of registration and filed the same, or certified copy thereof, with the clerk of the district court of the county of his residence, all as hereinafter provided.

History: En. Sec. 1608, Rev. C. 1907. See also history of Sec. 3155.

3157. Creation of state board of examiners in optometry. There is hereby created a board, whose duty it shall be to carry out the purposes and enforce the provisions of this act, which shall be styled the "Montana state board of examiners in optometry." Said board shall be appointed by the governor as soon as practicable after the passage of this act, and shall consist of five resident opticians engaged in the actual practice of optometry. Each member of said board shall hold office for a term of three years, and until his successor is appointed. Appointments to fill vacancies caused by death, resignation, or removal shall be made for the residue of such term by the governor. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other state officers, which shall be administered by the secretary of state, and filed in his office; and said board shall have a common seal.

History: En. Sec. 1609, Rev. C. 1907. See also history of Sec. 3155.

3158. Organization and meeting of board. Said board shall choose at its first regular meeting, and annually thereafter, one of its members president, and one secretary thereof, who severally shall have the power, during their term of office, to administer oaths and take affidavits, certifying thereto under their hand and the seal of the board. Said board shall meet at least once in each year at the state capitol, and in addition thereto, whenever and wherever the president and secretary thereof shall call a meeting. A majority of said board shall at all times constitute a quorum. The secretary of said board shall keep a full record of the proceedings of said board, which records shall at all reasonable times be open to public inspection.

History: En. Sec. 1610, Rev. C. 1907. See also history of Sec. 3155.

3159. Examination of applicants to practice. Every person, before beginning to practice optometry in this state, after the passage of this act, shall be at least twenty-one years of age, and shall pass an examination

before said board of examiners. Such examination shall be confined to such knowledge as is essential to the practice of optometry. Any person having signified to said board his desire to be examined by them, shall satisfactorily show to said board that he has completed the equivalent of at least two years of high school work, and has graduated from a registered school of optometry which has an annual course of study consisting of at least a thousand hours of actual instruction, and that said applicant for examination shall have actually completed at least seven hundred fifty hours of such course, and he shall appear before them at such time and place as they designate, and before beginning such examination shall pay the secretary of said board, for the use of said board, the sum of twenty dollars, and if he shall successfully pass such examination, shall pay to said secretary, for the use of said board, a further sum of five dollars on the issuance to him of a certificate. All persons successfully passing such examination shall be registered in the board register, which shall be kept by said secretary, as licensed in optometry, and shall also receive a certificate of such registration, to be signed by the president and secretary of said board, which shall be filed as hereinbefore provided. In case an applicant for a certificate of registration has been admitted to practice optometry in any state, and has secured an average of seventy-five per cent. in his examination in such other state, he may, in the discretion of the board, be granted a certificate to practice his profession in Montana, without examination, upon his payment of the fee and the deposit of his certificate, and provided the state from which said applicant comes offers equal privileges to applicants for certificates of registration from other states.

History: Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917. See also history of Sec. 3155.

3160. Certificate to issue to persons now engaged in practice. Every person who is engaged in the practice of optometry in the state of Montana at the time of the passage of this act, shall, within three months thereafter, file an affidavit in proof thereof with said board, who shall make and keep a record of such persons, and shall, in consideration of the sum of five dollars, issue to him a certificate of registration.

History: Sec. 1612, Rev. C. 1907. See also history of Sec. 3155.

3161. Exemptions—Annual renewal of registration. All persons entitled to a certificate of registration under the full provisions of section 3160 shall be exempt from the provisions of section 3159 of this code, but every registered optometrist who desires to continue in the pursuit of optometry in this state shall annually, after the expiration of the first year of registration, and on or before the second day of July of each year, and after having been notified by the secretary of the state board of optometry, pay to the said secretary a renewal fee to be fixed by the board, which shall not exceed two dollars, in return for which a renewal of registration shall be issued. If any person shall fail or neglect to procure his annual registration of renewal, notice of such failure having been mailed to his postoffice address by the secretary of the state board of optometry, as obtained from the books of the secretary, he shall, after the expiration of thirty days following the issue of said notice, be deprived

of all privileges conferred by this act; and after six months he shall be deprived of his registration, and it shall be necessary for such person to make application and pass an examination as provided in section 3159 of this code.

History: Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917. See also history of Sec. 3155.

3162. Registration of certificate in county. Recipients of said certificate of registration shall present the same for record to the clerk of the district court of the county in which they reside, and shall pay a fee of fifty cents to the clerk for recording the same. Said clerk shall record said certificate in a book to be provided by him for that purpose. Any person so licensed, removing his residence from one county to another in this state, shall, before engaging in the practice of optometry in such other county, obtain from the clerk of the district court of the county in which said certificate of registration is recorded a certified copy of such record, or else obtain a new certificate of registration from the board of examiners, and shall, before commencing practice in such county, file the same for record with the clerk of the court of the county to which he removes, and pay the clerk thereof, for recording the same, a fee of fifty cents. Any failure, neglect, or refusal on the part of any person holding such certificate or copy of record to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. Such board shall be entitled to a fee of one dollar for the reissue of any certificate, and the clerk of the district court of any county shall be entitled to a fee of one dollar for making and certifying the copy of the record of any such certificate.

History: Sec. 1614, Rev. C. 1907. See also history of Sec. 3155.

3163. Failure to apply for certificate—Forfeiture of right. Any person entitled to a certificate, as provided for in section 3160 of this code, who shall not, within six months after the passage thereof, make written application to the board of examiners for a certificate of registration, accompanied by a written statement, signed by him, and duly verified before an officer authorized to administer oaths within this state, fully setting forth the grounds upon which he claims such certificate, shall be deemed to have waived his rights to a certificate under the provisions of said section. Any failure, neglect, or refusal on the part of any person holding such certificate to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same.

History: Sec. 1615, Rev. C. 1907. See also history of Sec. 3155.

3164. Certificate to be displayed in office. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

History: Sec. 1616, Rev. C. 1907. See also history of Sec. 3155.

3165. Compensation of members of board of examiners. Out of the funds coming into the possession of said board, each member thereof may receive as compensation the sum of five dollars for each day actually engaged in the duties of his office, and mileage at three cents per mile

for all distances necessarily traveled in going to and coming from the meetings of said board. Said expenses shall be paid from the fees and assessments received by the board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said per diem allowance and mileage, as above provided for, shall be held by the secretary, as a special fund for meeting expenses of said board, and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and the said board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by it pursuant to this act.

History: Sec. 1617, Rev. C. 1907. See also history of Sec. 3155.

3166. Revocation of certificate. Said board shall have the power to revoke any certificate of registration, granted by it under this act, for conviction of crime, habitual drunkenness for six months immediately before a charge is to be made, gross incompetence, or contagious or infectious disease, or granted to persons who publicly profess to cure disease, or for unprofessional conduct, or for gross ignorance or inefficiency in his profession. Unprofessional conduct shall mean employing what are known as "cappers" or "steerers" to obtain business; the obtaining of any fee by fraud or misrepresentation; employing, directly or indirectly, any suspended or unlicensed optician or optometrist to perform any work covered by this act; or treatment or advice in which untruthful, improbable, or impossible statements are made; the use in advertising of the expression "eye specialist," in connection with the name of such optometrist; or habitual intemperance, or gross immorality, or permitting another to use his certificate; provided, that this act shall not prohibit legitimate or truthful advertising by any registered optometrist; and provided, that before any certificate shall be revoked, the holder thereof shall have notice in writing of the charge or charges against him, and, at a day specified in said notice, at least five days after the service thereof, be given a public hearing, and have opportunity to produce testimony in his behalf, and to confront the witnesses against him. Any person whose certificate has been revoked may appeal to the courts or may, after the expiration of ninety days, apply to have the same regranted, and the same shall be regranted him upon a satisfactory showing that the disqualification has ceased.

History: Sec. 1618, Rev. C. 1907: amd. Sec. 3, Ch. 128, L. 1917. See also history of Sec. 3155.

3167. Penalties for violation of act. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined not less than twenty dollars nor more than one hundred dollars, or be confined not less than one month, nor more than three months in the county jail. And all fines, thus received, shall be paid into the common school fund of the county in which such conviction takes place.

History: Sec. 1619, Rev. C. 1907. See also history of Sec. 3155.

3168. Jurisdiction of justices of the peace. Justices of the peace and the respective municipal courts shall have jurisdiction of violations of this act. It shall be the duty of the respective county attorneys to prosecute all violations of this act.

History: Sec. 1620, Rev. C. 1907. See also history of Sec. 3155.

3169. Act not to apply to physicians and surgeons. Nothing in this act shall be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana, nor to persons who sell spectacles or eye-glasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: Sec. 1621, Rev. C. 1907. See also history of Sec. 3155.

Cited or applied as section 1621, Revised Codes, in Johnson v. City of Great Falls, 38 Mont. 369, 374, 99 Pac. 1059, 16 Ann. Cas. 974.

CHAPTER 227.

PHARMACY—REGULATION OF AND RESTRICTIONS ON SALE OF OPIATES.

Section 3170. Drugs to be Sold by Registered Pharmacists.
3171. Registered Pharmacists Defined—Fee for Registration.
3172. Assistant Pharmacists.
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3201. "Person" Defined.
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3170. Drugs to be sold by registered pharmacists. It shall hereafter be unlawful for any person other than a registered pharmacist, as hereinafter defined, to retail, vend, compound, or dispense drugs, medicines, poisons, chemicals, or pharmaceutical preparations, in the state of Montana, or to institute, conduct, or manage a store, shop, pharmacy, or institution for the selling, vending, compounding, or dispensing of drugs,

medicines, poisons, chemicals, or pharmaceutical preparations in the state of Montana, unless such be a registered pharmacist as in this act provided, or unless a registered pharmacist is placed in charge of such store, pharmacy, shop, or institution for the retailing, vending, compounding, or dispensing of drugs, medicines, poisons, chemicals, and pharmaceutical preparations.

Note.—Sections 3170 to 3181 were enacted as sections 640 to 651, inclusive, Political Code 1895; re-enacted sections 1622 to 1633, Revised Codes 1907. The law is here given as amended by sections 1 to 14, chapter 134, Laws of 1915.

History: En. Sec. 1, Ch. 134, L. 1915.

The practice of pharmacy is a proper subject for police regulation. Johnson v. City of Great Falls, 38 Mont. 369, 373, 99 Pac. 1059, 16 Ann. Cas. 974.

Validity of statutory regulation of druggists or pharmacists, see note in 10 Ann. Cas. 399.

Druggists as subject to license regulations, see note in 129 A. S. R. 294.

Effect of partial invalidity of statute relating to licensing druggists, see note in Ann. Cas. 1916D, 57.

3171. Registered pharmacists defined—Fee for registration. Registered pharmacists, within the meaning of this act, shall comprise all persons who shall, at the time of the passing of this act, hold certificates of registration granted by the state board of pharmacy of the state of Montana, or persons who shall be granted certificates of registration by the said board of pharmacy after the passage of this act, either by examination or reciprocity, as hereinafter provided; fees for registration, under this act, shall be fifteen dollars for an examination, and twenty-five dollars for reciprocity; said fees, thus collected, are to be paid to the state board of pharmacy of the state of Montana.

History: En. Sec. 2, Ch. 134, L. 1915. See also history of Sec. 3170.

3172. Assistant pharmacists. Assistant pharmacists, in the meaning of this act, shall comprise all persons over eighteen years of age, having had at least one year's practical experience in the compounding and dispensing of physician's prescriptions, and who shall pass such examination as the state board of pharmacy of the state of Montana shall require, and pay to the state board of pharmacy a fee of five dollars. Assistant pharmacists shall not be permitted, under this act, to institute, conduct, or manage, on their own account, or to assume the management for others of any pharmacy, store, shop, or institution for the retailing, vending, compounding, or dispensing of drugs, medicines, poisons, chemicals, or pharmaceutical preparations, and are to be governed by the rules of the state board of pharmacy of the state of Montana.

History: En. Sec. 3, Ch. 134, L. 1915. See also history of Sec. 3170.

Right of unlicensed druggist to recover for services rendered by licensed one, see note in 2 L. R. A. (N. S.) 392.

Liability of druggist for negligence of clerk, see note in Ann. Cas. 1915C, 419; 39 L. R. A. (N. S.) 275.

3173. State board of pharmacy—Appointment and term of office—Vacancies. Immediately upon the passage of this act, the Montana state pharmaceutical association shall submit to the governor of the state of Montana the names of five registered pharmacists having had at least ten years' practical experience as dispensing pharmacists; provided, however, that nothing herein contained shall be so construed as to apply to or exclude registered pharmacists of less than ten years' practical experience who are graduates in pharmacy; and from this number the gov-

ernor shall appoint three, at least one of whom shall be a graduate in pharmacy, and the said three registered pharmacists shall constitute the state board of pharmacy of the state of Montana, to have and to hold office for one, two, and three years respectively, as designated in their appointments, or until their successors have been duly appointed and qualified.

Annually thereafter the Montana state pharmaceutical association shall elect five registered pharmacists having ten years' practical experience as dispensing pharmacists; provided, however, that nothing herein contained shall be so construed as to apply to or exclude registered pharmacists of less than ten years' experience who are graduates in pharmacy. And the governor shall appoint one registered pharmacist from this number to fill the vacancies annually occurring on the board. The term of office shall be three years, or until his successor shall be appointed and qualified. In case of resignation or removal of any member of the said board, or a vacancy occurring from any cause, the governor shall immediately appoint from the remaining selections of the Montana state pharmaceutical association a registered pharmacist to serve as a member of the board for the remainder of the unexpired term; provided, however, that the said board shall always contain at least one graduate in pharmacy.

History: En. Sec. 4, Ch. 134, L. 1915. See also history of Sec. 3170.

3174. Organization of board—Officers—Examination of applicants. The said board of pharmacy shall, within thirty days after its appointment, meet in the city of Helena, and organize by the selection of a president, secretary, and treasurer, who shall serve for a term of one year and who shall perform the duties prescribed by the said board; said secretary, thus appointed, shall not be a member of the state board of pharmacy, but shall be a member of the Montana state pharmaceutical association in good standing, and shall perform the duties as prescribed by the board. Meetings for the examination of applicants for registration, granting of certificates, and such other business as is necessary, shall be held not to exceed twice in any one year, and at such times and places as may be fixed by the said board; provided, that thirty days' notice in writing to all applicants and to all registered pharmacists of the state of the time and place of each meeting at which there is to be a meeting for an examination of candidates for registration shall be given. It shall be the duty of the board to receive all applications for examination and registration submitted in proper form, and to grant certificates to such persons as may be entitled to the same under this act; to cause the prosecution of all persons violating any of the provisions of this act; to report annually to the governor and to the state pharmaceutical association upon the condition of pharmacy in the state of Montana, which report shall also furnish a record of the proceedings of the board, as well as the names of all persons registered under this act; on what grounds and under what particular section of this act each person was registered, and any other facts pertaining to the granting of certificate, including financial report.

The board shall have power to make by-laws for the full and proper execution of its duties under this act; to prescribe the forms and methods

of application, examination, and registration; to demand and receive from applicants the fees herein provided, which shall be held by the said board and applied to the payment of salaries and other necessary expenses incident to the full discharge of its duties.

History: En. Sec. 5, Ch. 134, L. 1915. See also history of Sec. 3170.

3175. Salaries and expenses of officers. The salaries of the said board shall be five dollars to each member for each day of actual service, and all legitimate expenses incurred in the discharge of his official duties. The secretary of the board shall receive such salary as may be fixed by the said board, which shall not exceed six hundred dollars per annum, and all of his legitimate expenses incurred in the discharge of his official duties; he shall pay to the treasurer of the state board of pharmacy, at each regular meeting of the state board of pharmacy, or whenever the state board of pharmacy may direct, all funds which are or may come into his possession by virtue of his office as such secretary, and take the said treasurer's receipt therefor; said funds shall be paid out for such purposes only as the state board of pharmacy may direct, and only by warrant on said fund on an order drawn by the secretary and countersigned by the president of the state board of pharmacy; provided, that no salaries or expense of the board shall be paid out of the state treasury.

History: En. Sec. 6, Ch. 134, L. 1915. See also history of Sec. 3170.

3176. Application for registration—Fees and certificate. Every person seeking registration under this act, whose registration is not otherwise provided for, shall make application, in form and manner prescribed by the board, and deposit with the secretary of the board a fee of fifteen dollars; then, on presenting himself at the time and place directed by the board, and sustaining a satisfactory examination, he shall be granted an appropriate certificate, setting forth his particular qualifications; provided, that in case of failure of an applicant to pass a satisfactory examination, he will be entitled to a second examination, without charge, at the next succeeding meeting of the board.

History: En. Sec. 7, Ch. 134, L. 1915. See also history of Sec. 3170.

3177. Annual renewal of registration—Fees. Every registered pharmacist and every assistant pharmacist, within the meaning of this act, who desires to continue in the pursuit of pharmacy in this state, shall annually, after the expiration of the first year of registration, and on or before the second day of July of each year, and after having been notified by the secretary of the state board of pharmacy, pay to the secretary of the state board of pharmacy a renewal fee of three dollars, one dollar of which shall be paid to the Montana state pharmaceutical association, in return for which a renewal of registration shall be issued. If a person neglect or fail to procure his annual registration as specified, notice of such failure having been mailed to his postoffice address by the secretary of the state board of pharmacy, as obtained from the books of the secretary, he shall, after the expiration of thirty days, following the issue of the said notice, be deprived of all of the privileges conferred by this act, and after six months he shall be deprived of his registration, and it shall be necessary

for such person to make application and pass an examination as provided in the preceding section.

History: En. Sec. 8, Ch. 134, L. 1915. See also history of Sec. 3170.

3178. Certificate—Contents and display. Every person registered under this act shall receive from the state board of pharmacy an appropriate certificate, not exceeding in size three hundred and twenty square inches, which shall be conspicuously displayed at all times in his place of business.

If the holder be entitled to manage or conduct a pharmacy in the state for himself or another, the fact shall be set forth in the certificate.

History: En. Sec. 9, Ch. 134, L. 1915. See also history of Sec. 3170.

3179. Violation of act a misdemeanor. Any person who is not a registered pharmacist, within the meaning of this act, who shall conduct, manage, or keep, either for himself or others, a pharmacy, store, shop, or institution for the retailing, dispensing, compounding, or vending of drugs, medicines, poisons, chemicals, or pharmaceutical preparations, and who shall not have in his employ a registered pharmacist, within the meaning of this act, shall be guilty of a misdemeanor, and upon conviction pay a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars.

History: En. Sec. 10, Ch. 134, L. 1915. See also history of Sec. 3170.

3180. Wrongful exhibition of certificate of registration. Any person who shall unlawfully and without authority under this act, take, use, or exhibit the title of a registered pharmacist or an assistant pharmacist in the state of Montana, shall be liable to a fine of not less than fifty dollars, nor more than two hundred and fifty dollars, for each and every offense. A like penalty shall attach to any assistant pharmacist who shall, without authority, take, use, or exhibit the title of registered pharmacist in the state of Montana.

History: En. Sec. 11, Ch. 134, L. 1915. See also history of Sec. 3170.

3181. Compounding of drugs by persons other than registered pharmacists—Sale of patent medicines. Any proprietor of a pharmacy, or any other person who shall permit the compounding or dispensing of physicians' prescriptions, or the vending of drugs, medicines, poisons, chemicals, or pharmaceutical preparations in his store or place of business, except by a registered pharmacist, in the meaning of this act, or under the immediate supervision of a registered pharmacist, or who, while continuing in the pursuit of pharmacy in the state of Montana, shall fail or neglect to procure his annual registration, or any person who shall wilfully make any false representations to procure for himself, or for another, registration under this act, or who shall violate any provisions of this act, shall, for each and every offense, be liable to a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars; provided, that nothing in this act shall interfere with the keeping, distributing, or handling of drugs, acids, or poisons by merchants or corporations, for use in their business, when kept in original and plainly labeled packages;

provided, also, that nothing in this act shall interfere with any physician in his regular practice, nor with the wholesale business of any dealers, nor with the business of merchants in towns where there is no regularly licensed pharmacist when selling drugs, medicines, pharmaceutical, or proprietary medicinal preparations in original and plainly labeled packages, as the public may require; provided, also, that nothing herein shall be construed to prevent the sale of any patent or proprietary medicine in the original package, when plainly labeled, nor such non-medicinal articles as are usually sold by general merchants.

History: En. Sec. 12, Ch. 134, L. 1915. See also history of Sec. 3170.

Duty of druggist or apothecary in the sale or compounding of drugs or medicine, see notes in 29 L. R. A. (N. S.) 900; 47 L. R. A. (N. S.) 693.

Civil liability of vendor of patent medicine for injury caused by use, see note in Ann. Cas. 1914D, 51.

3182. Official preparations must be carried for sale for compounding drugs. Every person who shall keep a pharmacy, store, shop, or institution for the compounding or dispensing of physicians' prescriptions, or for the sale of drugs, medicines, chemicals, or pharmaceutical preparations, must carry the official preparations of the United States pharmacopoeia and the national formulary, and dispense the same.

The preparations carried in stock, made or dispensed by such person, where the same are covered by the United States pharmacopoeia or the national formulary, shall conform to the United States pharmacopoeia and the national formulary.

History: En. Sec. 13, Ch. 134, L. 1915.

3183. Registration of pharmacists without examination—Reciprocity. Any pharmacist having had four years' practical experience as a dispensing druggist, upon the payment of a fee of twenty-five dollars to the secretary of the state board of pharmacy, may be registered without examination under such rules as may be provided by the state board of pharmacy; provided further, that such pharmacist be and is registered in some state whose standard of requirements of examination shall be fully equal to the standard of requirements of the state of Montana, and provided that such other state will also register pharmacists duly and regularly licensed in the state of Montana.

History: En. Sec. 14, Ch. 134, L. 1915.

3184. Adulterated drugs. The proprietors of all pharmacies will be held responsible for the quality of all drugs, medicines, and chemicals sold or dispensed at their respective places of business, except patent and proprietary preparations, and articles sold in the original packages of the manufacturer. Any person who shall wilfully adulterate or alter, or cause or permit to be adulterated or altered, any drug, medicine, or pharmaceutical preparation, or shall sell or offer for sale any such adulterated or altered article, and any person who shall substitute, or cause to be substituted, one material for another, with the intention to defraud or deceive the purchaser, shall be guilty of a misdemeanor and liable to a prosecution therefor. All penalties collected for such violation shall be

paid into the county treasurer of the county wherein such conviction may be had for the benefit of the school fund of such county.

History: En. Sec. 652, Pol. C. 1895; re-en. Sec. 1634, Rev. C. 1907.

What constitutes adulteration within the food and drugs act, see note in L. R. A. 1915B, 774.

3185. Sale of poisons regulated. It shall be unlawful for any person, from and after the passage of this act, to retail any of the following named poisons, to-wit: Arsenic and its preparations, corrosive sublimate, white and red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine, and all poisonous vegetable alkaloids and their salts, the essential oil of almonds; opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce; aconite, belladonna, colchicum, conium, nux-vomica, digitalis, and their pharmaceutical preparations; croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid, oxalic acid; wood alcohol; without labeling the box, bottle, vessel, paper or package in which said poison is contained, with the name of the article, and the word "poison," and the name and place of business of the seller. Also, each label of such poison shall contain a concise statement of the principal antidotes for the poison so labeled. The label hereby required to be placed upon wood alcohol shall contain the following: "Warning. The fumes of wood alcohol burned in a close room, if inhaled, are injurious to eyesight, often producing total blindness." Nor shall it be lawful for any person to deliver or sell any poisons enumerated above, unless upon due inquiry it be found that the purchaser is aware of its poisonous character, and represents that it be used for a legitimate purpose. The provisions of this section shall not apply to the dispensing of poisons in not unusual quantities or doses upon the prescription of practitioners of medicine. Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor; provided, however, that this section shall not apply to manufacturers making and selling at wholesale any of the above poisons, and provided that each bottle, box, vessel, paper, or package in which said poison is contained shall be labeled with the name of the article, the word "poison," and the name and place of business of the seller.

History: En. Sec. 1, Ch. 156, L. 1907; Sec. 1636, Rev. C. 1907.

Liability of pharmacist for failure to label poisons, see note in 55 A. S R. 257.

Construction of statutes regulating the sale of poisons, see note in 20 Ann. Cas. 491; 30 L. R. A. (N. S.) 519.

3186. Sale of opium, morphine, and their derivatives. It shall be unlawful for any person to sell, furnish, or dispose of any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or codeine or heroin, or any derivative, mixture, or preparation of any of them, except upon the signed prescription of a physician or veterinarian duly licensed under the laws of this state, which prescription shall be retained by the person dispensing the same, shall be filled but once, and of which no copy shall be taken by any person, except as hereinafter provided. The person dispensing the same at the time thereof shall indorse on the back of such prescription the name, street, and house number of the person to whom

dispensed; and the proprietor or manager of the store where dispensed shall keep all such prescriptions in a permanent file, separate from all other prescriptions, in his place of business, for the period of two years after the same shall have been dispensed, and shall at any time allow the same to be inspected and copies thereof to be made by any peace officer, the prosecuting attorney of the county where sold, or any authorized inspector of drugs; provided, that nothing herein contained shall prohibit any manufacturer or licensed druggist from selling or delivering any of the above named to a person known to be a licensed physician, licensed veterinarian, or licensed druggist, nor prohibit a physician from dispensing the same in good faith to his patients, nor prohibit the sale of patent or proprietary or medicinal preparations containing opium or morphine, in combination or compounds with other active elements, where the dose of opium is less than one-quarter grain, or morphine not more than one-twentieth grain, or codeine not more than one-quarter grain, or heroin not more than one-twelfth grain.

History: En. Sec. 1, Ch. 11, L. 1911.

3187. Restrictions upon sale or prescription of opiates. It shall be unlawful for any physician to sell, or give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or codeine or heroin, or any derivative, mixture or preparation of any of them, except to a patient believed in good faith to require the same for medical use, and in quantities proportioned to the needs of such patients.

History: En. Sec. 2, Ch. 11, L. 1911.

Furnishing or prescribing opium by physician, see note in L. R. A. 1918E, 669.

3188. Penalty for violation of act. Any person found guilty of the violation of this act shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than sixty days nor more than one hundred days, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911.

3189. Regulation sale of opium and other narcotics. It shall be unlawful for any person to sell, barter, exchange, distribute, give away, or in any manner dispose of, at retail, or to a consumer, opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof, within this state, except upon the original written prescription of a duly licensed physician, duly licensed to practice medicine in Montana, and pursuant to all the requirements of this act; provided, that nothing in this act shall be construed as preventing a dentist or veterinary surgeon, duly licensed to practice in Montana, from obtaining, on federal government permits, for use in his practice, the drugs or narcotics mentioned in this section.

History: En. Sec. 1, Ch. 202, L. 1921.

Validity and construction of federal regulation of manufacture, sale or possession of opium, see note in Ann. Cas. 1917D, 856.

3190. Remedies excepted from act. The provisions of this act shall not be construed to apply to the sale, barter, exchange, distribution, giving

away dispensing, or the disposition in any manner, or the possession, within this state of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce; or, if a solid or semi-solid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, or to decocanized coca leaves or preparations made therefrom, or to other preparations of coca leaves, which do not contain cocaine; provided, that such remedies and preparations are sold, distributed, given away, disposed, or possessed as medicine and not for the purpose of evading the intendment and provisions of this act, except this act shall apply to liniments, ointments, and other preparations which contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts or any synthetic substitute for them.

History: En. Sec. 2, Ch. 202, L. 1921.

3191. Filling of prescriptions. The original written prescription required by the provisions of section 3189 of this code shall be signed in full by the duly licensed physician duly licensed to practice medicine in Montana, or by a veterinary surgeon duly licensed to practice in Montana, issuing it and dated as of the day on which so signed, and shall also indicate the office address and office hours of such duly licensed physician duly licensed to practice medicine in Montana, and the name and address of the person to whom such written prescription is issued, and when prescribed by a duly licensed veterinary surgeon, shall indicate in addition the kind of animal for the treatment of which such written prescription is issued and the name and address of the owner thereof. No written prescription containing more than four grains of morphine, thirty grains of opium, two grains of heroin, six grains of codeine, or five grains of cocaine shall be filled unless the due issuance and correctness thereof be first verified. No written prescription shall be filled without sufficient verification, if, for any reason, the proper issuance and presentation thereof appears questionable. Such written prescription shall be exactly filled as soon as received, or as soon thereafter as practicable, but no such written prescription shall be filled more than ten days subsequent to the issuance date which said written prescription bears. The person filling such prescription shall write or indicate thereon the date of filling and the date when and the name and address of the person to whom he delivers the drug so prescribed. Such written prescription shall be filled but once and shall not be copied, except for the purpose of record by the duly licensed physician, duly licensed to practice medicine in Montana, or by the person filling it, and shall be preserved on file, receiving a consecutive file number, by the person filing it, for a period of two years from the date on which such prescription is filled, in such a way as to be readily accessible to the officers, agents, employees and officials mentioned in this act.

History: En. Sec. 3, Ch. 202, L. 1921.

Right of druggist to retain prescriptions filled or presented to be filled, see note in 4 Ann. Cas. 519.

3192. Use of opiates by physicians, veterinary surgeons and dentists. A duly licensed physician or veterinary surgeon duly licensed to practice medicine in Montana may prescribe, dispense, distribute or administer, and a duly licensed dentist duly licensed to practice in Montana, may administer, within this state, to his patient any of the drugs mentioned in this act, providing such dispensing, distribution, or administering is made in good faith and in the course of his professional practice for medicinal purposes only; provided, further, that such duly licensed physician, duly licensed to practice medicine in Montana, dentist or veterinary surgeon shall keep a record of all such drugs so dispensed, distributed, or administered, showing in each instance the amount so dispensed, distributed, or administered, the date when and the name and address of the patient to whom such drugs are so dispensed, distributed, or administered, except such drugs as may be dispensed, distributed, or administered to a patient upon whom such duly licensed physician duly licensed to practice medicine in Montana, dentist or veterinary surgeon shall personally attend in emergency; and such record shall be kept for a period of two years from the date of dispensing, distributing, or administering such drugs, subject to the inspection provided for in this act. It shall be unlawful for any licensed veterinary surgeon to dispense, distribute, or administer any of the drugs mentioned in this act for the treatment of or consumption by a human being. It shall be unlawful, except as provided for in this act, for a duly licensed physician, duly licensed to practice medicine in Montana, to prescribe, dispense, distribute, or administer, and for a duly licensed dentist or veterinary surgeon to administer the drugs mentioned in this act.

The words "good faith," as mentioned, shall be interpreted to mean that where a duly licensed physician, duly licensed to practice medicine in Montana, dentist or veterinary surgeon shall prescribe, dispense, distribute, administer, or in any manner give opium or coca leaves, or any compound manufacture, salt, derivative, or preparation thereof, it shall be for the actual relief or treatment of disease or surgical operation, but if such prescribing, dispensing, distribution, administering, or giving of such drugs is not being issued for relief in the treatment of disease or surgical operation, and such drugs are being used for the purpose of providing the drug addict with the aforesaid drug or drugs sufficient to keep him comfortable, it shall be considered as a perversion of the meaning of the words "good faith" as above contained. The prescribing for, dispensing, administering, or giving of such drugs to an addict for self-administration by such patient shall not be deemed to constitute in itself legitimate medical treatment.

History: En. Sec. 4, Ch. 202, L. 1921.

3193. Officers charged with administration of act—Secrecy of record. The state board of health of Montana, through its duly authorized officers, agents, or employees and all officers, agents, and employees of any organized municipalities within this state, who are charged with the enforcement of state laws and city ordinances, are hereby charged with the enforcement of this act, and, also, the officers, agents, and employees of the United States treasury department duly authorized to make inspec-

tions under the act of congress approved December 17, 1914, entitled, "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes," are empowered to inspect any and all of the records required to be kept by any person under the provisions of this act. All records provided for in this act shall be inaccessible to the public, and any officer, agent, or employee mentioned above who shall disclose or use the information contained in said records, except as herein expressly provided for and except for the purpose of enforcing the provisions of this act or said act of congress, for the purpose of enforcing any ordinance of any organized municipality within this state, regulating the sale, prescribing for, dispensing, dealing in, or distribution of the aforesaid drugs, and except in the public interest unless directed by the court, shall, on conviction, be fined or imprisoned as provided by section 3202 of this code.

History: En. Sec. 5, Ch. 202, L. 1921.

3194. Physicians to report prescriptions issued to drug addicts. A duly licensed physician duly licensed to practice medicine in Montana, who prescribes for, dispenses, administers, or in any manner gives any of the drugs mentioned in this act, to a person known to him or believed by him to be an habitual user or a drug addict, shall, within forty-eight hours, report to the county attorney of the county in which said physician prescribes for, dispenses, administers, or in any manner gives any of the drugs mentioned in this act, the name, address, physical and mental condition, and any necessary substantial information regarding such person. "An habitual user of such drugs" or "drug addict" is defined as follows: "Any person who has needed or demanded the prescribing for, dispensing or administering, or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds, at more or less regular intervals for thirty consecutive days prior to the day such person applies to a physician or to a physician of any institution for the prescribing for, dispensing, administering, or the giving in any way of any such drugs or their derivatives." If a physician shall prescribe for, dispense, administer, or in any manner give any of the drugs mentioned in this act, daily for more than thirty days to a patient, such physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person, and a prognosis as to the probable future necessity for continuing the prescribing, dispensing, administering, or the giving of such drugs to such patient, and such prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such patient. It shall be the duty of the county attorney upon receipt of such notice to immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

History: En. Sec. 6, Ch. 202, L. 1921.

Furnishing or prescribing by physician of habit-forming drugs, see note in L. R. A. 1918E, 669.

3195. Arrest and commitment of drug addicts. Whenever a complaint shall be made to any judge of the district court that any person is addicted to the use of drugs mentioned in this act in a manner contrary to the public welfare, such judge of the district court must issue and deliver to some peace officer for service a warrant of arrest, directing that such person be arrested and brought before said judge for examination, and if, after said examination, said judge is satisfied that said person is addicted to the use of the drugs mentioned in this act, in a manner contrary to the public welfare, he may commit such person to a state, county, city, or other hospital or institution where facilities are provided for the treatment of drug addicts. Whenever it is made to appear to the judge of the district court that such person is no longer addicted to the use of the aforesaid drugs in a manner contrary to the public welfare, or at any other time in his discretion, he may order a discharge from such commitment. The provisions of this act shall not be construed to prohibit any person committed to any institution under its provisions from appealing for a review of the sufficiency of the evidence upon which the commitment was made.

History: En. Sec. 7, Ch. 202, L. 1921.

3196. Delivery of drug addict to institution. The person so committed, together with a copy of the order of the judge committing him, must be delivered by the sheriff of the county to the person in charge of the hospital or institution to which said person is committed.

History: En. Sec. 8, Ch. 202, L. 1921.

3197. Payment of costs. All costs and expenses incurred in the arrest, examination, commitment, and maintenance of such person shall be paid in the manner now provided for by law for the arrest, examination, commitment, and maintenance of persons committed to the state insane asylum.

History: En. Sec. 9, Ch. 202, L. 1921.

3198. Report of information concerning drug users. It is hereby made the duty of police judges and magistrates, judges of municipal courts and justices of the peace to report immediately to the county attorney of the county wherein their said courts are established and conducted, any and all knowledge or information acquired or obtained by said police judge, magistrate, judges of municipal courts, and justices of the peace, in a trial of causes or hearings before them, which knowledge or information shows, or tends to show, that any person is a drug user or drug addict. If said person so shown to be a drug user or drug addict is under arrest or liberated on bail at the time said knowledge or information is acquired or obtained by said police judge or magistrate, judge of a municipal court, or justice of the peace, said person shall not be liberated, if under arrest, nor said bail discharged by said judge, magistrate, or justice of the peace until said report is made to the county attorney, as provided herein.

History: En. Sec. 10, Ch. 202, L. 1921.

3199. Revocation of professional license on proof that licensee is drug user. The regularly established and constituted board, commission, or authority of this state, duly empowered to issue a license to a physician, dentist, veterinary surgeon, pharmacist, or nurse, authorizing the practice of his profession in this state, shall, at any time, and after a fair hearing held upon reasonable notice, revoke such license upon the production of sufficient evidence that the licensee is addicted to the use of the drugs mentioned in this act in a manner contrary to the public welfare. Whenever it shall appear that such physician, dentist, veterinary surgeon, pharmacist, or nurse is no longer addicted to the use of the aforesaid drugs in a manner contrary to the public welfare, they may reissue said license; that a duly licensed physician, duly licensed to practice medicine in Montana, dentist, veterinary surgeon, pharmacist, or nurse duly convicted of a substantial violation of this act shall be liable to a revocation of this license by the regularly constituted and established board, commission, or authority of this state, duly empowered to issue such license, after a fair hearing upon a reasonable notice, provided such revocation shall be in the public interest.

History: En. Sec. 11, Ch. 202, L. 1921.

3200. Regulation of possession or control of drugs. It shall be unlawful for any person to have in his possession or under his control any of the drugs mentioned in this act, if such possession or control is obtained in a manner contrary to the provisions of this act; and such possession or control shall be presumptive evidence of a violation of this act; provided, that this section shall not apply to the possession or control of the aforesaid drugs by any employee or agent, acting within the scope of his employment or agency, or any person dealing in such drugs pursuant to all the requirements of this act, and such possession or control does not operate any of the provisions or the intendment of this act; or to the possession or control by a nurse for medicinal treatment only, and not on his own account, acting under the supervision and direction of a duly licensed physician, duly licensed to practice medicine in Montana, or by a dentist or veterinary surgeon engaged in the legitimate practice of his profession; or to the possession and control of the aforesaid drugs by any United States, state, county, municipal, or other duly authorized public officer or official who has such possession or control by reason of his official duties; or to the possession or control of the aforesaid drugs by a warehouseman or a common carrier holding such possession or control under the direction of a person who has received such drugs pursuant to the requirements of this act; nor to persons conducting wholesale or retail drug establishments who are registered by the commissioner of internal revenue under and pursuant to the provisions of an act of congress approved December 17, 1914, being an act entitled: "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes"; provided, further that it shall not be necessary to negative

any of the aforesaid exemptions in any complaint, information, or indictment, or other writ or proceeding laid or brought under this act, and the burden of proof of any such exemption shall be upon the defendant.

History: En. Sec. 12, Ch. 202, L. 1921.

3201. "Person" defined. The word "person" as used in this act shall be construed to mean and include the partnership, firm, association, company, or corporation, as well as a natural person.

History: En. Sec. 14, Ch. 202, L. 1921.

3202. Penalty for violation of act. Any person who violates or fails to comply with any of the requirements of this act shall, on conviction, be punished by a fine of not more than one thousand dollars or by imprisonment for not more than three years, or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 202, L. 1921.

CHAPTER 228.

NURSING—REGULATION OF PRACTICE.

Section 3203. Issuance of Licenses by Governor to Nurses.
3204. Appointment of Board of Examiners for Nurses.
3205. Filling of Vacancies in Board.
3206. Organization of Board—Officers and Compensation.
3207. Subjects Upon Which Examination to Be Held.
3208. Duty of President as Inspector of Training Schools—Registration of Nurses.
3209. Examination of Applicants.
3210. Evidence of Qualifications of Applicant—Registration Fee.
3211. Registration of Graduates of Training Schools—Reciprocity.
3212. Appeals to State Association of Graduate Nurses and to District Court.
3213. All Applicants to Be Examined After July, 1917.
3214. Unlawful to Practice Without Certificate.
3215. Interpretation of Act.
3216. Revocation of Certificate.

3203. Issuance of licenses by governor to nurses. The governor of the state of Montana shall have the power, and it shall be his duty, to issue a license or certificate of registration to any person practicing the profession of nursing the sick, upon the recommendation of the board of examiners for nurses, said board to be appointed as hereinafter provided for.

History: En. Sec. 1, Ch. 50, L. 1913.

The duty imposed by this statute upon the state board of examiners for nurses to examine persons who seek registration as professional nurses, and judge of their qualifications, is quasi judicial, and its performance in any particular way cannot be compelled by mandamus. Where, however, its discretion has been abused, or arbitrarily or capriciously exercised, the writ does lie to compel a proper exercise of the powers granted. State ex rel. Marshall v. District Court, 50 Mont. 289, 294, 146 Pac. 743, Ann. Cas. 1917C, 164.

The aim of this act is, not to prohibit the practice of nursing, either gratuitously or for hire, but to designate the persons for whose qualifications the state is willing to stand sponsor, and to forbid persons from claiming such sponsorship who are not entitled to it. The matter is wholly administrative, and the process of administration may be committed to any agency the legislature may choose to select, with or without direct appeal to the courts or elsewhere. State ex rel. Marshall v. District Court, 50 Mont. 289, 297, 146 Pac. 743, Ann. Cas. 1917C, 164.

This statute is not unconstitutional as depriving, without due process of law, nurses who have not registered of the right to follow a lawful business or call-

ing, since it is expressly provided that it shall not apply to gratuitous nursing, nor to any person nursing for hire who does not pretend to have special training and to be a registered nurse. State ex rel. Marshall v. District Court, 50 Mont. 289, 296, 146 Pac. 743, Ann. Cas. 1917C, 164.

The fact that the act creating the board of examiners for nurses does not provide that the members thereof take an official oath cannot detract from their character as public officers, since the section of the constitution, requiring every public officer within the state to take the oath therein prescribed, is self-executing. State ex rel. Scollard v. Board of Examiners, 52 Mont. 91, 96, 156 Pac. 124.

Mandamus does not lie to compel the state board of examiners for nurses to recommend a person to the governor for certificate as a registered nurse, in the absence of a clear showing of abuse of discretion. State ex rel. Scollard v. Board of Examiners, 52 Mont. 91, 98, 156 Pac. 124.

State regulation of practice of nursing, see note in Ann. Cas. 1917C, 168.

Nursing as practice of medicine, see note in Ann. Cas. 1918E, 687.

3204. Appointment of board of examiners for nurses. The governor of the state of Montana shall, within ninety days after the passage and approval of this act, designate and appoint five persons who shall constitute the board of examiners for nurses. Said board shall consist of five members, and shall be appointed by the governor from the membership of the Montana state association of graduated nurses. The first board shall hold office during the following terms:

One member for the period of one year;

Two members for the period of two years;

Two members for the period of three years—

and the members and the terms thereof to be designated by the governor.

History: En. Sec. 2, Ch. 50, L. 1913.

3205. Filling of vacancies in board. Subsequent to the organization of state board of examiners for nurses, the governor of the state of Montana shall fill all vacancies and shall perpetuate said board by appointment of members thereof, which members for appointment shall be selected from persons who are registered nurses under the provisions of this act, and who shall be members of the Montana state association of graduate nurses, and who shall be actual residents of the state of Montana for a period of at least one year immediately preceding the date of appointment and who have actively engaged in the profession of nursing for five years prior to such appointment; and there shall be at all times at least two members of said board who shall have had at least two years' experience in educational work among nurses, or who have had two or more years' experience in the instruction of nurses in training schools.

The terms for which said members shall be appointed shall be for three years, except those first appointed and those to fill unexpired terms.

History: En. Sec. 3, Ch. 50, L. 1913; amd. Sec. 1, Ch. 117, L. 1919.

3206. Organization of board—Officers and compensation. The members of the board shall, immediately after their appointment, meet at the city of Helena for the purpose of organizating said board, and shall elect one of their number president, and shall elect one of their number as treasurer, and shall also elect a secretary, who shall not be a member of the board, who shall also act as inspector of the training schools for nurses, and perform such other services as may be required by the board, and who shall devote her entire time to such work. The board shall adopt a seal which shall remain in the custody of the secretary; the secretary

shall keep the records and minutes of the meeting of the board, and shall record in a suitable book the names of all the nurses and training schools registered under this act. The president and secretary of said board shall hold office for the period of one year, and until their successors are appointed and qualified. The salary of the secretary shall be settled and fixed by the board, not exceeding, however, the sum of twenty-four hundred dollars per year. The other members of the board shall receive ten dollars per day while actually engaged in attendance upon meeting of said board, and ten dollars per day for actual time lost in traveling to and from board meetings, and necessary expenses incurred in attending such meetings.

This shall be in full for their expenses, same to be paid from the funds in the hands of the treasurer of the board.

History: En. Sec. 4, Ch. 50, L. 1913; amd. Sec. 2, Ch. 117, L. 1919.

3207. Subjects upon which examination to be held. Said board shall provide a schedule of subjects upon which applicants shall be examined to qualify for registration under this act, which subjects shall include anatomy, physiology, obstetrics, and gynecology, surgery, hygiene and bacteriology, materia-medica, medical and contagious diseases, pediatrics, dietetics, and nursing ethics.

History: En. Sec. 5, Ch. 50, L. 1913; amd. Sec. 3, Ch. 117, L. 1919.

3208. Duty of president as inspector of training schools—Registration of nurses. The inspector of training schools shall inspect all training schools for nurses in the state of Montana, and shall report to the board and the governor such training schools as shall provide courses of instruction in the subjects required by the board. The board shall register for a period of one year all such training schools, and shall issue a certificate of registration thereto. Any school so registered shall be required to pay to the treasurer of the board a fee of twenty-five dollars upon registration. The fee for a renewal certificate of registration for the period of one year shall be five dollars. The secretary shall also enter in the register kept for such purposes the names of all nurses who are registered under the provisions of this act, and such register shall be a public record.

History: En. Sec. 6, Ch. 50, L. 1913; amd. Sec. 4, Ch. 117, L. 1919.

3209. Examination of applicants. The board shall adopt rules, which may be changed from time to time, for the examination of applicants for registration under this act, and the board shall meet not less than once each year for the purpose of conducting examinations for applicants for registration. The time and place of meeting of said board shall be advertised in the public press, and notice shall be sent to each training school registered under this act, to each regularly organized association of nurses within the state, to at least one journal of nursing, and notice shall be mailed to each person who has made application for examination under the provisions of this act, at least thirty days prior to said meeting. At such meeting it shall be the duty of the board to examine all persons who are applicants for registration under this act, and to recommend

to the governor each duly qualified applicant who shall have successfully passed said examination.

History: En. Sec. 7, Ch. 50, L. 1913.

3210. Evidence of qualifications of applicant—Registration fee. All applicants for registration under the provisions of this act shall furnish satisfactory evidence that he or she is at least twenty-two years of age, of good moral character, and has been graduated from a training school of nurses connected with a general hospital approved by the board, where a systematic course of at least three years' instruction is given, except in the cases hereinafter provided for; provided, that the board may grant proper credit upon such three-year period to any student for previous training and study, under such rules and regulations as the board may prescribe. No training school for nurses shall accept students under nineteen years of age, except high school graduates of at least eighteen years of age. A high school student completing such three-year course of instruction may be granted a temporary certificate by the board until such person shall arrive at the age of twenty-two years; and all persons registered under the provisions of this act shall pay to the secretary of said board a registration fee of ten dollars.

History: En. Sec. 9, Ch. 50, L. 1913; amd. Sec. 5, Ch. 117, L. 1919.

Testimony touching the immoral character of the applicant, introduced at a divorce proceeding to which she was a party, could rightfully be taken into consideration by the board in passing upon the question of her character. State ex rel. Scollard v. Board of Examiners, 52 Mont. 91, 98, 156 Pac. 124.

In its determination of the question whether an applicant for registration as a nurse possesses the good moral character made a prerequisite to certification, the board of examiners is not bound to accept affidavits of citizens deposing to such good character as conclusive, but it may hear evidence, to be produced before it in such manner as it may choose to adopt both in opposition to as well as in favor of the applicant. State ex rel. Scollard v. Board of Examiners, 52 Mont. 91, 97, 156 Pac. 124.

3211. Registration of graduates of training schools—Reciprocity. Any person who shall have graduated prior to July 1, 1917, and after January 1, 1890, from a reputable training school for nurses connected with a general hospital which then gave a course of at least two years' training, and who shall have graduated therefrom, shall be entitled to registration under the provisions of this act.

The governor shall issue a certificate of registration to any person registered under the laws of any other state having requirements for registration equivalent to those of Montana, the board to be the sole judge thereof.

History: En. Sec. 10, Ch. 50, L. 1913; amd. Sec. 6, Ch. 117, L. 1919.

3212. Appeals to state association of graduate nurses and to district court. Any person who makes application to the board for examinations for registration, having the required qualifications, as hereinafter provided for, and who shall not pass said examination, or any person registered in any other state, who shall be refused registration by the board without examination, as provided for in this act, may appeal to the Montana state association of graduated nurses at the first annual meeting thereafter, and shall abide by the majority vote of said association after a full hearing thereon; provided, that any person aggrieved by any

decision of the board of graduated nurses, finally determining his or her right to registration, may appeal from such decision to the district court of the county of the residence of said applicant, within thirty days after receiving notice from the board of its decision, which appeal shall be taken by filing notice of appeal with the clerk of the proper district court, and by serving copy thereof upon the secretary of said board. In case of a jury trial said jury shall consist of three nurses registered under the provisions of this act, and three reputable physicians in active practice.

History: En. Sec. 11, Ch. 50, L. 1913; amd. Sec. 1, Ch. 122, L. 1917; amd. Sec. 7, Ch. 117, L. 1919.

In the absence of provisions prescribing the procedure on appeal from a decision of the state board of examiners for nurses, the statute implies such orderly procedure as will enable the appellate body to fairly determine the right of appellant to registration. State ex rel. Marshall v. District Court, 50 Mont. 289, 297, 146 Pac. 743, Ann. Cas. 1917C, 164.

In contemplation of law, the appellate body is merely an agency for carrying into effect the provisions of the act; the legislature is not required to designate corporations or individuals, to the exclusion of voluntary associations, as agencies for such purposes; on the contrary, it is the settled rule that no such restriction exists. State ex rel. Marshall v. District Court, 50 Mont. 289, 297, 146 Pac. 743, Ann. Cas. 1917C, 164.

3213. All applicants to be examined after July, 1917. On and after July 1, 1917, all applicants for certificates of registration under the provisions of this act shall be residents of the state of Montana, and shall pass the examination required by the board before receiving a certificate of registration, or shall present to the board necessary credentials of registration in another state whose requirements for registration are equivalent to those of Montana.

History: En. Sec. 12, Ch. 50, L. 1913; amd. Sec. 8, Ch. 117, L. 1919.

3214. Unlawful to practice without certificate. It shall be unlawful hereafter for any person to practice nursing as a trained, graduate, or registered nurse without a certificate as herein provided for.

Any person who shall assume a title indicating that said person is a trained, graduate, or registered nurse, or who shall hold himself or herself out to be a trained, graduate, or registered nurse, and who shall not be registered in accordance with the provisions of this act, shall be guilty of a misdemeanor, and upon conviction hereof shall be fined for the first offense not less than ten dollars nor more than one hundred dollars, and for each subsequent offense not less than two hundred dollars nor more than five hundred dollars.

History: En. Sec. 13, Ch. 50, L. 1913; amd. Sec. 9, Ch. 117, L. 1919.

3215. Interpretation of act. This act shall not be construed as conferring any authority to practice medicine, or undertake the treatment of disease, in violation of the medical-practice act of the state of Montana, or to affect or to apply to the gratuitous nursing of the sick by friends or members of the family, nor to any person nursing the sick for hire who does not in any way assume or pretend to have special training in the profession of nursing, and who also does not pretend to be a registered nurse.

History: En. Sec. 13, Ch. 50, L. 1913; amd. Sec. 9, Ch. 117, L. 1919.

3216. Revocation of certificate. The governor shall, upon recommendation by the board, revoke any certificate previously issued to the holder

thereof, after a hearing by the full board on charges made by any licensed physician in the active practice of his profession, or upon charges made by the inspector of training schools for nurses, a registered nurse, or any other person charging dishonesty, gross incompetence, a habit rendering a nurse unsafe or unfit to care for the sick, or any conduct or act derogatory to the morals or standing of the profession of nursing, or any wilful fraud or misrepresentation practiced in securing such certificate.

The person so charged under this section shall be given at least thirty days' notice in writing of the specific charge against him or her, and of the time and place of hearing said charge by the board, at which time and place such person shall be entitled to appear and to be represented by counsel. Upon the revocation of any certificate heretofore issued, the same shall be null and void, and the secretary shall take the name of the holder thereof from the roll of registered nurses.

History: En. Sec. 15, Ch. 50, L. 1913; amd. Sec. 10, Ch. 117, L. 1919.

Cited or applied as section 15, chapter 50, Laws of 1913, before amendment, in State ex rel. Scollard v. Board of Examiners, 52 Mont. 91, 96, 156 Pac. 124.

CHAPTER 229.

VETERINARY MEDICINE AND SURGERY—REGULATION OF PRACTICE.

Section 3217. Appointment of State Board of Veterinary Medical Examiners.
3218. Organization of Board—Quorum—Powers.
3219. Expenses and Funds—Records and Report.
3220. Applications for License to Practice—Examinations—Fees.
3221. Application for License as Farrier.
3222. Farrier Defined.
3223. Issuance, Registration, and Revocation of Licenses.
3224. Display of License and Certificate—Arrangement With Other Boards.
3225. Veterinary Medicine and Surgery Defined—Qualifications for Practice.
3226. Revocation of Certificate.
3227. Interpretation of Statute—Persons Not Embraced Within Provisions.
3228. Practice in Violation of Law—Penalties.

3217. Appointment of state board of veterinary medical examiners. That there be and is hereby created a state board of veterinary medical examiners, to be appointed by the governor of the state of Montana, which shall consist of three reputable practitioners of veterinary medicine and surgery, who shall have graduated from some college authorized by law and recognized by the American veterinary medical association to confer degrees, and each of whom shall, after the first board has been appointed, be licensed under this act. The appointments first made shall be one for one year, one for two years, and one for four years, and thereafter appointments shall be made for the term of four years. The Montana state veterinary medical society shall, at each annual meeting, nominate twice the number of examiners to be appointed that year on the board. The names of such nominees shall be annually transmitted under seal by the president and secretary, prior to May first, to the governor, who shall, prior to August first, appoint from such lists the examiners that will be required to fill any vacancies that will occur from expiration of term on July thirty-first. Any other vacancy, however occurring, shall likewise be filled by the governor for the unexpired term. Each nominee, before appointment, shall furnish to the governor proof that he has

received a degree in veterinary medicine from an authorized veterinary medical school, and that he has actually and legally practiced veterinary medicine in this state for at least two years. If no nominees are legally before him from the society, the governor may appoint from members of the veterinary profession in good standing in Montana without restriction. The governor may, after due notice and hearing, remove any examiner for misconduct, incapacity, or neglect of duty.

History: En. Sec. 1, Ch. 82, L. 1913.

3218. Organization of board—Quorum—Powers. Every veterinary medical examiner shall receive a certificate of appointment from the governor, and, before beginning his term of office, shall file with the secretary of state the constitutional oath of office. The board shall annually elect from its members a president, vice-president, and secretary-treasurer, and shall hold two regular meetings each year. At any meeting a majority shall constitute a quorum. If any member of the board shall, without cause, absent himself from two of its regular meetings consecutively, his office shall be deemed vacant. The board may take testimony and proofs concerning all matters within its jurisdiction. The board may make all by-laws and rules not inconsistent with law needed in performing its duties.

History: En. Sec. 2, Ch. 82, L. 1913.

3219. Expenses and funds—Records and reports. Each member of the board shall be entitled to receive all necessary traveling and incidental expenses, provided such expenses shall not exceed the amount in the treasury during any fiscal year. The secretary-treasurer shall receive an additional salary to be fixed by the board and not to exceed one hundred and fifty dollars per annum. The secretary-treasurer shall give bond in such sum and with such conditions as the board may from time to time direct. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements, and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. The secretary-treasurer of said board shall be the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, up to and including the sum of one thousand dollars, which shall constitute a trust fund to be used, besides salaries and other expenses of the board, in carrying on prosecutions under the provisions of this act. If, at any time, the amount of money received, after deducting such salaries and expenses, shall amount to more than one thousand dollars, the secretary-treasurer shall forward the same to the treasurer of the state of Montana, and receive his official receipt for same. Said board shall, not later than July fifteenth of each year, submit to the governor a full and complete report of its proceedings during the twelve months immediately preceding.

History: En. Sec. 3, Ch. 82, L. 1913.

3220. Applications for license to practice—Examinations—Fees. Any person desiring to begin the practice of veterinary medicine or veterinary

surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 3227, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school recognized by the American veterinary medical association; said school or college having a curriculum requiring a three-year course, or its equivalent, for graduation. On application, the diploma of said applicant shall be submitted to said board for inspection and verification. Every person applying to said board for license to practice shall pay to the board the fee of ten dollars, which fee shall in no case be refunded, and which shall become a part of the funds of the treasury of the board. Said board shall, by means of examination, either oral or written as the board may determine, ascertain the professional qualifications for license of all applicants under this act, and shall issue such license to all who are found upon examination to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination to be competent. Such examination shall be held at a time and place or places specified by said board, and shall include suitable questions for a thorough examination in comparative anatomy, physiology and hygiene, in chemistry and veterinary surgery, obstetrics, pathology, and diagnosis, and therapeutics, including practice of materia medica, bacteriology, parisitology, and other branches deemed advisable by the board. Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians holding a diploma from a recognized veterinary medical school, who are at the time of the passage and approval of this act engaged in the practice of veterinary medicine in the state of Montana, shall be entitled to a license without such examination. Any candidate failing on one subject, with a general average of eighty per cent. in the others, may be re-examined in that subject at any regular examination; failing in one subject with a lower average, or in two or more subjects, may be admitted to a subsequent examination on original fee after six months have elapsed, and must then take the examination in all subjects. The board may issue temporary license to such candidate, allowing him or her to practice pending the successful passage of an examination.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919.

3221. Application for license as farrier. Any person desiring to begin the practice of treating domestic animals in the state of Montana, under the title of farrier, shall make application to said board of veterinary medical examiners on or before July 1, 1919, so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by the fee prescribed in the preceding section, and satisfactory evidence of the good moral character of the applicant, who shall present satisfactory

evidence of having resided in the state of Montana for a period of twenty-four months immediately previous to the passage and approval of this act, and of having treated domestic animals as a part of his or her vocation during that period, and a license shall be granted. Such license shall entitle him or her to all the rights and privileges of this act except those contained in section 3225 of this code.

History: En. Sec. 5, Ch. 82, L. 1913; amd. Sec. 2, Ch. 150, L. 1919.

3222. Farrier defined. A farrier is any person who has had experience in treating the diseases of domestic animals.

History: En. Sec. 6, Ch. 82, L. 1913.

3223. Issuance, registration, and revocation of licenses. The state board of veterinary medical examiners will, at the conclusion of a regular examination, if in their judgment the applicant is duly qualified therefor, issue a license to practice veterinary medicine and surgery or farriery. Every license so granted by the board shall be issued under seal, and shall be signed by each acting veterinary medical examiner of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and all other matters required by law, and that after full examination he or she has been found duly qualified to practice. Each person licensed by the board to practice veterinary medicine or veterinary surgery or farriery in this state shall procure from the secretary of the board on, or before July first, annually, his certificate of registration. Such certificate shall be issued by the secretary upon the payment of a fee to be fixed by the board, not exceeding the sum of two dollars, and certificates so issued shall be prima facie evidence of the right of the holder to practice veterinary medicine or veterinary surgery or farriery in this state during the time for which they are issued. Any certificate of license, granted by the board, may be revoked upon conviction of the party holding such certificate or license of a violation of any of the provisions of this act.

History: En. Sec. 7, Ch. 82, L. 1913.

3224. Display of license and certificate—Arrangement with other boards. Every person practicing veterinary medicine or veterinary surgery in the state of Montana, or representing himself as so practicing, shall display or cause to be displayed conspicuously in his or her usual place of business, license or certificate of registration issued to him or pursuant to the provisions of this act. The board of examiners shall make arrangement with similar boards in the several states in so far as practicable, whereby due credit for state and territorial licenses will be allowed in the state of Montana to such licensees of said board as desire to secure license or practice veterinary medicine or surgery in this state, and whereby licensees of the board of veterinary medical examiners in this state will secure due credit for license issued by said board, whenever such licensees desire to secure license to practice in any other state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine or surgery in the state of Montana. The board may,

if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states.

History: En. Sec. 8, Ch. 82, L. 1913.

3225. Veterinary medicine and surgery defined—Qualifications for practice. Any person shall be regarded as practicing veterinary medicine or surgery in the state of Montana, who shall append or cause to be appended to his name upon any display or advertisement published the letters V. S., D. V. M., V. M. D., M. D. C., D. V. S., or M. R. C. V. S., or the words "veterinary," "veterinarian," "veterinary surgeon," "veterinary dentist," "veterinary horseshoer," "horse dentist," or "horse doctor," or who shall publicly profess to do any of these things, directly or indirectly, as a veterinarian. No person shall practice veterinary medicine or veterinary surgery, or farriery, in the state of Montana after July 1, 1913, unless licensed by the state board of veterinary medical examiners of the state of Montana, and registered as required by this article; nor shall any person practice veterinary medicine, surgery, or farriery, whose authority to practice is suspended or revoked by said board.

History: En. Sec. 9, Ch. 82, L. 1913.

3226. Revocation of certificate. On hearing, the board may revoke any certificate which is obtained by fraud, or where the holder is guilty of gross moral or professional misconduct.

History: En. Sec. 10, Ch. 82, L. 1913.

3227. Interpretation of statute—Persons not embraced within provisions. This article shall not be construed to affect commissioned veterinary medical officers serving in the United States army or in the United States bureau of animal industry while so commissioned; or any person doing castrating or spaying, or giving gratuitous services; or any person treating an animal belonging to himself as the case may be; or any lawfully qualified veterinarian in other states or any foreign country meeting legally registered veterinarians in this state in consultation; or any veterinarian residing on a border of a neighboring state and duly authorized under the laws thereof to practice veterinary medicine therein, whose practice extends into this state, and who does not open an office or appoint a place to meet patients or receive calls within this state.

History: En. Sec. 11, Ch. 82, L. 1913.

3228. Practice in violation of law—Penalties. Every person who shall practice veterinary medicine or farriery within this state, without lawful registration or in violation of any provisions of this article, shall forfeit to the county wherein such person shall so practice, or in which any violation shall be committed, not to exceed fifty dollars for every such violation, and for every day of such unlawful practice, and any incorporated veterinary medical society of the state may bring action in the name of such county for the collection of such penalties, and the expense incurred by such society in such prosecution, including necessary counsel fees, may be retained by such society out of the penalties so collected,

and the residue, if any, such shall be paid into the county treasury. The state board of veterinary medical examiners may, out of the funds in the treasury, when sufficient proof is before them, begin proceedings for prosecutions under the provisions of this act, independent of such state societies. Any person who shall practice veterinary medicine or farriery under a false or assumed name, or who shall falsely personate another practitioner of a like or different name, shall be guilty of a felony; and any person guilty of violating any of the other provisions of this article, not otherwise specifically punished herein, or who shall buy, sell, or obtain any veterinary medical diploma, license, record, or registration, or who shall aid or abet such buying, selling, or fraudulently obtaining, or who shall practice veterinary medicine or farriery under cover of a license or diploma illegally obtained, or signed or issued unlawfully under fraudulent representation, or mistake of fact in material regard, shall attempt to practice veterinary medicine or farriery, and any person who shall, without having been authorized so to do legally, append any veterinary title to his or her name, or shall assume or advertise any veterinary title in such manner as to convey the impression that he or she is a lawful practitioner of veterinary medicine or farriery, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail not more than twenty-five days, or both such fine and imprisonment.

History: En. Sec. 12, Ch. 82, L. 1913.

CHAPTER 230.

ARCHITECTURE—REGULATION OF PRACTICE.

Section 3229. Appointment of Board of Architectural Examiners.
3230. Organization of Board—Powers, Meetings, and Records.
3231. Examinations for Certificates to Practice—Subjects Embraced in—Granting of Certificates.
3232. Certificates to Be Recorded.
3233. Seal of Architect.
3234. Penalty for Practicing Without a License.
3235. Granting of License Without Examination—Contents of License.
3236. Fees Payable by Applicants for Examination—Disposition of Fees.
3237. Compensation of Members of Board—Disposition and Use of Funds—Annual Report.
3238. Annual Fee of Licensed Architects.
3239. Architects Removing From State to Be Granted Demit.
3240. Revocation of License.

3229. Appointment of board of architectural examiners. Within thirty days after the passage of this act, the governor, with the consent and advice of the senate, shall appoint three skilled and capable architects, who shall have been residents of the state of Montana for not less than three years prior to their appointment, not more than two of whom shall be residents of the same county, and who shall have been in continuous practice of the profession for three years, who shall constitute the board of architectural examiners for the purpose of this act.

The architects so appointed shall hold their respective offices for a term of four years, and all vacancies shall be filled in like manner as the appointments are made. Appointments made when the senate is not in

session shall take effect immediately, and may be confirmed at the next ensuing session.

History: En. Sec. 1, Ch. 158, L. 1917.

Statutory regulation of architects, see notes in Ann. Cas. 1914B, 1224; 36 L. R. A. (N. S.) 1203.

Validity of contract by unlicensed architect, see note in 12 L. R. A. (N. S.) 614.

3230. Organization of board—Powers, meetings, and records. The board of architectural examiners must, during the first week in April of each year, elect from among their number a president, secretary, and treasurer, and must have a seal.

The president and secretary shall have power to administer oaths in examination of applications for certificates, and to witnesses called before the board for the transaction of business under the provisions of this act.

The members of the board shall meet during the first week of April of each year, and at such times, and at the same and other places as the board may determine.

The board must keep a record of all proceedings thereof, and also a register of all applicants for a certificate, with the name and age of all applicants and the number of years spent in the study of architecture, and whether or not the applicant was granted a certificate or rejected; such register is prima facie evidence of all matters therein kept.

History: En. Sec. 2, Ch. 158, L. 1917.

3231. Examinations for certificates to practice—Subjects embraced in—Granting of certificates. Every person hereafter wishing to practice architecture in this state shall apply to said board for a certificate so to do. Every person so applying shall submit to an examination in the following branches, to-wit: Arithmetic and elementary mathematics, knowledge of building materials and construction, architectural drawing, technical education and experience, and such other branches as the board may deem advisable. Said board shall cause such examination to be both scientific and practical, but of sufficient severity to test the candidate's fitness to practice architecture in this state, or high standing in profession or such qualifications as are required for admission to the American institute of architects may be deemed sufficient. After examination said board shall, if the candidate has been found qualified, grant a certificate to such candidate to practice architecture within the state of Montana, which said certificate can only be granted on the consent of not less than two members of the board, and attested by the secretary, and have the seal of said board attached thereto; provided, that the president of the board may, in the time of intervening between the sessions of the board, grant a certificate to any person desiring to practice architecture within the state of Montana, after satisfying himself of the qualifications of the applicant, which said certificate shall be good until the next regular meeting of the board; providing, however, nothing herein contained shall prevent or restrict a duly licensed architect from any state practicing his profession in Montana, upon the payment of the annual fees provided in this act.

History: En. Sec. 3, Ch. 158, L. 1917.

3232. Certificates to be recorded. Every person obtaining a certificate from said board must, within thirty days from the date thereof, have the

same recorded in the office of the county clerk and recorder of the county wherein he resides. If he or she maintain offices for the practice of architecture in other counties, he or she must have his or her certificate recorded in such counties in like manner. The county clerk shall receive for recording such certificate the usual fee paid by the applicant.

History: En. Sec. 4, Ch. 158, L. 1917.

3233. Seal of architect. Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words "Licensed Architect, State of Montana," with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state.

History: En. Sec. 5, Ch. 158, L. 1917.

3234. Penalty for practicing without a license. After six months from the passage of this act it shall be unlawful, and it shall be a misdemeanor punishable by a fine of not less than five dollars nor more than three hundred dollars, for each and every week during which said offense shall continue, for any person to practice architecture without a license in this state, by signing plans and specifications as an architect, or to advertise, or put out any sign or card, or other device, which might indicate to the public that he or she is entitled to practice as an architect.

History: En. Sec. 6, Ch. 158, L. 1917.

3235. Granting of license without examination—Contents of license. Any person who shall, by affidavit, show to the satisfaction of the state board of architectural examiners that he or she was engaged in the practice of the profession of architecture in the state of Montana on the date of the passage of this act, shall be entitled to a license without an examination, provided such application shall be made within six months after the passage of this act. Such license, when granted, shall set forth the fact that the person to whom the same was issued was practicing architecture in this state at the time of the passage of this act, and is therefore entitled to a license to practice architecture without an examination by the board of examiners, and the secretary of the board shall, upon the payment to him of the fee of fifteen dollars, issue to the person named in said affidavit a license to practice architecture in this state, in accordance with the provisions of this act. In the case of a copartnership of architects, each member whose name appears on their seal, must be licensed to practice architecture. No stock company or corporation shall be licensed to practice architecture, but the same may employ licensed architects.

History: En. Sec. 7, Ch. 158, L. 1917.

3236. Fees payable by applicants for examination—Disposition of fees. Applicants for examination shall pay in advance to the secretary of said board a fee of fifteen dollars, which fee shall defray the entire expense of such candidate, before the aforesaid board of architectural examiners. Any applicant failing to pass the said examination shall be entitled to a second examination within one year without fee.

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the architectural board fund as herein provided.

History: En. Sec. 8, Ch. 158, L. 1917.

3237. Compensation of members of board—Disposition and use of funds—Annual report. Each member of the examining board is hereby allowed the sum of five dollars per day and mileage at the rate of ten cents per mile while in the discharge of his actual duties, to be paid out of any funds in the hands of the state treasurer in the name of the architectural board fund. And there is hereby established a fund known as the "architectural board fund."

And all fees and moneys received for licenses from practicing architects shall be deposited with the state treasurer to the credit of the architectural board fund, to meet the expenses incurred in carrying out the provisions of this act; provided the expenses of said board of examiners shall not exceed the fees collected.

The state treasurer is hereby directed and required to set such sums paid from licenses and fees apart for the credit of such fund, subject to the orders and disbursement hereinafter provided for.

The money in such fund can only be paid out on a warrant signed by the secretary of said board, countersigned by the president, and the members of the said board shall report annually to the governor on the first Monday of January of each year, which report must show all the transactions of the board, giving the number and names of all applicants, and the number and names of those rejected, and those to whom certificates have been issued, the expenses, the fees and mileage paid, the amount of money received, and the amount of money remaining in said fund.

History: En. Sec. 9, Ch. 158, L. 1917.

3238. Annual fee of licensed architects. Every licensed architect in the state who desires to continue the practice of his profession shall annually, during the time he or she shall continue in such practice, pay to the treasurer of the state of Montana, during the month of July, a fee of ten dollars.

History: En. Sec. 10, Ch. 158, L. 1917.

3239. Architects removing from state to be granted demit. A licensed architect removing from the state may receive a demit from the board of architectural examiners, and if he desires to re-establish himself in the state, the board will issue a certificate to him without examination; provided, however, he shall pay the regular license fee.

History: En. Sec. 11, Ch. 158, L. 1917.

3240. Revocation of license. The board of architectural examiners may revoke any license for gross incompetency or recklessness in the construction of buildings, or fraud, but the holder of such license shall

receive twenty days' notice of the day of hearing and determining of charge against him.

History: En. Sec. 12, Ch. 158, L. 1917.

CHAPTER 231.

PUBLIC ACCOUNTING—REGULATION OF PRACTICE.

Section 3241. University May Issue Certificates to Public Expert Accountants—Conditions.
3242. Cases in Which Examination May Be Waived.
3243. Persons Barred From Practice.
3244. Examiners in Accountancy.
3245. Time and Place of Examinations—Notice.
3246. Fees for Examining and Certifying Applicants.
3247. Compensation of Members of Board—Expenses Defrayed From Fees.
3248. Cancellation of Certificates—Proceedings.
3249. Penal Liability of Accountants and Auditors.
3250. Penalty for Practicing Without Certificate.
3251. Prior Certificates Valid.

3241. University may issue certificates to public expert accountants—Conditions. The state university of Montana (hereinafter referred to as the university) is hereby authorized to issue to persons possessing the qualifications hereinafter set forth certificates entitling the holders thereof to practice as public expert accountants, and to employ the title of certified public accountant or the abbreviation "C. P. A." Every applicant for such certificate shall be a citizen of the United States of America, of the age of twenty-one years, of good moral character, a graduate of a high school with a four years' course, or possessed of an equivalent education, a resident of the state of Montana for at least one year immediately preceding the date of his application, and shall have had at least one year's practical experience in the office of a practicing public accountant. Save as provided in the next section, certificates shall issue only to applicants who shall be certified to the university by its board of examiners in accountancy, hereinafter provided for, as having successfully passed a written examination in "theory of accounts," "practical accounting," "auditing," and "commercial law" as affecting accountancy, together with such other related subjects as the university may designate.

Note.—The first law regulating public accountants was chapter 39, Laws of 1909. This act was repealed by chapter 72, Laws of 1919.

History: En. Sec. 1, Ch. 72, L. 1919.

Liability of public accountant, see note in 8 A. L. R. 462.

3242. Cases in which examination may be waived. The university may waive the examination and the requirement of one year's practical experience in the office of a practicing public accountant provided for in the preceding section and may issue a certificate in such form as to clearly indicate the conditions under which same be issued to any applicant who is possessed of the other qualifications hereinbefore recited, and who shall be—

1. The holder of a valid certificate as certified public accountant issued by another state which extends like privileges to certified public accountants of this state; provided, that the requirements for said cer-

tificate in said other state are, in the opinion of the university, equivalent to those of the state of Montana; or,

2. A member or associate in good standing of the American institute of accountants, who shall have successfully passed the examinations required by the said American institute of accountants; provided, that in the opinion of the university the standards of said examination are as high as those maintained by the university; or,

3. Engaged in the business of public accounting or auditing, and who shall have been so engaged exclusively and continuously, in an office maintained for that purpose solely, for at least two years preceding the date of his application for said certificate, and who shall apply in writing to the university for said certificate within sixty days from and after the date of passage and approval of this act, and shall present evidence of his qualifications, as provided in this act, satisfactory to the university, before a certificate as a certified public accountant shall issue.

History: En. Sec. 2, Ch. 72, L. 1919.

3243. Persons barred from practice. No certificate shall be issued under this act to any person who shall have been barred from practicing as a certified public accountant in any other state.

History: En. Sec. 3, Ch. 72, L. 1919.

3244. Examiners in accountancy. For the purpose of determining the qualifications of persons applying for examination under the provisions of section 3241 of this code, the chancellor of the university of Montana, with the approval of the state board of education, shall appoint a board of examiners in accountancy, consisting of three members, each of whom shall possess a certificate as certified public accountant issued under this act or under the provisions of chapter 39 of the laws of the eleventh legislative assembly. The members of the first board appointed hereunder shall hold their offices until July 1, 1920. The members of boards subsequently appointed shall hold their offices for the period of one year, and until their successors shall be appointed and qualified.

The university shall prescribe all useful and necessary rules and regulations for the conduct, character, and scope of the examinations, the methods and time of filing applications therefor, and all other rules and regulations necessary or proper fully to carry into effect the purposes of this act.

History: En. Sec. 4, Ch. 72, L. 1919.

3245. Time and place of examinations—Notice. The board of examiners in accountancy shall hold examinations at the university at Missoula, Montana, or at the state capitol in Helena, Montana, as often as in the opinion of the university shall be necessary, but in no event less frequently than once each year. Thirty days' notice of the time and place of holding such examinations shall be given by advertisement published once a week for three successive weeks prior to the date thereof, in three daily newspapers, no two of which shall be published in the same county.

History: En. Sec. 5, Ch. 72, L. 1919.

3246. Fees for examining and certifying applicants. The university shall be entitled to receive for the examination and certificate provided for in section 3241 a fee of twenty-five dollars, payable in advance at the time of making application therefor. Any applicant who shall fail to pass an examination shall be entitled to a second examination without the payment of further fee.

History: En. Sec. 6, Ch. 72, L. 1919.

3247. Compensation of members of board—Expenses defrayed from fees. The members of the board of examiners in accountancy shall receive their actual traveling and hotel expenses incurred while engaged in the performance of their duties, as imposed upon them by this act, but shall receive no other compensation. Such expenses, together with the expenses of preparing and issuing certificates, publishing notices of examinations, and all other expenses arising from the administration of this act, shall be paid by the university from the fees received from applicants. In no event shall any expenses arising from the administration of this act become a charge against the funds of the university or the state of Montana.

History: En. Sec. 7, Ch. 72, L. 1919.

3248. Cancellation of certificates—Proceedings. The university may cancel any certificate issued under the provisions of this act for unprofessional conduct or other sufficient cause; provided, that written notice shall have been forwarded by registered mail at least twenty days prior to any hearing thereon, addressed to the holder of such certificate at his last known address, and appointing a date for a full hearing thereon by the university; and provided further, that no certificate shall be revoked until after a hearing shall have been had. The university shall establish such rules and regulations for the conduct of such hearings as to it may appear necessary and proper, and in its discretion may appoint a commission of disinterested persons to take evidence and prepare and submit findings and recommendations.

History: En. Sec. 8, Ch. 72, L. 1919.

3249. Penal liability of accountants and auditors. Any person practicing as an accountant or auditor in this state who, because of negligence, gross inefficiency, or wilfulness, shall issue, or permit the issuance of, or approve the issuance of any false statement, or who, because of negligence, gross inefficiency, or wilfulness, shall sign or certify to any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars nor more than two thousand dollars, or imprisoned for a period of not less than ninety days nor more than one year, or subjected to both said fine and imprisonment, in the discretion of the court.

History: En. Sec. 9, Ch. 72, L. 1919.

3250. Penalty for practicing without certificate. Any person who shall represent himself as having received a certificate as provided in this

act or under the provisions of chapter 39 of the laws of the eleventh legislative assembly, or who shall offer to or attempt to practice as a certified public accountant or chartered accountant, or who shall employ the abbreviation "C. P. A." or "C. A.," or any similar words or letters to indicate that he is a certified public accountant or chartered accountant, without having been granted a certificate as such by the university or under the laws of another state; or who, having received a certificate as certified public accountant under the laws of this or another state shall have lost the same by revocation or annulment, and who shall continue to practice as a certified public accountant, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than one thousand dollars, or imprisonment for a period of not less than ninety days nor more than one year, or subjected to both said fine and imprisonment, in the discretion of the court.

History: En. Sec. 10, Ch. 72, L. 1919.

3251. Prior certificates valid. Chapter 39 of the laws of the eleventh legislative assembly of the state of Montana, and all other acts or parts of acts in conflict herewith, are hereby repealed; provided, however, that nothing in this act contained shall nullify, invalidate, or otherwise affect any certificate as certified public accountant heretofore issued by the university under the provisions of said chapter 39 of the laws of the eleventh legislative assembly.

History: En. Sec. 11, Ch. 72, L. 1919.

CHAPTER 232.

LAW—REGULATION OF PRACTICE.

Section 3252. Practice of Law.

3252. Practice of law. The practice of law is regulated by sections 8936 to 8973 of the Code of Civil Procedure.

Note.—New section recommended by code commissioner.

CHAPTER 233.

REGULATION OF LIVESTOCK INDUSTRY—THE LIVESTOCK COMMISSION.

Section 3253. Livestock Commission—Appointment, Qualifications, and Term of Office of Members—Vacancies.
3254. Compensation of Members.
3255. Organization of Board—Secretary and Other Employees—Powers of Board.
3256. Duties and Powers of Commission.
3257. Duty of Commission to Audit and Certify Bills for Expenses—Warrants—Livestock Commission Fund.
3258. Annual Report of Commission.
3259. Sections Repealed—Transfer of Powers.

3253. Livestock commission—Appointment, qualifications, and term of office of members—Vacancies. Upon the passage and approval of this act, the board of stock commissioners and the board of sheep commis-

sioners shall be consolidated, and their powers and duties, except as herein modified, shall be exercised by a board to be known as the livestock commission, which said board is hereby created, to be composed of six members, each of whom must be, at the time of his appointment, a resident of the state of Montana and the owner of cattle, sheep, or horses in the said state. The governor is hereby authorized and empowered to appoint, by and with the consent of the senate, the members of the said livestock commission. Upon the approval of this act, the governor shall appoint two members of the said livestock commission to hold office for a term of two years; and two members to hold office for a term of four years; and two members to hold office for a term of six years, from and after the first day of March, 1917, respectively, and thereafter the members of the said livestock commission so appointed by the governor shall hold office for the term of six years from and after the appointment, and until their successors are appointed and qualified. In the case of death, resignation, or removal of a member, the governor shall appoint to fill the vacancy thus occasioned. Each of the members, before entering upon his duties, must take and file with the secretary of state the constitutional oath of office.

Note.—The board of stock commissioners was created by act of March 12, 1885, amended by act of March 9, 1887, appearing as sections 32 to 46, 5th Division Compiled Statutes 1887. The composition of the board was changed by section 1, p. 177, Laws of 1897 and the law governing it was amended by sections 2950 to 2957, Political Code 1895. The foregoing sections appeared as sections 1782 to 1789, Revised Codes 1907, including amendment by chapter 50, Laws of 1903. The board of sheep commissioners was created by act of March 5, 1897; Laws of 1897, p. 99, section 102; amended by chapter 45, Laws of 1905, appearing as sections 1854 to 1859 et seq., Revised Codes 1907.

History: En. Sec. 1, Ch. 51, L. 1917.

3254. Compensation of members. The members of the livestock commission shall receive no compensation for their services, but shall be allowed their actual expenses for and while attending meetings, such expenses to be audited, allowed, and paid as in the case of other expenditures of the said commission.

History: En. Sec. 2, Ch. 51, L. 1917.

3255. Organization of board—Secretary and other employees—Powers of board. The commission shall organize by electing one of its members president, and one of its members vice-president. It shall also have power to appoint a secretary and fix his salary, and appoint such other agents and employees as may be necessary for the proper conduct of the business of the commission. They shall have power to adopt, subject to the approval of the governor, by-laws and rules and regulations for the government and conduct of the business of the commission. The secretary shall be the general recorder of marks and brands.

History: En. Sec. 3, Ch. 51, L. 1917.

3256. Duties and powers of commission. It shall be the duty of the livestock commission to exercise general supervision over, and, so far as possible, protect the livestock interests of the state from theft and disease, and recommend from time to time such legislation as will, in the judgment of the commission, foster this industry. The commission shall have power

to procure all necessary and lawful process for the attendance of witnesses, and to employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and to assist in any lawful way in the prosecution of any persons charged with any offenses against the laws of the state in feloniously branding or stealing live stock, or any other crime or misdemeanor under any of the laws of the state for the protection of the rights and interests of the stock owners. It shall also have power to make rules and regulations governing the recording and use of livestock brands.

History: En. Sec. 4, Ch. 51, L. 1917.

An attorney who represents the state board of stock commissioners has the right to appear in aid of the prosecution of one accused for grand larceny in having stolen live stock. State v. Biggs, 45 Mont. 400, 403, 123 Pac. 410.

3257. Duty of commission to audit and certify bills for expenses—Warrants—Livestock commission fund. It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties entitled thereto for the amount so certified, which warrants shall be drawn upon and paid out of the livestock commission fund, which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 2079 of this code, and other funds hereafter appropriated for the support and maintenance of the said commission.

History: En. Sec. 5, Ch. 51, L. 1917.

3258. Annual report of commission. The commission must make an annual report in writing to the governor on the first day of December of all its transactions for the year.

History: En. Sec. 6, Ch. 51, L. 1917.

3259. Sections repealed—Transfer of powers. Sections 1782, 1783, 1784, 1785, 1786, 1787, 1788, and 1789 of the Revised Codes of Montana of 1907, relating to the board of stock commissioners, and sections 1854, 1855, 1856, 1857, 1858, 1859, 1860 and 1861 of the Revised Codes of Montana of 1907, relating to the board of sheep commissioners, and all other acts or parts of acts in conflict herewith, are hereby repealed; provided, however, that all powers conferred and duties imposed upon the board of stock commissioners and the board of sheep commissioners by statutes other than those in this section mentioned shall be hereafter imposed and conferred upon and exercised by the livestock commission created hereby.

History: En. Sec. 7, Ch. 51, L. 1917.

CHAPTER 234.

THE LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE, INSPECTION, AND DESTRUCTION OF DISEASED STOCK.

Section 3260. Creation Livestock Sanitary Board.
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3262. Veterinary Surgeon—Appointment and Qualifications.
3263. Same—Duties.
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3265. Appointment Federal Veterinary Inspectors.
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3283. Exceptions of Certain Producers of Meats and Dairy Products.
3284. Co-operation by Public Officers.
3285. Slaughter House License—Fees and Renewals.
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3287. Diseased Animals Not to Run at Large—Burial of Carcasses.
3288. Penalty for Violation of Act.
3289. Same—Civil Liability.
3290. Power of Board Concerning Oaths and Witnesses.
3291. Livestock Sanitary Board Account.
3292. Annual Report State Veterinary Surgeon.
3293. Personal Liability—Members and Officers of Board.
3294. Effect of Partial Invalidity of Act.
3295. Repealing Clause.

3260. Creation livestock sanitary board. In addition to the powers and duties now conferred on the livestock commission, the members thereof shall constitute the livestock sanitary board. Meetings of the livestock sanitary board shall be held upon call of the chairman or executive officer, or of any three members; a majority of the board shall constitute a quorum for the transaction of business; and the chairman of the livestock commission shall act as chairman of the livestock sanitary board. The members of the livestock commission shall receive no compensation for acting on said board, but they shall receive their actual and necessary traveling and subsistence expenses while in attendance upon and in going to and from board meetings.

Note.—The livestock sanitary board was created by chapter 152, Laws of 1907, appearing as sections 1884 to 1903, Revised Codes, 1907. This act, together with sections 1862 to 1880, Revised Codes 1907, being part of chapter 45, Laws of 1905, dealing with the inspection of sheep, was repealed by chapter 157, Laws of 1917, as were also chapter 146, Laws of 1911; chapter 68, 90, and 123, Laws of 1913, and chapter 9, and 140, Laws of 1915. All the above laws were superseded by the act here given.

History: En. Sec. 1, Ch. 262, L. 1921.

3261. Verification and approval of claims. All claims against the board must be verified by oath of claimant, or his agent with knowledge

of the facts, and be approved by the state board of examiners before payment.

History: En. Sec. 2, Ch. 262, L. 1921.

3262. Veterinary surgeon—Appointment and qualifications. The board shall appoint a chief executive officer, who shall act as the state veterinary surgeon. He must be a graduate of a regular and reputable veterinary college, or of the veterinary department of a regular and reputable university, and he must be licensed to practice veterinary medicine in the state of Montana.

History: En. Sec. 3, Ch. 262, L. 1921.

3263. Same—Duties. The state veterinary surgeon shall be the executive officer of the livestock sanitary board, and shall act as its secretary; and, subject to the rules and regulations of the board, he shall have power to act for and perform the duties imposed by law on the board, when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board at its next, or any subsequent meeting.

History: En. Sec. 4, Ch. 262, L. 1921.

3264. Appointment inspectors and deputies. The state veterinary surgeon may, by and with the consent of the livestock sanitary board, appoint inspectors, deputy veterinary surgeons, and other agents and assistants, whose duties it shall be to act under the directions of the state veterinary surgeon and the livestock sanitary board. Such deputy veterinary surgeons must be graduates of a regular and reputable veterinary college, or of the veterinary department of a regular and reputable university.

History: En. Sec. 5, Ch. 262, L. 1921

3265. Appointment federal veterinary inspectors. By and with the consent of the livestock sanitary board, together with the approval of either the federal veterinary inspector in charge in the state of Montana, or the chief of the United States bureau of animal industry, the state veterinary surgeon may appoint federal veterinary inspectors stationed in this state, as deputy veterinary surgeons under this act, and by and with such consent and approval, federal lay inspectors stationed in this state may likewise be appointed agents for the livestock sanitary board. All such federal officers so appointed as deputies or agents of the livestock sanitary board shall possess the powers and duties of deputy state veterinary surgeons or agents of the livestock sanitary board, as the case may be, but they shall act without compensation and hold office only at the pleasure of the livestock sanitary board.

History: En. Sec. 6, Ch. 262, L. 1921.

3266. Authority of veterinary surgeon and agents. In the performance of their official duties, the state veterinary surgeon, and any other agent or officer of the livestock sanitary board shall be, and are hereby, authorized and empowered to enter upon or into any lot, yard, land, building, room, premises, enclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or trans-

portation of animals, meat, or dairy products, intended for sale or disposal as food or whereon or wherein may be found any livestock affected with, or which has been exposed to, or which such officer has reason to believe is either affected with, or has been exposed to, an infectious, contagious, communicable or dangerous disease, or disease-carrying insects.

History: En. Sec. 7, Ch. 262, L. 1921.

3267. Powers of livestock sanitary board. The livestock sanitary board shall have power:

1. To supervise and control the action of the state veterinary surgeon, all deputies, inspectors, and other employees, and to prescribe their duties, compensation, and tenure of office.

2. To remove any one or more of its appointees, subordinates, and employees at any time for cause.

3. To supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and such reasonable rules and regulations as this board may from time to time promulgate, and to this end this board shall have power to quarantine any lot, yard, land, building, room, premises, enclosure, or other place or section in this state, which is or may be used or occupied by livestock, and which, in the judgment of the state veterinary surgeon, or of his authorized agent, is infected or contaminated with an infectious, contagious, communicable, or dangerous disease, or disease-carrying medium by which such disease may be communicated; and this board shall have power to quarantine any livestock in this state, whenever, in the judgment of the state veterinary surgeon, or of his authorized agent, such livestock is affected with, or has been exposed to such disease or disease-carrying medium; and this board shall have power to prescribe treatments and enforce sanitary regulations which, in the judgment of the state veterinary surgeon, or of his authorized agent, are reasonable, necessary, and proper to circumscribe, extirpate, control, or prevent such diseases.

4. To foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases, or to the care of livestock and its products; and to this end to establish and maintain a laboratory, and to make, or cause to be made, biologic products, curatives, and preventative agents; and to do or perform such other acts and things as in their judgment may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state.

5. To promulgate and enforce such reasonable rules, regulations, and orders as they may deem necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock into this state, and to this end to promulgate and enforce such reasonable rules, regulations and orders as they may deem necessary or proper governing inspections and tests of all livestock intended for importation into this state, before it may be imported into this state.

6. To promulgate and enforce such reasonable rules, regulations, and orders as they may deem necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state.

7. To promulgate and enforce such reasonable rules, regulations and orders, as may to them seem necessary or proper for the supervision, inspection and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its by-products, barns, dairy cows, factories, and other places and premises where meat, or meat foods, milk or its products, or any thereof intended for sale or consumption as food are produced, kept, handled, or stored; and for the purposes of this act they, or any duly authorized representative of said board, may take samples of any such product or products, so produced, kept, handled, or stored, for analysis or testing by the livestock sanitary board chemist or bacteriologist or the state chemist, and the records of such samples and their analysis and test, when identified as to the sample by the oath of the officer taking the same, and verified, as to the analysis or test, by the oath of such chemist or bacteriologist making the same, shall be prima facie evidence of the facts therein set forth, when offered in evidence in any prosecution or action at law or in equity for violation of the provisions of this act, or any rule, regulation or order of said board, made in pursuance to this act, provided that the standards referred to in this subsection 7, in so far as they relate to dairies or milk and its by-products, shall not be deemed to include standards of weight or measurement.

8. To promulgate and enforce such reasonable rules, regulations, and orders as may to them seem necessary or proper for the supervision and control of manufactured and refined foods for livestock, and the manufacture, importation, sale, and method of using any biologic remedy or curative agent for the treatment of diseases of livestock; provided, however, that as far as practicable the standards approved by the United States department of agriculture shall be adopted.

9. To install an adequate system of meat inspection at any time and in such places as public welfare may demand under the rules and regulations which may provide fees for the maintenance of such inspection, and which shall provide ways and means for shipping home-grown and home-killed meats into any city in Montana. As far as practicable, such rules and regulations shall conform with the meat-inspection requirements of the United States bureau of animal industry.

10. To slaughter, or cause to be slaughtered, any or all livestock in this state known to be affected with, or which has been exposed to, an infectious, contagious, communicable, or dangerous disease, when, in the opinion of the state veterinary surgeon, or of a deputy veterinary surgeon, such slaughter is necessary for the protection of other livestock; and to destroy, or cause to be destroyed, all barns, stables, sheds, outbuildings, fixtures, furniture, and personal property infected with any such infectious, contagious, communicable, or dangerous disease, when, in the judgment of the state veterinary surgeon or his authorized agent, the same cannot be thoroughly cleaned and disinfected, and in the judgment of that officer, or his authorized agent, such destruction is necessary to prevent the spreading of such disease.

11. To indemnify the owner of any property destroyed by order of this board, or its authorized representatives, under the provisions of this

act, or any rules, regulations, or orders promulgated by this board in pursuance of this act.

12. To require persons, firms, and corporations engaged in the production or handling of meat or meat-food products, or dairy products or any thereof, to furnish statistics of the quantity and cost of such food and food products produced or handled, and the name and address of person or persons supplying them any of such products.

History: En. Sec. 8, Ch. 262, L. 1921.

Quarantine regulations respecting animals, see note in 47 A. S. R. 533.

3268. Promulgation of rules. It shall be the duty of the livestock sanitary board to promulgate and enforce rules and regulations for the inspection and tuberculin test of all dairy cattle, or other animals, and for the inspection, test, treatment, or disposition of all livestock affected with, or which may have been exposed to, any infectious, contagious, communicable, or dangerous disease, and for the quarantines provided for in this act.

History: En. Sec. 9, Ch. 262, L. 1921.

Validity of statute providing for destruction of diseased animals without compensation, see note in 15 Ann. Cas. 48; 8 A. L. R. 70.

Validity of statute providing for destruction of diseased animal with compensation to owner, see notes in Ann. Cas. 1917D, 89; 8 A. L. R. 69.

3269. Sale of diseased carcasses forbidden. It shall be unlawful for any person, firm, or corporation to sell as food for human beings, or to hold or possess as human food intended for sale, the carcass or part of carcass of any animal slaughtered under unsanitary conditions, or which carcass or part of carcass has been prepared, handled, or kept under unsanitary conditions; and it shall be the duty of the livestock sanitary board to see that the provisions of this section are enforced.

History: En. Sec. 10, Ch. 262, L. 1921.

3270. Authority of municipal corporations. Nothing in this act shall prevent the governing authority of any municipal corporation from enacting or enforcing ordinances providing for the inspection of slaughterhouses, meat depots, meat markets, meat-food products, creameries, butter or cheese factories, dairies, and dairy products, sold or offered for sale within the limits of such municipal corporation; but no such ordinance shall be enforced in conflict with the powers of this act delegated to the livestock sanitary board, its officers or agents.

History: En. Sec. 11, Ch. 262, L. 1921.

3271. Classification of animals as to compensation for slaughter. Animals with reference to compensation for slaughter by direction of the livestock sanitary board, or an agent thereof, under the provisions of this act, shall be divided into two classes, to-wit:

1. Animals determined by the state veterinary surgeon, or by a deputy veterinary surgeon, to be affected with an incurable disease, which are killed by order of such officer, shall be designated as animals of class one, and, unless otherwise herein provided, each of such animals shall be paid for on a basis of seventy-five per cent. of its full assessed valuation, as such full assessed valuation is fixed on the completion of the assessment-roll on the second Monday in the month of August next preceding the

killing, by the tax-assessment records of the county liable in part for any indemnity to be paid. The county in which such animal was last assessable for tax purposes in this state, or if such animal has not been assessable for taxes in this state, the county in which such animal was located at the time it was condemned, shall be liable in part, as hereinafter provided, for any indemnity to be paid for such animal; provided, the total amount of indemnity to be paid from all sources for any such animal shall not exceed the actual sound value of an animal of its class; and provided further, that the total amount of indemnity to be paid for such animal from all sources shall not exceed the sum of three hundred dollars for any pure bred animal, or the sum of one hundred dollars for any grade animal.

2. Animals of class one shall be paid for on a basis of their full assessed valuation, as herein determined, in event no evidence of such incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings; provided, the total amount of indemnity paid from all sources for any such animal shall not exceed the actual sound value of an animal of its class; and provided further, that the total amount of indemnity to be paid from all sources for such animal shall not exceed five hundred dollars for any pure bred animal, or one hundred and fifty dollars for any grade animal.

3. Animals determined by the state veterinary surgeon, or by a deputy veterinary surgeon, to be affected with or exposed to an infectious, contagious, communicable, or dangerous disease which is not of its nature necessarily fatal, which animals are killed by order of such officer as a sanitary safeguard, shall be designated as animals of class two, and unless otherwise herein provided, each of such animals shall be paid for on the basis of its full assessed value as such full assessed value is determined by the method outlined hereinabove in this section; provided, the total amount of indemnity paid from all sources for any such animal shall not exceed the actual sound value of an animal of its class; and provided further, that the total amount of indemnity to be paid for such animal from all sources shall not exceed five hundred dollars for any pure bred animal, or the sum of one hundred and fifty dollars for any grade animal.

4. Where an animal killed by order of the board, or of its agent, does not appear on the last assessment-roll of the county liable for indemnity, then its assessed valuation herein referred to as a basis for indemnity shall be equal to the minimum assessed valuation for animals of the class and age such animal would have been at the last past assessment time in the county.

5. Animals destroyed but too young to have been assessed at the time of assessment shall be appraised by the state veterinary surgeon, or his authorized agent, and paid for according to that appraised value, but the total claim from all sources shall in no case exceed twenty-five dollars for a grade calf and fifty dollars for a pure bred calf, and thirty-five dollars for a grade yearling, and one hundred dollars for a pure bred yearling. In case of controversy the appraisement of the state veterinary surgeon shall be final, with no recourse, and the owner or agent shall be

liable for the actual traveling expenses of the state veterinary surgeon in making such appraisement.

6. Animals which may be injured or killed while they are being inspected or tested in accordance with an order of the livestock sanitary board, and which animals do not come within either class one or class two as herein provided, may be paid for at their full assessed valuation, or in accordance with subdivision 5 of this section, when the claim therefor is recommended for payment at a meeting of the livestock sanitary board and is approved by the state board of examiners, and where it is shown that the injury or death of such animal was not proximately due to the negligence of the owner or his agent. The whole of such claim when so approved shall be paid out of the livestock sanitary board funds; provided, however, that the limit of compensation for such animal from all sources shall not exceed that fixed by this act for animals of class two.

History: En. Sec. 12, Ch. 262, L. 1921.

3272. Payment for other personal property. Personal property, other than livestock, destroyed by order of the livestock sanitary board, or an authorized representative thereof, shall be paid for on the basis of its full assessed valuation; such full assessed valuation to be determined in the manner specified in the preceding section for the determination of the assessed valuation of animals.

History: En. Sec. 13, Ch. 262, L. 1921.

3273. Indemnity—From what funds paid. In payment for animals or property destroyed by order of the livestock sanitary board, the state shall pay one-half of such indemnity out of any moneys at the disposal of the livestock sanitary board, and the county liable in part for the indemnity, as such county is determined by this act, shall pay the one-half part of such total indemnity out of the general fund of the county.

History: En. Sec. 14, Ch. 262, L. 1921.

3274. Presentation of claims for indemnity. Claims against the state and any county thereof, arising from the destruction of animals or property destroyed by order of the livestock sanitary board, shall be made upon official forms, which must contain an affidavit by the owner, or his agent with knowledge of the facts, of such animal or property, that such animal or animals have been killed and buried, and the property destroyed, in accordance with the law and regulations of the livestock sanitary board; and such claims must be accompanied by a certificate from the state veterinary surgeon, or his authorized deputy or agent, that such animal or animals, or property (as the case may be) were ordered destroyed. Such claims shall likewise be accompanied by the certificate of the county assessor of the county liable in part for the indemnity, setting forth the full assessed value of animals or property (as the case may be) destroyed, as shown by the records of his office on the completion of the tax-roll the second Monday in August last preceding the date of the killing or destruction.

History: En. Sec. 15, Ch. 262, L. 1921.

3275. Examination and payment of claims. Claims against the state arising under this act, and when passed by the board of examiners, shall

be examined by the state auditor, and if found correct, he shall issue a warrant upon the state treasurer for the amount payable by the state and charge the same to any funds or account at the disposal of the livestock sanitary board.

History: En. Sec. 16, Ch. 262, L. 1921.

3276. Same—Payment from county funds. The board of county commissioners of the county liable in part for the indemnity for any such animal or property destroyed shall cause to be paid the amount due from said county out of the general funds of the county.

History: En. Sec. 17, Ch. 262, L. 1921.

3277. Sale of condemned carcasses—Disposal of proceeds. Where carcasses of animals ordered destroyed under this act are found, upon postmortem inspection (which inspection must be made in accordance with the regulations of the livestock sanitary board by a state or federal veterinarian) fit for human consumption, the owner may receive the net proceeds from the sale of such carcass and shall have no further claim against the state or county on account of such slaughter. Should the owner refuse to accept this salvage in full settlement for the destruction of the animal, then the representative of the livestock sanitary board may proceed to sell the carcass, upon such terms as shall to him seem to the best interests of the state, and the net proceeds obtained therefrom shall be paid, fifty per cent. to the livestock sanitary board fund and fifty per cent. to the treasurer of the county liable in part for the indemnity to be paid for such animal.

History: En. Sec. 18, Ch. 262, L. 1921.

3278. Persons entitled to indemnity. The owner of any animal or property destroyed, as provided in this act, shall be entitled to indemnity therefor as herein provided, except in the following cases:

1. Animals belonging to the United States.

2. Animals brought into the state violating any provisions of this act, or regulations of the livestock sanitary board.

3. Animals which the owner or claimant knew to be diseased, or had notice thereof at the time they came into his possession.

4. Animals which had the disease for which they were slaughtered, or which were destroyed by reason of exposure to such disease, at the time of their arrival in the state; providing, however, that any animal or animals of the second class which were shipped into the state of Montana in accordance with the livestock sanitary board regulations and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when such payment is authorized at a meeting of the livestock sanitary board and approved by the state board of examiners.

5. Animals which have not been within the state of Montana for at least one hundred and twenty days prior to the discovery of the disease; provided, that animals of the second class which have not been in the state one hundred and twenty days may be paid for when such payment is authorized at a meeting of the livestock sanitary board and approved by the state board of examiners.

6. When the owner or agent has not used reasonable diligence to prevent disease or exposure thereto.

7. When the owner or agent has not complied with the rules and regulations of the livestock sanitary board with respect to animals condemned.

8. No compensation or indemnity will be paid for the destruction of any livestock affected with tuberculosis, or other infectious, contagious, communicable, or dangerous disease, unless the entire herd or band of which such affected livestock is a part shall be under the supervision of the livestock sanitary board for the eradication of such disease.

9. When animals condemned are not destroyed within sixty days after they have been determined to be affected with or exposed to a disease which requires them to be destroyed by order of the livestock sanitary board.

History: En. Sec. 19, Ch. 262, L. 1921.

3279. Deduction of federal compensation. In all cases where the federal government, or agency other than the state or county, shall compensate the owner in whole or in part for the livestock or property destroyed by order of the livestock sanitary board, then the amount of such compensation from the federal government, or other agency, shall be deducted from the amount of compensation or indemnity provided herein for such animal or property destroyed; and provided further, that where the owner or agent of such livestock or property destroyed by order of the livestock sanitary board, shall forfeit any indemnity which the owner would otherwise be entitled to from the federal government, or other compensating agency than the state or county, by violation of the regulations of the federal government, or other agency, then and in such case an amount equal to the indemnity which would have been paid, but for the forfeiture, by the federal government, or other indemnifying agency, shall likewise be deducted from the payment required by this act from the state and county for the destruction of such animal or property.

History: En. Sec. 20, Ch. 262, L. 1921.

3280. Expenses how paid—Lien and foreclosure. The expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of livestock by the livestock sanitary board, under the provisions of this act, and the sanitary inspection of dairies, packing houses, meat depots, slaughterhouses, milk depots, and other premises as provided in this act, shall be paid for by the livestock sanitary board out of such funds as they may have at their command; provided, however, that the owner of such livestock or property shall be liable for all expenses, save the salary of the supervising officer or officers, representing this board, when such owner, agent, or person in charge of such livestock or property shall have violated the regulations of the livestock sanitary board, and such expenses shall be a lien upon the livestock or other property, and the agent of the livestock sanitary board may retain possession of the livestock until the charges and expenses are paid; but the lien shall not be dependent upon possession, and the lien may be foreclosed in the name of the agent

of the livestock sanitary board by selling of the stock, or as many as may be necessary to pay the sum of the costs, by sale at public auction, and ten days' notice by posting thereof in three public places in the county, or such lien may be foreclosed by an action in any court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses.

History: En. Sec. 21, Ch. 262, L. 1921.

3281. Expense of cleaning cars, etc.—Lien. The expense of cleaning and disinfection of cars, yards, or other transportation facilities of a common carrier, when required by the livestock sanitary board, shall be a charge against and collectible from such common carrier; and likewise the expense of supervising the cleaning and disinfection of cars for transportation of livestock, when required at any point other than disinfection points agreed upon between the board and the carrier, shall be a charge against and collectible from such common carrier.

History: En. Sec. 22, Ch. 262, L. 1921.

3282. Licenses for producers of dairy products. It shall be unlawful for any person, firm, or corporation to conduct any creamery, receiving station, dairy, butter, cheese, condensed-milk, or ice-cream factory within the state of Montana without first securing a license issued by the livestock sanitary board, which license shall expire on the last day of December of the current year in which it is issued; provided, also that said license may be revoked at any time by the livestock sanitary board or state veterinary surgeon when they, or he, shall determine that a licensee has failed to comply with the rules and regulations of the livestock sanitary board, or failed to conduct such an establishment in a sanitary manner; provided, further, that all licenses now issued by the state dairy commissioner for the operation of any creamery, receiving station, dairy, butter, cheese, condensed-milk, or ice-cream factory, within the state of Montana shall continue in effect for the period of said license, unless canceled by the livestock sanitary board for good cause shown. All license fees collected under the terms of this section shall be paid into the general fund.

The following schedule of license fees shall be charges for all licenses issued under the provisions of this section by the livestock sanitary board.

Schedule of license fees:

Dairies of twenty cows or less selling milk or cream, or both, shall pay an annual license fee of one dollar.

Dairies of over twenty cows selling milk or cream, or both, shall pay an annual license fee of two dollars and fifty cents.

Cheese factories and butter factories and condensed milk factories having an annual output of less than five hundred thousand pounds shall pay an annual license fee of five dollars.

Cheese factories and butter factories and condensed milk factories having an annual output of five hundred thousand pounds or over shall pay an annual license fee of twenty-five dollars.

Ice-cream factories, not making butter and cheese, having an annual

output of less than fifteen thousand gallons shall pay an annual license fee of five dollars.

Ice-cream factories, not making butter and cheese, having an annual output of fifteen thousand gallons or more shall pay an annual license fee of twenty-five dollars.

Milk plants shall pay an annual license fee of ten dollars.

Receiving stations for milk or cream, or both, shall pay an annual license fee of one dollar.

History: En. Sec. 23, Ch. 262, L. 1921.

State or municipal regulation of ice cream, see note in Ann. Cas. 1917B, 645; Ann. Cas. 1918B, 1035.

Constitutionality of statutes regulating sale of milk, see notes in 4 Ann. Cas. 119; 5 Ann. Cas. 911; 18 Ann. Cas. 321; Ann. Cas. 1915C, 72.

3283. Exceptions of certain producers of meats and dairy products. On and after the passage and approval and effective date of this act, the owners or operators of slaughterhouses, packing houses, meat depots, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage or transportation of meats, meat foods, or dairy products, shall not be required to procure a license from the state board of health, in so far as the business of production, storage or transportation of such food products are concerned, but nothing in this act contained shall be construed to limit or conflict with the supervision or regulation of the sanitary condition of any restaurant, hotel, boarding house, or retail market, or the products sold or offered for sale thereat, by the state board of health, nor shall this act be construed to limit or conflict with the duties imposed by law on the state board of health to make and enforce sanitary regulations for the eradication or control of any epidemic of human disease which may exist in any community.

History: En. Sec. 24, Ch. 262, L. 1921.

3284. Co-operation by public officers. It shall be the duty of the state and several local boards of health of any county, city, town, or village in this state to co-operate with and assist the livestock sanitary board in all matters relating to the execution of its sanitary powers as to livestock and their food products under this act, in such manner as may be by the livestock sanitary board prescribed, either by general regulation or direct order.

History: En. Sec. 25, Ch. 262, L. 1921.

3285. Slaughterhouse license—Fees and renewals. It shall be unlawful for any person, firm or corporation to maintain or conduct any slaughterhouse or meat packing house or meat depot in this state without having a license issued by the livestock sanitary board. The annual fee for all licenses issued under the provisions of this section shall be one dollar and shall be paid into the general fund. All licenses shall be made to expire on the last day of December of the current year in which they are issued, and shall be renewed by said board upon request of the licensee; provided, that when the livestock sanitary board shall find that the place for which such license is issued is not conducted in accordance with the rules, regulations, and orders of said board, made and promul-

gated in accordance with the provisions of this act, then said board shall revoke such license and shall not renew the same until such place is put in a sanitary condition in accordance with such rules and regulations; provided, further, that all licenses now issued by the state board of health for the operation of slaughterhouses or meat packing houses or meat depots shall continue in effect for the period of said license, unless canceled by the livestock sanitary board for good cause shown.

History: En. Sec. 26, Ch. 262, L. 1921.

Statutory regulation of slaughterhouses, see notes in 18 Ann. Cas. 470; Ann. Cas. 1915C, 245.

3286. Duty to report contagious diseases. Any person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock, or the presence of exposed animals to such disease, at any point within the state of Montana shall forthwith give notice thereof to the state veterinary surgeon.

History: En. Sec. 27, Ch. 262, L. 1921.

3287. Diseased animals not to run at large—Burial of carcasses. It shall be unlawful for any owner, agent, or person in charge of any domestic animal or animals that are known to be suffering from or exposed to a dangerous, infectious, contagious, or communicable disease, to permit such animal or animals to run at large on the public range or public highway; and it shall be the duty of the owner or agent or person in charge of animals which died, or they have reason to suspect did die from an infectious, contagious, communicable, or dangerous disease, to properly bury or burn the same.

History: En. Sec. 28, Ch. 262, L. 1921.

3288. Penalty for violation of act. Any person, persons, firm, or corporation violating any provision of this act, or the rule, regulation, or order promulgated by authority of same, shall be guilty of a misdemeanor; violations of this act shall be tried without undue delay in any court of competent jurisdiction.

History: En. Sec. 29, Ch. 262, L. 1921.

3289. Same—Civil liability. Any person, or persons, firm, or corporation violating any of the provisions of this act or regulations or orders of the livestock sanitary board (or state veterinary surgeon), shall be liable for all damages which may be sustained by any person or persons by reason of such act or acts, which damages may be recovered by such person or persons in a civil action in any court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921.

3290. Power of board concerning oaths and witnesses. Whenever in the exercise of their powers or the discharge of their duties, it shall become necessary or proper for any member of the livestock sanitary board, the state veterinary surgeon, or authorized agent to investigate facts and conditions, they are hereby authorized to administer oaths, take affidavits and compel the attendance and testimony of witnesses.

History: En. Sec. 31, Ch. 262, L. 1921.

3291. Livestock sanitary board account. There shall be created the livestock sanitary board account, which, in addition to the livestock sanitary board fund, shall be used to defray all expenses of the livestock sanitary board created by this act.

History: En. Sec. 32, Ch. 262, L. 1921.

3292. Annual report state veterinary surgeon. The state veterinary surgeon shall on or before the thirty-first day of December of each year make a written report to the livestock sanitary board, which report must be transmitted by them to the governor.

History: En. Sec. 33, Ch. 262, L. 1921.

3293. Personal liability—Members and officers of board. No member of the livestock sanitary board, or any officer, agent, or employee of said board, shall be personally liable or held for any damage resulting from his official acts or decisions in pursuance of this act, or any rule, regulation, or order promulgated under this act, except it be for his own wilful wrong or gross negligence.

History: En. Sec. 34, Ch. 262, L. 1921.

3294. Effect of partial invalidity of act. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

History: En. Sec. 35, Ch. 262, L. 1921.

Effect of partial invalidity of statutes relating to live stock, see note in Ann. Cas. 1916D, 35, 139.

3295. Repealing clause. Sections 1512 to 1558, both inclusive, of the Revised Codes of Montana, 1907, and sections 1836 to 1853, both inclusive, of the Revised Codes of Montana, 1907, and chapter 157, Session Laws of 1917, and chapter 132, Session Laws of 1919, and all acts or parts of acts in conflict with this act are hereby repealed, save, however, the right to prosecute all civil or criminal actions that may have arisen under these provisions, which actions may be prosecuted with like force and effect as if said acts had not been repealed.

History: En. Sec. 36, Ch. 262, L. 1921.

CHAPTER 235.

SALE AND DISTRIBUTION OF TUBERCULIN.

Section 3296. Tuberculin—Permission for Sale or Distribution of.
3297. Same—Report of Sales or Distribution.
3298. Violation of Act a Misdemeanor—Penalty.

3296. Tuberculin—Permission for sale or distribution of. Any person, firm, or corporation desiring to sell or distribute tuberculin for animal use

in the state of Montana must first secure permission from the livestock sanitary board.

History: En. Sec. 1, Ch. 118, L. 1917.

3297. Same—Report of sales or distribution. Any person, firm, or corporation, having secured permission from the livestock sanitary board to sell or distribute tuberculin for animal use within this state as prescribed in the preceding section, shall, on the same day of selling, furnishing, or supplying tuberculin, report in writing to the livestock sanitary board the name or names and address of the person or persons furnished, including a statement of the amount of tuberculin supplied.

History: En. Sec. 2, Ch. 118, L. 1917.

3298. Violation of act a misdemeanor—Penalty. Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and punished by a fine of not less than twenty-five dollars and not more than five hundred dollars, or by imprisonment for not less than thirty days and not more than ninety days, or both fine and imprisonment.

History: En. Sec. 3, Ch. 118, L. 1917.

CHAPTER 236.

RECORDING OF MARKS AND BRANDS—VENTING BRANDS.

Section 3299. Recorder of Marks and Brands.
3300. Venting Brands.
3301. Recording of Brands Required.
3302. Application for Recording—Record of Brands.
3303. Designation of Years for Re-recording Brands.
3304. Right of Owner Recorded Brand
3305. Publication of Notice of Re-recording Brands.
3306. Penalty for Violation of Act.
3307. Fees for Recording Brands.
3308. Repealing Clause.

3299. Recorder of marks and brands. The secretary of the livestock commission is the general recorder of marks and brands.

History: En. Sec. 2940, Pol. C. 1895; re-en. Sec. 1790, Rev. C. 1907.

Statutory regulations as to live stock brands are discussed in 1 R. C. L. 1082.

Note.—For history of earlier recording acts see Cuerth et al. v. Arbogast, 48 Mont. 209, 220, 136 Pac. 383.

3300. Venting brands. Every person who sells horses, mules, or cattle must vent or counter-brand such animals, and said vent or counter-brand must be upon the same side of the animal as the original brand and must be a facsimile of the original brand, except that it may be reduced one-half in size, and the venting of said original brand shall be prima-facie evidence of sale or transfer of said animal or animals so vented.

History: En. Sec. 2943, Pol. C. 1895; re-en. Sec. 1793, Rev. C. 1907.

Cited or applied as section 1793, Revised Codes, in Cuerth v. Arbogast, 48 Mont. 209, 217, 136 Pac. 383.

3301. Recording of brands required. It shall be unlawful for any person, firm, or corporation to artificially brand or mark, or cause to be

artificially branded or marked, any domestic animal or livestock, running at large, or upon the public domain, or open range, or which may run or stray at large or upon the public domain or open range, unless such artificial brand or mark has been recorded or re-recorded as provided by law, in the office of the general recorder of marks and brands, in the name of such person, firm, or corporation, within the period of ten years immediately preceding such branding or marking.

History: En. Sec. 1, Ch. 144, L. 1921.

3302. Application for recording—Record of brands. Any person, firm, or corporation desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock, shall make application therefor to the secretary of the livestock commission, who is in this act designated the general recorder of marks and brands. Such application must be in writing, and must contain the name, residence and postoffice address of the applicant, and the species of the animals on which the mark or brand is to be used. The said recorder shall thereupon designate for the applicant's use some practical form of mark or brand, distinguishable with reasonable certainty from all other marks and brands recorded, or re-recorded, within the period of ten years immediately preceding the time of filing the application, as in this act provided, in the name of some person, firm, or corporation other than the applicant, and he shall designate the position on the animals upon which the mark or brand shall be placed, and the species of animals on which the mark or brand may be used. The general recorder of marks and brands shall keep a record in a book kept by him for that purpose, of the particular mark or brand, the position on the animal where the same is to be used, the species of animals on which the same is to be used, and the date of recording. Such record shall be a public record and shall be prima-facie evidence of the facts therein recorded.

History: En. Sec. 2, Ch. 144, L. 1921.

3303. Designation of years for re-recording brands. The year A. D. 1921, and each tenth year thereafter are hereby designated years for the re-recording of all artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock; and it shall be the duty of the general recorder of marks and brands, upon the application of any person, firm, or corporation, or the transferee of such person, firm, or corporation, made in any year in this act designated a year for re-recording such marks and brands, to re-record any mark or brand which at the time of such application stands of record in said recorder's office in the name of such person, firm, or corporation; provided, that on and after January 1, 1922, no mark or brand which was neither originally recorded nor re-recorded in the name of such person, firm, or corporation, during the re-recording year last preceding the date when such application is filed, nor originally recorded in the name of such person, firm, or corporation, or his or its predecessor or predecessors in interest therein between the time of such application and the re-recording

year last preceding such application, shall be deemed of record in the office of such general recorder of marks and brands.

History: En. Sec. 3, Ch. 144, L. 1921.

3304. Right of owner recorded brand. The person, firm, or corporation in whose name any mark or brand is of record, as in this act provided, is entitled to the right to the exclusive use of such mark or brand on the species of animal and in the position designated in such record, and a copy of such record certified by the general recorder of marks and brands shall be prima-facie evidence of such right; and such certificate shall likewise be prima-facie evidence that the person, firm, or corporation entitled to use such mark or brand is the owner of all animals on which the same appears in the position and on the species of animal stated in such certificate.

History: En. Sec. 4, Ch. 144, L. 1921.

3305. Publication of notice of re-recording brands. Between the first day of January and the first day of July in each year in this act designated a re-recording year, the general recorder of marks and brands shall cause to be published in at least one issue of at least one newspaper of general circulation in each county of this state, wherein such a newspaper is published, a notice to the effect that such year is a year for re-recording such marks and brands, and that no mark or brand shall continue of record unless re-recorded, and shall likewise mail to each person, firm, and corporation in whose name any such mark or brand stands of record, a similar notice addressed to such person, firm or corporation at his or its postoffice address as shown by the records in such recorder's office.

History: En. Sec. 5, Ch. 144, L. 1921.

3306. Penalty for violation of act. Any person, firm, or corporation violating any provision of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or imprisonment in the county jail for not to exceed one year, or both such fine and imprisonment.

History: En. Sec. 6, Ch. 144, L. 1921.

3307. Fees for recording brands. The general recorder of marks and brands shall charge and collect for recording any mark or brand, the sum of two dollars each, and for re-recording any mark or brand the sum of twenty-five cents each, which fees shall be paid into the livestock commission fund.

History: En. Sec. 7, Ch. 144, L. 1921.

3308. Repealing clause. Chapter 27 of the Laws of Montana of the twelfth session of 1911, and section 1791 of the Revised Codes of Montana of 1907, and all acts and parts of acts in conflict herewith are hereby repealed, save that no action or proceeding pending, and no penalty incurred under any law hereby repealed, at the time of such repeal, shall be abated hereby, but the same may be prosecuted and enforced in all respects as though such law or laws had not been repealed.

History: En. Sec. 8, Ch. 144, L. 1921.

CHAPTER 237.

STOCK INSPECTORS AND DETECTIVES.

Section 3309. Appointment and Powers.
3310. Bond and Oath.
3311. Duties.
3312. Compensation.
3313. District Officers, Detectives, and Inspectors.
3314. Brands Fraudulently Changed.
3315. Compensation for Animals Killed.
3316. Costs on Appeal.

3309. Appointment and powers. The livestock commission may appoint such stock inspectors and detectives as are necessary for the protection of the livestock interests of the state. Such inspectors and detectives shall take and subscribe the official oath required by law and shall have like powers and authority as are conferred by law upon deputy sheriffs; save they shall not be entitled to the fees or emoluments awarded by law to deputy sheriffs.

History: En. Sec. 2970, Pol. C. 1895; re-en. Sec. 1796, Rev. C. 1907; amd. Sec. 1, Ch. 170, L. 1921.

Liability of livestock inspectors, see note in L. R. A. 1915B, 1013.

3310. Bond and oath. The stock inspectors and detectives must each make and execute a bond with two sufficient sureties, in the sum of one thousand dollars, to the state, conditioned for the full and faithful performance of their duties, said bond to be approved by and filed with the secretary of state, and each must take and subscribe the constitutional oath of office.

History: En. Sec. 2971, Pol. C. 1895; re-en. Sec. 1797, Rev. C. 1907.

3311. Duties. It is the duty of the stock inspectors and detectives to arrest all persons who in their presence violate the stock laws of the state, and every stock inspector and detective, upon information that any person has committed any offense against the laws of the state, in feloniously branding or stealing any stock, or any offense against the laws of the state, for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of such person, and, upon warrant issued therefor, immediately arrest such person and bring him before the proper officer and notify the board of his acts.

History: En. Sec. 2972, Pol. C. 1895; re-en. Sec. 1798, Rev. C. 1907.

3312. Compensation. The stock inspectors and detectives are under the exclusive control and direction of the board, and must be paid for their services such sums as may be agreed upon by the board out of the fund hereinafter provided for, but in no case must they receive any mileage.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907.

3313. District officers, detectives, and inspectors. The stock inspectors and detectives are district officers, and the board must designate the district in which the inspectors and detectives shall serve, and the district must be designated in their commissions.

History: En. Sec. 2991, Pol. C. 1895; re-en. Sec. 1800, Rev. C. 1907.

3314. Brands fraudulently changed. Whenever a mark or brand upon any neat cattle, horse, or other animals has been fraudulently altered, obliterated, or defaced, so that the original mark or brand cannot be determined through the external inspection thereof, any stock inspector or sheriff may seize and kill said animal to ascertain the mark or brand so altered or defaced, upon paying to the owner the value of said animal.

History: En. Sec. 2974, Pol. C. 1895; re-en. Sec. 1801, Rev. C. 1907.

3315. Compensation for animals killed. The value of the animal so taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907.

3316. Costs on appeal. Should the owner of the animal so seized and killed feel dissatisfied with the valuation made, he may maintain an action against said officer seizing said animal, and should he fail to recover damages in any greater amount than that allowed under section 3315, he shall bear all costs that may be incurred in the maintenance of said action.

History: En. Sec. 2976, Pol. C. 1895; re-en. Sec. 1803, Rev. C. 1907.

CHAPTER 238.

INSPECTION OF HORSES AND CATTLE BEFORE REMOVAL FROM THE STATE.

Section 3317. Inspection of Horses Before Removal From the State.
3318. Duty of Stock Inspector.
3319. Penalties.
3320. Fees.
3321. Inspection of Cattle to Be Removed From State.
3322. Duties of Stock Inspector.
3323. Penalties for Violation of Act.

3317. Inspection of horses before removal from state. From and after the passage of this act, it shall be the duty of any and all persons removing or taking from this state, in any manner whatsoever, any horse, mule, mare, colt, foal, or filly, immediately before the shipment or removal of the same, and at the place from which the shipment is to be made, to cause the same to be inspected by a stock inspector or the sheriff of the county from which such stock is to be removed, as hereinafter provided.

History: En. Sec. 1, p. 93, L. 1901; re-en. Sec. 1804, Rev. C. 1907.

Statute requiring inspection of animals as interference with interstate commerce, see notes in 26 L. R. A. (N. S.) 279; 43 L. R. A. (N. S.) 1066.

3318. Duty of stock inspector. On receiving notice from any person that he desires to remove or take from this state, to be sold or used outside of this state, any of the class of animals mentioned in the preceding section, it shall be the duty of any stock inspector, or the sheriff of the county from which such animals are to be taken, to inspect the same, by

carefully noting the brands upon such animals, and otherwise describing such of said animals as may have no brands, and to keep a record of all such inspections in a book to be provided for that purpose by the county commissioners of each county. Such descriptions shall contain:

1. The brands of all animals branded, and a description of animals not branded.
2. The number of animals inspected for removal.
3. The name of the owner or person removing the same.
4. The date of such inspection, with destination to which such animals are to be taken. If, in the opinion of the officer making the inspection, the person proposing to remove such stock is rightfully in the possession of the same, he shall grant such person a certificate of inspection in duplicate, containing the matters herein provided, with the further statement that permission is granted to such person to remove such animals from this state. The person so receiving said certificates must deposit with the agent of the railroad company at the point from which the shipment is made the duplicate certificate referred to, which said duplicate must be filed by the agent, and must be all times during business hours accessible to the public. The agent must, at the time of the receipt of the duplicate, indorse upon the original certificate the date of the receipt of the duplicate. If, however, the officers making such inspection shall be of the opinion that such stock, or any portion thereof, is stolen, or otherwise wrongfully in the possession of the person proposing to remove the same, he shall withhold such certificate and permit to remove, until satisfactory assurance is given him of the rightful possession of such property by the person proposing to remove the same. Such certificate of inspection shall be by the holder thereof exhibited to any person demanding to see the same.

History: En. Sec. 2, p. 94, L. 1901; re-en. Sec. 1805; Rev. C. 1907.

3319. Penalties. Any railroad company or agent shipping or permitting to be shipped from any station, siding, or stock-yards, without first receiving the duplicate certificate herein provided for, and indorsing on the original the date of its receipt, any of the animals mentioned in this charter, and any person removing or attempting to remove any of said animals without first securing a certificate of inspection, or any person in any other way violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction in any court of competent jurisdiction, shall be fined in any sum not less than fifty dollars nor more than three hundred dollars and costs, and in default of payment of such fine and costs, shall be imprisoned in the county jail until such fine and costs are discharged, at the rate now provided by law. The fine herein provided for, if collected, shall be paid into the county treasury to the credit of the general fund of the county where said conviction is had.

History: En. Sec. 3, p. 95; L. 1901; re-en. Sec. 1806, Rev. C. 1907.

3320. Fees. For the service of inspection herein provided for, the officer making such inspection shall receive three dollars per day while engaged in making such inspection, and shall receive in addition thereto

his necessary actual expenses, to be paid by the person for whom the inspection is made.

History: En. Sec. 4, p. 95, L. 1901; re-en. Sec. 1807, Rev. C. 1907.

3321. Inspection of cattle to be removed from state. It shall be the duty of any and all persons removing or taking from this state in any manner whatsoever, any cow, ox, bull, stag, heifer, steer, or calf, immediately before the shipment of same, or its removal, and at the time and place from which said shipment is to be made, to cause the same to be inspected by a stock inspector of the state as hereinafter provided; provided, however, that whenever any of the class of stock aforementioned shall be loaded for shipment and consigned to any point where the state board of stock commissioners maintain a stock inspector, then and in such event only, such shipments so consigned, need not be inspected in this state before shipment.

History: En. Sec. 1, Ch. 8, L. 1907; Sec. 1812, Rev. C. 1907.

3322. Duties of stock inspector. On receiving notice from any person that he desires to remove from this state to be sold or used outside of the state any of the class of animals mentioned in the preceding section, it shall be the duty of any stock inspector to whom such is given, to inspect said animals, carefully noting all of the brands and marks upon same, and make a report of such inspection to the secretary of the board of stock commissioners, which said report shall show the date of such inspection, the name and address of the person taking said animals from the state, the destination of the shipment, the marks and brands upon each animal together with the number of animals listed under each brand; and if in the opinion of the stock inspector the person proposing to remove the same, is rightfully in possession of the animals inspected, he shall grant such persons a certificate of inspection, containing the matter herein provided, with the further statement that permission is granted said person to remove such animals from the state. The person receiving said certificate must deposit it with the railroad agent at the point from which said shipment was made, which certificate must be filed by the agent and must be at all times during business hours accessible to the public, and the agent must at the time of filing said certificate indorse upon it the date of its receipt and filing by him. If, however, any stock inspector making such inspection shall be in doubt as to whether any of said stock is rightfully in possession of the person proposing to remove same from this state, he shall withhold such inspection certificate until satisfied that the said shipper is in rightful possession of such stock.

History: En. Sec. 2, Ch. 8, L. 1907; Sec. 1813, Rev. C. 1907.

3323. Penalties for violation of act. Any railroad company or agent, shipping or permitting to be shipped from any station, siding, or stockyards, within this state, any of the class of animals described in this chapter without first receiving the aforesaid inspection certificate and endorsing upon it the date of its receipt and filing, and any person removing or attempting to remove from this state any of the said animals without first securing the certificate of inspection herein provided, and any person who shall load any of such stock for shipping and consign

same to any point where the state board of stock commissioners maintains a stock inspector, and who shall then reconsign them en route to any other points, so as to avoid inspection at point of shipment, and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor, and, on conviction in any court of competent jurisdiction, shall be fined in any sum not less than fifty dollars nor more than three hundred dollars, or imprisoned in the county jail not to exceed six months, such fine, if collected, to be turned into the general fund of the county where such conviction is had.

History: En. Sec. 3, Ch. 8, L. 1907; Sec. 1814, Rev. C. 1907.

CHAPTER 239.

INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM ONE COUNTY TO ANOTHER.

Section 3324. Inspection of Livestock on Removal From County to County.
3325. Duties of Stock Inspector.
3326. Certificate of Inspection.
3327. Penalty for Violation of Act.

3324. Inspection of livestock on removal from county to county. From and after the passage of this act, it shall be the duty of any and all persons, associations, or corporations, removing or taking livestock or any neat cattle from one county to another within this state by railroad, or in any other manner whatsoever, to cause the same to be inspected for brands by a state stock inspector, and no railroad company shall accept such livestock for shipment, unless the shipper shall produce a certificate of their inspection for brands as herein required; provided, however, that the provisions of this act shall not apply to the said stock when driven by the owner from one county to another for the purpose of pasturing, feeding, or changing the range thereof, nor to any stock so removed or taken by any person, association, or corporation, when such stock is used in the ordinary conduct of his business, and such person, association, or corporation has been the owner of said stock to be removed for at least three months.

History: En. Sec. 1, Ch. 125, L. 1907; Sec. 1808, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1915; amd. Sec. 1, Ch. 72, L. 1917; amd. Sec. 1, Ch. 52, L. 1921.

3325. Duties of stock inspector. On receiving notice from any person, association, or corporation that he or it desires to remove, ship, or take from one county to another within this state any of the classes of animals named in the preceding section, it shall be the duty of the stock inspector immediately to inspect the same, by carefully noting the brands upon such animals and otherwise describing such animals, and to keep a full and complete record of all such inspections in a book to be provided for that purpose by the state board of stock commissioners, which description shall contain:

1. The brands of all animals branded, and the description of animals not branded.
2. The number of animals inspected for removal.
3. The name of the owner or person removing the same.

4. The name of the person, corporation, or association from which the person removing the same made purchase of such animals.

5. The date of such inspection, with the destination to which such animals are to be taken, and the means of their transportation.

6. A statement that none of such animals are afflicted with any infectious or contagious disease.

If, in the opinion of the inspector making the inspection, the person proposing to remove such stock is rightfully in the possession of the same, and such animals are not infected with disease, he shall grant such person or persons, corporation, or association certificate of inspection containing a statement of the matters herein above required, with a further statement that permission is granted to such person to remove such animals from the county. If, however, the officer or officers making such inspection shall be of the opinion that such stock, or any portion thereof, is stolen or otherwise wrongfully in the possession of the person or persons proposing to remove the same, or if such stock, or any portion thereof, is infected with disease, the inspection certificate and permit to remove shall be withheld until satisfactory evidence is given to the inspector of the rightful possession of such property by the person or persons proposing to remove the same, and in case of disease, until the state veterinary surgeon shall have made examination of the animals withheld on account of disease and made written order and direction respecting their disposal. Such certificate of inspection and permit to remove shall be by the holder thereof exhibited to any person or persons demanding to see the same.

History: En. Sec. 2, Ch. 125, L. 1907; Sec. 1809, Rev. C. 1907; amd. Sec. 2, Ch. 131, L. 1915.

3326. Certificate of inspection. It shall be the duty of the stock inspector, immediately upon making the inspection herein required, in case he passes such livestock, to issue the certificate herein provided for, and to immediately transmit a duplicate of such certificate to the state board of stock commissioners, to be by said board held and kept as a permanent record, and in case he refuses to grant such inspection certificate because of question as to the ownership of the property, he shall immediately notify the state board of stock commissioners of his refusal to grant such certificate, and his reasons therefor; and, should he refuse to grant a certificate because of his belief that such livestock are infected with disease, the state veterinary surgeon shall be at once notified and requested to make inspection and examination.

History: En. Sec. 3, Ch. 125, L. 1907; Sec. 1810, Rev. C. 1907; amd. Sec. 3, Ch. 131, L. 1915.

3327. Penalty for violation of act. Any person removing or attempting to remove any livestock of the kind named in section 3324 of this code, without first having received the certificate of inspection and removal herein provided for, and any railroad accepting for shipment any such property, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six

months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act shall be turned into the state treasury, and placed to the credit of the stock detective and inspection fund.

History: En. Sec. 4, Ch. 125, L. 1907; Sec. 1811, Rev. C. 1907; amd. Sec. 4, Ch. 131, L. 1915.

CHAPTER 240.

INSPECTION OF LIVESTOCK MARKETS.

Section 3328. Public Markets—Record Books of Sales of Livestock.
3329. Inspection of Public Markets.
3330. Quarantine of Diseased Animals.
3331. State Treasurer to Hold Proceeds of Sales of Stray Stock.
3332. Penalties.

3328. Public markets—Record books of sales of livestock. Hereafter any person, firm, corporation, or association of individuals, desiring to establish, maintain, or conduct a market for the sale of horses or other livestock at public auction, or otherwise, shall keep a full and complete record book in which must be recorded the name or names of any person, corporation, or association of individuals bringing to the said market, or offering for sale at such market, any horses or other live stock, together with a description thereof as to their kind, and of all brands of every kind thereon. And if requested by the sheriff of the county or a stock inspector, in case question arises respecting the ownership, particular description shall be recorded showing, in addition to all the brands, the color and sex of such animals; and, in addition, such record shall clearly show the name of the person for whom such animal or animals were sold, the date of the sale, and the person to whom such animal or animals were sold, and the particular character of the animal or animals. Such record book must be open for inspection by the public for persons interested at any and all reasonable times.

History: En. Sec.. 1, Ch. 96, L. 1907; Sec. 1815, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1909.

3329. Inspection of public markets. The stock inspector of the county or district, or the sheriff of any county in this state, and the state veterinarian, or any person duly appointed and representing the livestock commission, may enter upon the premises where any such livestock are being held or sold, and be accorded every facility by the owners thereof in determining whether any violations of the law are being made, or are likely to be made, by any person, association, or corporation whatsoever; provided, however, that such inspection shall not unnecessarily interfere with the conduct of the sales; and that no horses or other livestock so sold at such market shall be delivered to the purchaser until he shall first have received an inspection certificate, issued by one of the officers hereinabove designated, for the inspection of such livestock, showing clearly and explicitly that the person making such inspection, as herein authorized, is satisfied as to the ownership of such livestock and the health of all animals so sold.

History: En. Sec. 2, Ch. 96, L. 1907; Sec. 1816, Rev. C. 1907.

Note.—In this and other sections the words "State Board of Livestock Commissioners" have been changed by the code commissioner to "Livestock Commission" to conform to later enactments.

3330. Quarantine of diseased animals. Should the person herein authorized to inspect such livestock at any such sale find any of the animals afflicted with an infectious or contagious disease, he shall immediately take possession of such animals and place them in quarantine, to be thereafter disposed of as may be directed by the state veterinary surgeon. And, in the event there is any question arising respecting the ownership of any animal sold, the person so making the inspection, as herein authorized, shall have the right, privilege, power, and authority to take possession of such animal or animals; provided, that he shall notify the person in charge of such market and conducting the sales, and also the person who may purchase any such livestock at any such sale, within a reasonable time; provided, further, that where any livestock is sold, the ownership of which is not known or determinable by the person or persons herein authorized to make inspection, they may be sold as strays, and that the net proceeds derived from said sale shall be transmitted to the livestock commission of the state of Montana, at Helena, Montana, to be held and kept, together with a complete description of any such animal or animals, and the brands thereon, and such money shall be held and retained by said commission for the use and benefit of the owner or owners of any such animal or animals, and paid over to such owner or owners when the ownership shall have been satisfactorily determined. And, in the event that the proceeds of the sale of any such animal or animals so transmitted to the livestock commission be not claimed by the lawful owner of the property so sold, within two years from the date of the receipt of the proceeds of such sale, such money shall be held and disposed of as hereinafter provided.

History: En. Sec. 3, Ch. 96, L. 1907; Sec. 1817, Rev. C. 1907.

Note.—Last paragraph of original section omitted in this code, account subsequent repeal of sections therein referred to.

3331. State treasurer to hold proceeds of sales of stray stock. When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from the state board of stock commissioners, the state treasurer shall be required to hold such money in a separate fund, to be known and designated as the "stray stock fund," and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property and be placed to the credit of the livestock commission fund.

History: En. Sec. 4, Ch. 96, L. 1907; Sec. 1818, Rev. C. 1907.

3332. Penalties. Any person or persons, corporation, or association guilty of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor, and is punishable by a fine not exceeding six hundred dollars, or by six months' imprisonment in the county jail, or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 96, L. 1907; Sec. 1819; Rev. C. 1907.

CHAPTER 241.

ESTRAYS.

Section 3333. Estrays—Livestock Commission Authorized to Take Possession of.
3334. Authority of Stock Inspector to Gather Up Estrays—Notice of Sale.
3335. Sale at Public Auction—Branding.
3336. Expenses, How Paid—Disposition of Proceeds of Sale.
3337. "Estray," as Herein Used, Defined.
3338. Publication of Description of Estrays Sold—Disposition of Proceeds Remaining in State Treasury.
3339. "Estray" Defined.
3340. Penalty for Wrongful Taking of Estray.
3341. Shipment of Stray Cattle—Duties of Shipper.
3342. Description of Animals Taken Out During Shipment.
3343. Powers and Duties of Inspectors Outside of State.
3344. Livestock Commission to Furnish Blanks.
3345. Failure of Shipper or Inspector to Comply With This Act—Penalty.

3333. Estrays—Livestock commission authorized to take possession of. The livestock commission, by and through its legally appointed stock inspectors, be and it is hereby authorized to take possession of any and all estrays found running at large within the state of Montana, and to dispose of the same, subject to the following restrictions.

History: En. Sec. 1, Ch. 34, L. 1915.

General features of estray laws in the United States, see note in 8 A. S. R. 271.

3334. Authority of stock inspector to gather up estrays—Notice of sale. Any stock inspector appointed by the livestock commission shall take into his possession all estrays found within his district, and shall hold such estrays so collected by him in his possession, and care for the same in the cheapest and most practicable manner for a period of not less than thirty days, nor more than sixty days, during which time he shall advertise the facts that he holds such estray or estrays, and that unless claimed by the owner thereof he will, on a date to be specified in said notice, sell such estray or estrays at public auction to the highest bidder for cash, which said notice shall be published in the newspaper doing the county printing of the county wherein such estray or estrays are found, and in addition thereto in a paper published in the town or city nearest the place at which such estray is held, which said notice shall be published at least once a week for four consecutive weeks, and shall contain a statement of the date of the sale, the place where such sale is to be held, and a general description of such estray, including the sex of the same and the approximate age, together with an illustration of the brand and the position of such brand upon such estray, together with a description of the place or locality where such estray was found or taken up; and the owner of such estray may appear and claim the same at any time prior to the sale or shipment, as hereinafter provided, and without cost or expense to said owner.

History: En. Sec. 2, Ch. 34, L. 1915.

3335. Sale at public auction—Branding. On the date specified in the notice provided in the preceding section, such stock inspector shall cause said estray or estrays to be sold at public auction to the highest bidder

for cash; and before removal from said sale the said stock inspector shall cause the said estray or estrays to be branded with the recorded estray brand of the livestock commission.

History: En. Sec. 3, Ch. 34, L. 1915.

3336. Expenses, how paid—Disposition of proceeds of sale. All expenses attending the collecting, holding, advertising, and selling of such estray or estrays shall be paid out of the gross proceeds of the sale of such estray or estrays, and the balance of the proceeds of such sale shall be forwarded to the secretary of the livestock commission to be by him advertised as estray funds in the manner now provided by law, and such proceeds shall be subject to claim by the owner of the animal for a period of two years from the date of such sale; provided, that in the event the owner of such estray claims said animal prior to the sale thereof, the expense theretofore incurred by the stock inspector shall be paid by the livestock commission as an expense of said commission.

History: En. Sec. 4, Ch. 34, L. 1915.

3337. "Estray," as herein used, defined. An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt over one year old, cow, ox, bull, stag, steer, heifer, or calf over one year old, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the postoffice designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

History: En. Sec. 5, Ch. 34, L. 1915.

3338. Publication of description of estrays sold—Disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of four consecutive weekly or semi-monthly issues next after May first of each year in not more than four weekly or semi-monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the state livestock commission fund.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919.

3339. "Estray" defined. The term "estray" shall mean any mare, gelding, stallion, colt, foal or filly, mule, jack, jennet, cow, ox, steer, bull,

stag, heifer, or calf, which is running at large away from its accustomed range, or any animal as above described, the owner of which cannot with reasonable diligence be found.

History: En. Sec. 1, Ch. 169, L. 1921.

3340. Penalty for wrongful taking of estray. Any person who shall, for his own use or benefit and without the owner's consent, take into his possession any estray, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 169, L. 1921.

3341. Shipment of stray cattle—Duties of shipper. Every person, agent, firm, corporation, pool, or round-up association who shall ship cattle from this state may ship with their own cattle any strays which may be among them, but they shall, before shipment or at the time of loading same on the cars for shipment, carefully and as accurately as possible inspect or tally the brand on such cattle, whether their own or strays, making a list in duplicate, which list shall state the date of loading, name of shipper, description of brands on each animal, number and class of each brand, destination, name of commission firm to whom consigned, and the name of person in charge of shipment; one copy of this list to be filed with the railroad agent at point of loading, who shall, in turn, forward the same to the livestock commission, at Helena, within two days after shipment, and another copy to be immediately mailed to the state stock inspector at point of destination.

History: En. Sec. 1, Ch. 94, L. 1907; Sec. 1820, Rev. C. 1907.

3342. Description of animals taken out during shipment. Every person in charge of or who accompanies such shipment as the shipper in charge shall take an accurate description, including the brands of each and every animal, whether dead or alive, taken out of shipment in transit between original loading point and final destination, and shall hand such description to the state stock inspector at such point of destination immediately upon arrival of the shipment in the stock-yards.

History: En. Sec. 2, Ch. 94, L. 1907; Sec. 1821, Rev. C. 1907.

3343. Powers and duties of inspectors outside of state. The stock inspector appointed to inspect Montana cattle at any cattle market outside of this state shall be duly commissioned by the livestock commission, and shall be qualified and have power and authority to inspect any or all cattle that may come from this state to the market where he may be located, having the same power as other stock inspectors within the state to inspect and seize any stock which he may have reason to believe is stolen, or upon which brands have been altered or obliterated, and shall have authority to take the proceeds of any animal in dispute, or bearing altered or burned brands, remitting such proceeds to the livestock commission, who shall hold same pending a decision as to ownership, and such stock inspector shall, upon receipt of the certified lists mentioned in the

two preceding sections, make inspection of the cattle so listed, and if, upon comparison of such list with his own inspection, he shall find any difference or discrepancy, he shall make a second inspection of any animal or animals or upon which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct, and he shall forthwith make inspection report to the livestock commission, stating in detail wherein any discrepancies with the loading tally exist, and calling special attention to his own inspection of such animal or animals, and he shall, on his own report, make mention of any and every animal, with the brands thereon, which were taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination; all such reports to be entered in a suitably bound book and be at all times open to public inspection.

History: En. Sec. 3, Ch. 94, L. 1907; Sec. 1822, Rev. C. 1907.

3344. Livestock commission to furnish blanks. The livestock commission shall have printed the necessary blanks for the tallying of cattle at loading point as provided in section 3341 of this code, and shall furnish same free to shippers on application. The expense of such printing shall be paid out of the livestock commission fund.

History: En. Sec. 4, Ch. 94, L. 1907; Sec. 1823, Rev. C. 1907.

3345. Failure of shipper or inspector to comply with this act—Penalty. Any person, agent, firm, corporation, pool, or round-up association who shall ship cattle from this state, and shall fail to make such inspection or tally at point of loading, or who shall fail to file a true and correct tally, to the best of their knowledge and belief, of all the brands of cattle in such shipment with the railroad agent at the point of shipment, or who shall fail to forward a true and correct copy, duly signed by them as parties making the shipment, to the stock inspector at point of destination, or any person who shall accompany a shipment of cattle as the shipper in charge from this state, and shall fail to take a description of any and every animal taken out in transit and hand such description to the stock inspector at point of destination, or any stock inspector at market points who shall fail to make inspection as provided in section 3343 of this code, shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not less than fifty dollars nor more than five hundred dollars for each and every offense. The fines so collected shall be turned into the general fund of the county where conviction is had, and any stock inspector, sheriff, or other police officer shall have power to make arrests to enforce the provisions of this act.

History: En. Sec. 5, Ch. 94, L. 1907; Sec. 1824, Rev. C. 1907.

CHAPTER 242.

HIDES OF SLAUGHTERED CATTLE.

Section 3346. Hides of Slaughtered Cattle to Be Kept.
3347. Record of Brands of Slaughtered Cattle—Oath and Filing.
3348. License to Sell Meat—Exceptions.
3349. Penalty for Violation of Act.
3350. Repealing Clause.

3346. Hides of slaughtered cattle to be kept. Every person or persons slaughtering cattle must keep the hides with the ears attached for ten days, and must, upon demand being made by any person, exhibit said hide for examination.

History: En. Sec. 1, Ch. 171, L. 1921.
Note.—Earlier acts were sections 1794, 1795; 8859-8862, Revised Codes 1907, and chapter 206, Laws of 1919.

3347. Record of brands of slaughtered cattle—Oath and filing. All persons, firms, and corporations who slaughter, or cause to be slaughtered, cattle for sale or distribution shall keep a record thereof in a book, which record shall include a description of the marks and brands on each animal slaughtered, the date when slaughtered, whether such animal was raised by the person, firm, or corporation slaughtering, or causing it to be slaughtered, and if not, from whom such animal was purchased or received by the person, firm, or corporation slaughtering, or causing it to be slaughtered; and a duplicate copy of such record on forms to be supplied by the livestock commission shall be by such person, firm, or corporation, verified by the oath of such person, firm, or corporation, or an agent thereof with knowledge of the facts, and filed with the county clerk of the county wherein such animal is slaughtered, within three days of the day the animal is slaughtered. The records herein provided for shall at all reasonable times be open to the inspection of the public.

History: En. Sec. 2, Ch. 171, L. 1921.

3348. License to sell meat—Exceptions. Every person, firm, association, or corporation who slaughters and offers for sale or sells meat in this state shall first obtain from the county clerk a license to sell such meat, and shall pay for said license the sum of one dollar, said payment to be made annually in advance, and said license fee when collected, shall be deposited in the general fund of the county. The provisions of this section shall not apply to any person who shall kill beef in good faith for his own use.

History: En. Sec. 3, Ch. 171, L. 1921.

3349. Penalty for violation of act. Any person or persons who violate any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars.

History: En. Sec. 4, Ch. 171, L. 1921.

3350. Repealing clause. Chapter 206 of the laws of Montana of the sixteenth legislative assembly of 1919, and all acts, and parts of acts, in conflict herewith are hereby repealed, save that no action or proceeding pending, and no penalty incurred under any law hereby repealed, at the time of such repeal, shall be abated hereby, but the same may be prosecuted and enforced in all respects as though such law or laws had not been repealed.

History: En. Sec. 5, Ch. 171, L. 1921.

CHAPTER 243.

IMPROVEMENT OF LIVESTOCK.

Section 3351. County Assessor to Collect Names of Owners of Pure-Bred Stock.
3352. Delivery of Information to Experiment Station.
3353. Official Books of Breed Association.
3354. Publication of Owners of Pure Breeds—Bulletins.
3355. Sale of Animals Under False Registration Certificate—Fraudulent Changing of Markings.
3356. Penalty for Violation of Preceding Section.

3351. County assessor to collect names of owners of pure-bred stock. The county assessor in each county during the odd-numbered years shall, in the regular routine of his duties, collect the names and addresses of all owners or breeders of pure-bred horses, cattle, sheep, swine, and poultry in the county, and in each case secure the name of the breed.

History: En. Sec. 1, Ch. 6, L. 1913.

3352. Delivery of information to experiment station. On or before the first day of November, the assessor shall compile the information secured, and deliver same to the director of the Montana agricultural experiment station, located at Bozeman.

History: En. Sec. 2, Ch. 6, L. 1913.

3353. Official books of breed association. Pure-bred animals are those recorded in the official books of the various breed associations. A list of these books shall be furnished to the assessor of each county by the director of the Montana agricultural experiment station, and the assessor shall accept as pure-breds only such breeds as are given in this list as shown by certificates of registration in the possession of the owner.

History: En. Sec. 3, Ch. 6, L. 1913.

3354. Publication of owners of pure breeds—Bulletins. On or before the first day of January of the even-numbered years, the director of the experiment station shall prepare for publication and cause to be printed a bulletin giving the names and addresses of all owners and breeders of pure-bred livestock in the state of Montana, as reported the previous year by the county assessors. This bulletin shall be for free distribution in the state of Montana, and on request, to breeders and farmers outside the state.

History: En. Sec. 4, Ch. 6, L. 1913.

3355. Sale of animals under false registration certificate—Fraudulent changing of markings. No person or persons, company, or corporation shall sell to another person or persons any animal with a certificate of registration or breeding that does not belong to said animal, nor change in any way the certificate of registration or breeding of any animal; nor shall any person change the markings of any animal with the intent to deceive the purchaser.

History: En. Sec. 5, Ch. 6, L. 1913.

3356. Penalty for violation of preceding section. Any person or persons, company, or corporation violating the preceding section shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment of not less than ten days or more than six months, or by both fine and imprisonment.

History: En. Sec. 6, Ch. 6, L. 1913.

CHAPTER 244.

STALLIONS AND JACKS—STALLION REGISTRATION BOARD.

Section 3357. Enrollment or Registration of Stallion or Jack—License.
3358. Stallion Registration Board.
3359. Personnel of Board—Secretary.
3360. Certificate of Pedigree of Animal.
3361. Disqualifying Diseases.
3362. Temporary License Certificates.
3363. Imported Animals—Certificate of Soundness.
3364. Posting Copies of License Certificate.
3365. Form of License Certificate.
3366. Bills, Posters, or Advertisements—Contents.
3367. Fees for Examination and License.
3368. Transfer of License on Sale of Animal.
3369. Penalty for Violation of Act.
3370. Use of Funds Derived From Fees.
3371. Annual Report of Board to Governor—Inspection of Financial Records.
3372. Law Not Applicable to Range Animals—"Standing for Public Service" Defined.
3373. Transportation of Animals by Railroad.

3357. Enrollment or registration of stallion or jack—License. Every person, firm, or company, standing or using any stallion or jack for public service in this state, shall cause the name, description, and pedigree of such stallion or jack to be enrolled by a stallion registration board, hereinafter provided for, and shall secure a license from said board as provided for in section 3360 of this code. All enrollment and verification of pedigree shall be done by said board.

History: En. Sec. 1, Ch. 108, L. 1909.

Public regulation of the breeding of animals, see note in Ann. Cas. 1916A, 564.

3358. Stallion registration board. In order to carry out the provisions of this act, there shall be constituted a stallion registration board, whose duty it shall be to verify and register pedigrees; to employ one or more competent graduate veterinarians to make examinations of the stallions for soundness, at one or more points in each county in the state; to pass upon certificates of veterinary examination; to issue stallion license certificate; to make all necessary rules and regulations; and to perform such other duties as may be necessary to carry out and enforce the provisions of this act. Said board shall hold an annual meeting at the college of agriculture in Bozeman the first Tuesday of February, and such other meetings as may be necessary.

History: En. Sec. 2, Ch. 108, L. 1909.

3359. Personnel of board—Secretary. The stallion registration board shall be composed of the president of the Montana horse breeders' association, the state veterinarian, and the professor of animal husbandry at

the Montana experiment station, who shall be secretary and executive officer of this board.

History: En. Sec. 3, Ch. 108, L. 1909.

3360. Certificate of pedigree of animal. In order to secure the license certificate herein provided for, the owner shall apply for such to the stallion registration board, after the stallion or jack has been examined for soundness. The owner of such stallion or jack shall furnish to the stallion registration board the veterinary certificate and book registry certificate of pedigree of the stallion or jack, and all other necessary papers relating to his breeding and ownership. Upon verification of pedigrees and certificate of breedings, a stallion or jack certificate shall be issued to the owner.

History: En. Sec. 4, Ch. 108, L. 1909.

3361. Disqualifying diseases. The presence of any one or more of the following-named diseases shall disqualify a stallion or jack for public service, except such stallions or jacks as were in public use, or held for sale for public use at the time of the enactment and passage of this act: Such diseases or unsoundness hereby defined as infectious, contagious, or transmissible diseases or unsoundness for the purpose of this act; cataract, amaurosis, laryngeal hemiplegia (roaring or whistling), chorea (St. Vitus' dance, crampiness, shivering, spring-halt, bone-spavin, ring-bone, side-bone, glanders, farcy, maladie de coit, urethral gleet, mange, melanosis, and curb when accompanied by curby hock.

The stallion registration board is hereby authorized to refuse certificate of enrollment to any stallion or jack affected with any one of the diseases specified, and to revoke previously issued stallion license certificate of any stallion or jack found on examination to be so affected, except stallions or jacks in the state at the time of the enactment and passage of this act.

No stallion or jack shall stand for public service in the state of Montana which is deformed or so badly diseased as to be, in the opinion of the stallion registration board, wholly unfit for breeding purposes, and said board is hereby authorized to refuse license certificate and registry for said animal.

History: En. Sec. 4, Ch. 108, L. 1909.

3362. Temporary license certificates. The stallion registration board is authorized in cases of emergency to grant temporary license certificates without veterinary examination, upon the receipt of an affidavit of the owner to the effect that to the best of his knowledge and belief said horse or jack is free from infectious, contagious, or transmissible disease, or unsoundness. Temporary license certificates shall be valid only until veterinary examination can reasonably be made.

Stallions or jacks in the state previous to the passage and enactment of this law shall have described in their license certificate any hereditary disease or unsoundness referred to in the preceding section.

History: En. Sec. 5, Ch. 108, L. 1909.

3363. Imported animals—Certificate of soundness. Every person, firm, or company, importing any stallion or jack into the state of Montana for breeding purposes, shall first secure a certificate from a recognized state or federal veterinary officer, certifying that said animal is free from any or all diseases or unsoundness referred to in section 3361 of this code.

A copy of this certificate must be mailed to the secretary of the stallion registration board, at the Montana experiment station, Bozeman, Montana, at least ten days before the importation of said stallion or jack into the state.

No stallion or jack which is neither pure-bred nor grade according to the meaning of this act shall be imported into this state for breeding purposes.

History: En. Sec. 6, Ch. 108, L. 1909.

3364. Posting copies of license certificate. The owner of any stallion or jack standing for public service in this state shall post and keep affixed during the entire breeding season, copies of the license certificates of such stallion or jack issued under the provisions of this act, in a conspicuous place upon the main door leading into every stable or building where said stallion or jack stands for public service. Said copies shall be printed in bold-faced and conspicuous type, not smaller than small pica, especially the words "pure-bred," "grade," etc.

History: En. Sec. 7, Ch. 108, L. 1909.

3365. Form of license certificate. The license certificate issued after proper examination of a stallion or jack whose sire and dam are of pure breeding, and the pedigree certificate of which is registered in a stud book recognized by the Montana stallion registration board, and, in the case of foreign pedigree certificate, those which are registered in a stud book recognized by the United States department of agriculture, shall be in the following form:

Stallion Registration Board.

License Certificate of Pure-bred Stallion or Jack.

The pedigree of the stallion (name).....,
owned by....., bred by.....,
described as follows:.....
color....., breed .....,
foaled in the year....., has been examined by the Stallion Registration Board of Montana, and it is hereby certified that the said stallion or jack is of pure breeding, and is registered in a stud book recognized by said Stallion Registration Board.

The above-named stallion or jack has been examined by the veterinarian appointed by the Stallion Registration Board, and is reported as free from infectious, contagious, or transmissible diseases or unsoundness (or is affected with.....), and is licensed to stand for public service in the state of Montana.

Signed .....
Secretary, Stallion Registration Board of Montana.

The license certificate issued after proper examination for a stallion or jack whose sire or dam, but not both, is of pure breeding shall be in the following form:

Stallion Registration Board.

License Certificate of Grade Stallion or Jack.

The pedigree of the stallion (name).....,
owned by....., bred by.....,
described as follows: .....
color....., breed.....,
foaled in the year....., has been examined by the Stallion Registration Board of Montana, and it is hereby certified that the said stallion or jack is not of pure breeding, and is therefore not eligible for registration in any stud book recognized by the Stallion Registration Board.

The above-named stallion or jack has been examined by the veterinarian appointed by the Stallion Registration Board, and is reported as free from infectious, contagious, or transmissible diseases or unsoundness (or is affected with.....), and is licensed to stand for public service in the state of Montana.

Signed .....

Secretary, Stallion Registration Board of Montana.

History: En. Sec. 8, Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915.

3366. Bills, posters, or advertisements—Contents. Every bill, poster, or advertisement issued by the owner of any stallion or jack licensed under this act, or used by him for advertising such stallion or jack, shall contain a copy of his license certificate, and shall not contain illustrations, pedigrees, or other matter that is untruthful or misleading.

History: En. Sec. 9, Ch. 108, L. 1909.

3367. Fees for examination and license. A fee of ten dollars shall be paid to the secretary of the stallion registration board for the veterinary examination of stallions and jacks and enrollment of each pedigree and the issuance of a license certificate.

A fee not exceeding two dollars shall be paid annually for the renewal of the license. Stallions or jacks shall be examined every four years, until ten years of age, and after the first examination shall be exempt from examination at ten years of age and over.

History: En. Sec. 10, Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915.

3368. Transfer of license on sale of animal. Upon a transfer of the ownership of any stallion or jack licensed under the provisions of this act, the license certificate may be transferred by the secretary of this board to the transferee upon the submittal of satisfactory proof of such transfer of ownership and upon the payment of one dollar.

History: En. Sec. 11, Ch. 108, L. 1909.

3369. Penalty for violation of act. Any person or persons knowingly or wilfully violating any of the provisions of this act shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars,

or by imprisonment for not less than thirty days or more than six months, or by fine and imprisonment for each offense.

History: En. Sec. 12, Ch. 108, L. 1909.

3370. Use of funds derived from fees. The funds accruing from the above-named fees shall be used by the stallion registration board to defray the expenses of veterinary examination, of enrollment of pedigrees, and issuance of licenses. Any funds not so used shall be used to publish reports or bulletins containing lists of stallions examined; to encourage the horse and mule breeding interests of this state; to disseminate information pertaining to horse breeding, and for any other such purposes as may be necessary to carry out the purposes and enforce the provisions of this act.

History: En. Sec. 13, Ch. 108, L. 1909.

3371. Annual report of board to governor—Inspection of financial records. It shall be the duty of this board to make annual report, including financial statements, to the governor of the state, and all financial records of said board shall be subject to inspection at any time by the public examiner.

History: En. Sec. 14, Ch. 108, L. 1909.

3372. Law not applicable to range animals—"Standing for public service" defined. No part of this act shall apply to stallions turned upon the open range, and the term "standing for public service" is hereby defined as the service of a stallion or jack for a fee when said stallion or jack is stood at one or more places for a public use.

History: En. Sec. 15, Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915.

3373. Transportation of animals by railroad. No railroad company, transportation company, or common carrier shall transport into the state of Montana any stallion or jack unless accompanied by a state or federal veterinary certificate as provided in this act. Violation of this provision shall be punished as provided in section 3369 of this code.

History: En. Sec. 16, Ch. 108, L. 1909; amd. Sec. 1, Ch. 133, L. 1915.

CHAPTER 245.

FENCES—LEGAL FENCE—LIABILITY OF OWNERS OF TRESPASSING STOCK.

Section 3374. Legal Fences Defined.
3375. Penalty for Violation.
3376. Barbed Wire Fences to Be Kept in Repair.
3377. Damage to Planted Trees.
3378. Liability of Owners of Stock for Trespass.
3379. Stock Trespassing May Be Retained.
3380. Marking Land and Mining Claims in National Forest.
3381. Method of Marking.
3382. Marking—Right of Action Against Trespassing Stock.
3383. Partition Fences.

3374. Legal fences defined. Any one of the following, if not less than forty-four inches nor more than forty-eight inches in height, shall be a legal fence in the state of Montana:

1. All fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which must not be less than fifteen inches

nor more than eighteen inches from the ground, securely fastened as nearly equidistant as possible to substantial posts, firmly set in the ground, or to well-supported leaning posts, not exceeding twenty feet apart, or thirty-three feet apart where two or more stays or pickets are used equidistant between posts; provided, that all corral fences which are used exclusively for the purposes of inclosing stacks which are situated outside of any lawful inclosure shall not be less than sixteen feet from such stack so inclosed, and shall be substantially built with posts not more than eight feet distant from each other and not less than five strands of well-stretched barb wire, and shall not be less than five nor more than six feet high; provided, further, that any kind of a fence equally as effectual for the purpose of a corral fence may be made in lieu thereof.

2. All fences constructed of any standard woven wire not less than twenty-eight inches in height, securely fastened to substantial posts not more than thirty feet apart, shall be a legal fence; provided, that two equidistant barbed wires shall be placed above the same at a height of not less than forty-eight inches from the ground.

3. All other fences made of barbed wire, which shall be as strong and as well calculated to protect inclosures as those above described, shall be considered legal fences.

4. All fences consisting of four boards, rails, or poles, with standing or leaning posts not over seventeen feet and six inches apart; provided, that if leaning posts are used, there shall be a pole or wire fastened securely on the inside of the leg or support of such leaning post.

5. All rivers, hedges, mountain ridges and bluffs, or other barrier over or through which it is impossible for stock to pass.

History: Ap. p. Sec. 1, p. 46, L. 1881; amd. Sec. 1, p. 76, L. 1885; amd. Sec. 1111, 5th Div. Comp. Stat. 1887; amd. Sec. 3250, Pol. C. 1895; amd. Sec. 1, p. 139, L. 1901; amd. Sec. 1, Ch. 37, L. 1905; amd. Sec. 1, Ch. 64, L. 1913; amd. Sec. 1, Ch. 163, L. 1919.

Cited or applied as section 3250, Political Code, before amendment, in Clemmons v. Gillette, 33 Mont. 321, 328, 83 Pac. 879, 114 Am. St. Rep. 814; as section 2082, Revised Codes, before amendment, in Herrin v. Sieben, 46 Mont. 226, 232, 127 Pac. 323.

The provisions of this section et seq. relative to legal fences, prescribing what are such fences, and defining the duty to maintain and repair partition fences, do not affect the right of an adjoining owner to build a division fence partly on the other's land. Hoar v. Hennessy, 29 Mont. 253, 261, 74 Pac. 452.

Constitutionality of fencing and stock laws, see note in 6 A. L. R. 212.

Effect of statute prohibiting recovery for damages done by trespassing animals on unfenced lands, see note in 9 Ann. Cas. 1005.

Fencing against stock running at large, see note in 81 A. S. R. 446.

3375. Penalty for violation. Any person constructing or maintaining any fence of any kind not described in the next preceding section is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

Note.—Sections 3375 to 3376 were enacted as sections 1112 to 1120, 5th Division Compiled Statutes 1887; were carried forward as sections 3251 to 3252, Political Code 1895, and appeared as sections 2083 to 2084, Revised Codes 1907.

History: Sec. 2083, Rev. C. 1907.

3376. Barbed wire fences to be kept in repair. The owners of barbed wire fences must keep the same in repair, and any person receiving notice

in writing that his barbed wire fence or any part thereof is down, or in such condition as to be likely to injure any livestock, and fails or refuses to repair such fence, is liable to pay damages in an amount equal to the value of any cattle, horse, mule, or other domestic animal which may be injured by coming into contact with the fence.

History: Sec. 2084, Rev. C. 1907. See also history of Sec. 3375.

Liability of owner of barbed-wire fence for injuries caused, see notes in Ann. Cas. 1913D, 781; Ann. Cas. 1915D, 856.

3377. Damage to planted trees. In case of any damage done to planted trees by animals, the owner of the trees may recover damages from the owner of the animals, if said trees are planted inside of a lawful fence or boxed to a height of not less than five feet.

History: En. Sec. 3281, Pol. C. 1895; re-en. Sec. 2096, Rev. C. 1907.

3378. Liability of owners of stock for trespass. If any cattle, horse, mule, ass, hog, sheep, or other domestic animal break into any enclosure, the fence being legal, as hereinbefore provided, the owner of such animal is liable for all damages to the owner or occupant of the enclosure which may be sustained thereby. This section must not be construed so as to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law.

History: En. Sec. 1119, 5th Div. Comp. Stat. 1887; re-en. Sec. 3258, Pol. C. 1895; re-en. Sec. 2090, Rev. C. 1907.

A lawful fence entirely surrounding the grounds or premises entered, or some obstruction equivalent thereto, is a condition precedent to the right to bring an action against the owner of trespassing animals for damages sustained by reason of such trespass. Smith v. Williams, 2 Mont. 195, 201.

A reasonable and substantial compliance with the statute is all that is required, and an immaterial variation in the height of the fence from that of a lawful fence will not defeat the action. Smith v. Williams, 2 Mont. 195, 202.

There can be no recovery for damages sustained to the owner of uninclosed lands by reason of sheep straying or being driven thereupon and destroying the grass and verdure, unless it appear that they were maliciously driven upon such lands for the purpose of causing injury. Fant v. Lyman, 9 Mont. 61, 62, 22 Pac. 120.

This section applies to trespasses committed by animals running at large without the knowledge of the owner, and not to a case where one knowingly and wilfully appropriates the use of another's land. Monroe v. Cannon, 24 Mont. 316, 320, 61 Pac. 863, 81 Am. St. Rep. 439. See, also, Musselshell Cattle Co. v. Woolfolk, 34 Mont. 126, 132, 85 Pac. 874; Rea Bros. Sheep Co. v. Rudi, 46 Mont. 149, 161, 127 Pac. 85; Light v. United States, 220 U. S. 523, 537, 55 L. Ed. 570, 31 Sup. Ct. 485.

This section, and the custom of the state making the maintenance of a legal fence by a land owner a prerequisite to recovery for trespass by domestic animals of another, do not charge the landowner with the duty to keep cattle lawfully at large from coming on his land, or make their entry thereupon rightful, so as to make him liable for injuries to such animals caused by the existence of dangerous agencies on the land, but not wantonly or intentionally caused. Beinhorn v. Griswold, 27 Mont. 79, 88, 69 Pac. 557, 94 Am. St. Rep. 818, 59 L. R. A. 771.

A person who unlawfully fences a portion of the public domain acquires only a tortious possession, which does not authorize him to maintain an action against another for depasturing such land, nor entitle him to restrain the latter, by way of injunction, from continuing to depasture the land. Clemmons v. Gillette, 33 Mont. 321, 328, 83 Pac. 879, 114 Am. St. Rep. 814.

The provisions of this section apply to all domestic animals, but have no application to animals in charge of a herder. Herrin v. Sieben, 46 Mont. 226, 232, 127 Pac. 323.

The owner of animals may not knowingly and wilfully drive or herd them upon the lands of another, whether such lands are protected by an inclosure or not, and to avoid encroaching upon his

neighbor he must at his peril ascertain the line at which his rights end and his neighbor's begin. Herrin v. Sieben, 46 Mont. 226, 233, 127 Pac. 323.

Right to distrain and sell animals running at large, see note in 90 A. S. R. 212.

Liability of owner for trespass of cattle, see note in 22 L. R. A. 55.

3379. Stock trespassing may be retained. If any such animal breaks into an enclosure surrounded by a legal fence, or is wrongfully upon the premises of another, the owner or occupant of the enclosure or premises may take into his possession the animal trespassing, and keep the same until all damages, together with reasonable charges for keeping and feeding are paid. The person taking any such animal into his possession shall, within seventy-two hours thereafter, give written notice to the owner or person in charge of the animal, stating that he has taken up such animal; said notice shall also give the date of such taking, the description of the animal or animals taken up, including marks and brands, if any, the amount of damages claimed and the charge per head per day for caring for and feeding the same, and shall describe, either by legal subdivisions or other general description, the location of the premises upon which said animals are held. In all cases a copy of said notice shall likewise be posted at a point where said stock was taken up. Such notice shall be given to the owner or person in charge only when said owner or person in charge of the animal or animals is known to the person taking up the same and resides within twenty-five miles of the premises upon which such animals have been taken up. In case the owner or person in charge of such animals resides more than twenty-five miles from the place of such taking, notice as aforesaid shall be mailed to him, and in such case, and also in case the owner be unknown, a like notice shall be mailed to the Montana livestock commission and the sheriff of the county in which such animals have been taken up. Upon receipt of such notice, the sheriff shall post a copy thereof at the court house and shall send by registered mail a copy thereof to the owner of the stock, if known to him; if unknown to him, the sheriff shall send a copy of such notice to the nearest state livestock inspector. In case the parties do not within five days thereafter agree as to the amount of damages, the lien claimant must within ten days thereafter institute a civil action to foreclose his lien in any court of competent jurisdiction, pending the outcome of which suit, the person taking up said stock may, at the expense of the owner, retain a sufficient amount of such stock to cover the amount of damages claimed by him; provided, however, that the defendant may, after the institution of an action as aforesaid, upon filing in said cause a bond executed by two or more sureties and approved by the court, in double the sum sued for, conditioned for the payment to the plaintiff of all sums, including costs that may be recovered by said plaintiff, have the return to him of all livestock held as aforesaid, and said person shall be liable to such owner for any loss or injury to said stock occurring through his fault or neglect. If the person taking up said stock shall fail to recover in said action a sum equal to that offered him by the owner of the stock, the former shall bear the expense of keeping and feeding same while in his possession.

Any person taking or rescuing any such animal from the possession of the person taking the same, without his consent, is guilty of a misde-

meanor, and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars.

History: En. Sec. 8, p. 48, L. 1881; re-en. Sec. 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3259, Pol. C. 1895; re-en. Sec. 2091, Rev. C. 1907; amd. Sec. 1, Ch. 231, L. 1921.

Where plaintiff might have sued under this section for three hundred and fifty dollars because of the wrongful rescue of animals which had been trespassing upon his premises, but his demand was for only two hundred and eighty-six dollars, a justice's court had jurisdiction of the cause. Reynolds v. Smith, 48 Mont. 149, 150, 135 Pac. 1190.

Cited or applied as section 3259, Political Code, in Hoar v. Hennessy, 29 Mont. 253, 261, 74 Pac. 452.

Validity of statute authorizing landowner to seize and sell trespassing animals, see note in Ann. Cas. 1915C, 1263.

3380. Marking land and mining claims in national forest. It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented mining claims, which said lands or patented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921.

3381. Method of marking. For the purposes of this act, it shall be prima facie evidence that such boundaries are properly marked if the same are defined; provided, that such monuments or some tree, stump, or post adjacent thereto shall be conspicuously marked with the name of the owner or claimant of such ground and the name of the claim or the description of the land claimed.

History: En. Sec. 2, Ch. 222, L. 1921.

3382. Marking—Right of action against trespassing stock. No person owning or possessing agricultural or grazing land, or patented mining claims, lying within said national forest reserves of this state, or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of herded sheep for trespasses committed by such sheep upon said land, and such shall be the rule regardless of whether the said sheep so trespassing strayed thereon of their own inclination and without being driven, or whether said sheep were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to.

History: En. Sec. 3, Ch. 222, L. 1921.

3383. Partition fences. Certain regulations relating to partition fences are found in sections 6778 to 6782 of the Civil Code.

Note.—New section recommended by code commissioner.

CHAPTER 246.

HERD DISTRICTS.

Section 3384. Herd Districts—Size and Proceedings for Creation of.
3385. Animals Prohibited From Running at Large in District.
3386. Trespassing Animals—Proceedings Respecting.
3387. Former Proceedings for the Formation of Herd Districts Validated.
3388. Rescue of Impounded Animals a Misdemeanor—Penalty.
3389. Unlawful Introduction of Livestock Into Herd District a Misdemeanor—Penalty.

3384. Herd districts—Size and proceedings for creation of. Herd districts may be created in any county in the state of Montana to contain fifty-four square miles or more, lying not less than three miles in width, outside of the incorporated cities, upon petition of owners or possessors of fifty-five per cent. of the land in such district, and providing twenty-five per cent. or more of the land in such district is in actual cultivation, and such petition shall designate the months of the year when herd district is effective, and upon presentation and filing of such petition, properly signed, giving outside boundaries and description of proposed district and the postoffice address of the signers thereto, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county, upon receipt thereof, shall set a date for hearing protests and verifying the signatures thereto, and shall give not less than twenty days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district, and should it appear to such county commissioners after such hearing that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the county commissioners must give notice by four weekly publications in some newspaper nearest the district of the creation of such districts, also stating period such districts will be in effect, and such districts shall not be in effect until thirty days have expired after the order; provided, that such herd districts may be abolished at any time upon proceedings as hereinbefore set forth for the establishment of such herd districts.

Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created, and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof.

Should the signature of lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest. And the board of county commissioners shall remove the name of lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

History: Sec. 2, Ch. 167, L. 1919.

Note.—Sections 3384 to 3389 were enacted as chapter 74, Laws of 1917, amended by chapter 167, Laws of 1919.

3385. Animals prohibited from running at large in district. All horses, mules, cattle, sheep, and goats are hereby prohibited from running at large within herd districts as defined in section 3384 or as defined in section 3387 of this code, except as may be provided in said petition.

History: En. Sec. 3, Ch. 167, L. 1919.

3386. Trespassing animals—Proceedings respecting. If any such animal or animals wrongfully enter upon premises within such district of any person, the owner or person in control of such animal or animals shall be liable for all damages sustained thereby to the party entitled thereto. The owner or occupant of the land upon which such wrongful entry is made may take into his possession such animal or animals and shall reasonably care for the same while in his possession, and may retain possession of said animal or animals, and shall have a lien and claim thereon as security for payment of such damages and the reasonable charges for the care of said animal or animals while in his possession. If the owner of said stock, or the person entitled to the possession thereof, can be found or is known to the person taking up said stock, it shall be his duty to notify said owner, owners, or persons in charge thereof in person, within forty-eight hours after taking possession thereof, by leaving a written notice at his usual place of residence with some member of his family over the age of fourteen years, describing said stock and stating the amount of damages claimed, and requiring him within forty-eight hours after receiving said notice to take the said property away, after making full payment of all damages and costs of trespassing animals. Upon demand, the owner or occupant of the land shall release and deliver possession of such stock to the owner or person entitled thereto, upon payment of such damages and charges, and if the parties cannot agree upon the amount of such damage and charges, the owner or person entitled to said stock shall issue a receipt to the owner or occupant of the land having possession of such stock, which receipt shall fully describe the animal or animals so that they may be at any time identified, and shall thereupon be entitled to the possession of such stock.

The owner or person so receiving possession of said stock shall not dispose of the same, but shall retain and hold the same in his possession as the agent and legal custodian thereof for the party entitled to such damages and charges. The party entitled to such damages or charges shall, within ten days after delivery of possession of such stock, commence an action in any court having jurisdiction, to recover such damages and charges, and summons in such action shall be immediately served. At any time after such action is commenced, the owner or person entitled to said stock to whom delivery of possession was made, may furnish and file a bond conditioned to pay the damages and charges, and upon the approval of said bond by the justice of the peace, if such action is commenced in a justice court, or by the judge or clerk, if the action is commenced in the district court, the lien and claim upon said stock shall thereupon be discharged.

If the owner or person entitled to said stock does not furnish such bond within ten days after the notice of the commencement of said action, an order may be issued in such action, authorizing and directing the constable or sheriff to take possession and hold such stock to satisfy any judgment that may be recovered in such action, and such stock, when so taken possession of by the officer, shall be held, treated, and sold the same as though seized under a writ of attachment.

The owner or person entitled to said stock may, in lieu of furnishing

a bond, deposit an amount of money sufficient to pay any judgment which may be recovered in such action, the amount to be determined by the justice or judge of the court.

If the owner or person entitled to said stock, after delivery of possession to him, without payment of damages and charges as herein provided, shall sell or dispose of said stock, or shall permit the same to be taken from his possession, or shall in any manner prevent the seizure of same by the constable or sheriff as herein provided, before the lien thereon is discharged, he shall be guilty of a misdemeanor, and, in addition thereto, shall be liable to the party entitled to such damages and charges in double the value of such stock. At the time of delivery of the possession of such stock to the owner or person entitled thereto, a written statement of the amount of damages and charges shall be furnished to the owner entitled to such stock by the person claiming such damages and charges.

If the owner or claimant of such stock is not known to the person taking up such stock, he shall give notice thereof within forty-eight hours, by posting a notice at the nearest postoffice and notifying the stock inspector of the district, which notice shall contain the number of animals, the brand and description thereof, together with the date of trespass.

When the ownership of such stock cannot be determined as provided by sections 3333 to 3337 of this code, said stock may be sold as provided therein, and from the proceeds thereof damages and costs shall be paid in the manner herein provided, with the stock inspector acting as agent of the owner.

History: En. Sec. 4, Ch. 167, L. 1919.

3387. Former proceedings for the formation of herd districts validated. All herd districts heretofore formed or attempted to have been formed under section 1, chapter 74 of the session laws of the fifteenth legislative assembly of the state of Montana, where the proceedings taken have complied with requirements of section 3384 of this code, shall be and are hereby declared to have been properly formed and valid, and said proceedings are hereby expressly validated, and such districts shall constitute herd districts, and be subject to all the provisions of this act and of law affecting said districts.

History: En. Sec. 5, Ch. 167, L. 1919.

3388. Rescue of impounded animals a misdemeanor—Penalty. Any person who takes or rescues any animal impounded as provided in section 3386 from the possession of the person in whose custody the same may be, without his consent, shall be guilty of a misdemeanor, and upon conviction therefor be subject to a fine of not more than one hundred dollars, or shall be confined in the county jail not more than sixty days, or both such fine and imprisonment.

History: En. Sec. 6, Ch. 167, L. 1919.

3389. Unlawful introduction of live stock into herd district a misdemeanor—Penalty. Any person or persons not the owner or person in charge of any livestock, who shall drive, put, place, or introduce any livestock into any herd district established under the provisions of this act, or who shall so place, move, or interfere with such livestock that

they will trespass on such herd district, shall be guilty of a misdemeanor, and upon conviction thereof be subject to a fine of not less than fifty dollars, or shall be confined in the county jail not less than sixty days, or both such fine and imprisonment, and shall be liable for all damages and costs occurring from such trespass; and for the purposes of this act each separate animal so moved, placed, or interfered with, shall constitute a separate offense.

History: En. Sec. 7, Ch. 167, L. 1919.

CHAPTER 247.

ANIMALS RUNNING AT LARGE.

Section 3390. Rams and He-Goats Not to Run at Large.
3391. Penalty.
3392. Liability to Civil Damages.
3393. Swine Running at Large.
3394. Penalties.
3395. Disposition of Fines.
3396. Ridgelings and Jackasses Running at Large.
3397. Stud Horses Running at Large, Filing Description.
3398. Taking Up and Castrating Animal.
3399. Duty of Person to Make Inquiry of Records—Notice to Owner.
3400. Penalty for Violation of Act.
3401. Certain Livestock Not to Run at Large in Municipalities.
3402. Punishment for Permitting Trespass of Livestock.
3403. Only Pure-Bred Bulls to Run at Large.
3404. Female-Bred Cattle, Pure-Bred Bull to Accompany.
3405. Penalty for Violation of Act.
3406. Taking Up and Castrating Bulls, Notice to Owner.

3390. Rams and he-goats not to run at large. It is unlawful for any owner or person having the management or control of any ram or he-goat to permit the same to run at large between the first day of August and the first day of December of each year.

History: En. Sec. 76, 5th Div. Comp Stat. 1887; re-en. Sec. 3060, Pol. C. 1895 re-en. Sec. 1881, Rev. C. 1907.

In an action for damages claimed to have been caused by defendant's neglect of duty imposed by this section and section 3392, plaintiff must plead nonobservance of the statute and make a case bringing the defendant within the liability created thereby. Ball Ranch Co. v. Hendrickson, 50 Mont. 220, 225, 146 Pac. 278.

Where simple negligence is relied on as a basis of recovery of damages caused by permitting rams to run at large, the plaintiff must prove, by a preponderance of the evidence, the negligence alleged, the defendant being held to the exercise of ordinary care only. Where, however, the damages are alleged to spring from non-compliance with the duty imposed by this section, disobedience in this respect constitutes negligence per se, and makes defendant liable, if the injury was proximately caused thereby. Ball Ranch Co. v. Hendrickson, 50 Mont. 220, 225, 146 Pac. 278.

Where rams or he-goats run at large without the tacit consent of the persons in control, or such persons make a reasonable effort to hinder or prevent them from running at large, no offense is committed and no liability is incurred, either under this section and the two succeeding sections, or in an action based upon simple negligence. Ball Ranch Co. v. Hendrickson, 50 Mont. 220, 228, 146 Pac. 278.

3391. Penalty. Any person violating the provisions of the preceding section is guilty of a misdemeanor, and on conviction thereof must be punished as provided in section 8837 of the Penal Code.

History: En. Sec. 3061, Pol. C. 1895; re-en. Sec. 1882, Rev. C. 1907.

Note.—Section 8837 was repealed by chapter 109, Laws of 1921.

Cited or applied as section 1882, Revised Codes, in Ball Ranch Co. v. Hendrickson, 50 Mont. 220, 228, 146 Pac. 278.

3392. Liability to civil damages. Any person damaged by rams or he-goats running at large during the time mentioned in section 3390 of this code may recover in a civil action any damages sustained thereby.

History: En. Sec. 3062, Pol. C. 1895; re-en. Sec. 1883, Rev. C. 1907.

Cited or applied as section 1883, Revised Codes, in Ball Ranch Co. v. Hendrickson, 50 Mont. 220, 225, 146 Pac. 278.

3393. Swine running at large. It shall be unlawful for any owner or owners of swine to permit the same to run at large.

History: En. Sec. 1165, Pen. C. 1895; re-en. Sec. 8838, Rev. C. 1907.

3394. Penalties. Any person or persons violating the preceding section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of ten dollars for the first offense and in the sum of twenty dollars for each subsequent offense and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction.

History: En. Sec 1166, Pen. C. 1895; re-en. Sec. 8839, Rev. C. 1907.

3395. Disposition of fines. All fines collected under the provisions of this act shall be paid into the county treasury for the use and benefit of the public schools.

History: En. Sec. 1167, Pen. C. 1895; re-en. Sec. 8840, Rev. C. 1907.

3396. Ridgelings and jackasses running at large. It shall be unlawful for any owner or owners of a ridgeling, or unaltered male mule or jackass over the age of eighteen months to permit the same to run at large.

History: En. Sec. 1, Ch. 125, L. 1917.

3397. Stud horses, running at large, filing description. It shall be unlawful for any owner or owners of a stud horse over the age of eighteen months to permit the same to run at large unless the owner or owners of such stud horse has first filed with the county clerk and recorder of the county where such stud horse is owned, a description in writing of said stud horse. The description so filed shall give the age, color and brand or brands and owner of said stud horse.

History: En. Sec. 2, Ch. 125, L. 1917.

3398. Taking up and castrating animal. Any person may take up any animal described in section 3396 of this code and if the same is not claimed within five days may castrate such animal at the expense of the owner or owners.

History: En. Sec. 3, Ch. 125, L. 1917.

3399. Duty of person to make inquiry of records—Notice to owner. Any person who takes up any animal described in section 3397 of this code shall make inquiry of the clerk and recorder of the county wherein such animal is taken up, and the county clerk and recorder of adjoining counties and the general recorder of marks and brands at Helena and said officers shall inform the person who makes such inquiry whether such animal is recorded or not, and shall notify the owner if known who may within five days after the receipt of said notice take possession of

said animal upon payment of costs not to exceed one dollar per day for time such animal is held. If ownership cannot be determined in the manner aforesaid then the person who takes up any animal described in section 3397 of this code, may castrate said animal.

History: En. Sec. 4, Ch. 125, L. 1917.

3400. Penalty for violation of act. Any person or persons violating any of the provisions of this act shall be punishable by a fine not exceeding fifty dollars and shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof.

History: En. Sec. 5, Ch. 125, L. 1917.

3401. Certain livestock not to run at large in municipalities. It is hereby provided that livestock, consisting of horses, cattle, mules, sheep, goats, and swine or any such animals shall not be allowed to run at large in any incorporated city, or in any incorporated town.

History: En. Sec. 1, Ch. 65, L. 1917.

3402. Punishment for permitting trespass of livestock. Any person owning livestock or having in charge any horses, mules, cattle, sheep, goats, or swine or any such animals who wilfully and unlawfully permit any such livestock to trespass, in violation of any of the provisions of this act, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be punished as such as provided by law.

History: En. Sec. 2, Ch. 65, L. 1917.

3403. Only pure-bred bulls to run at large. It shall be unlawful for any person or persons, firm, company, or corporation to turn upon, or allow to run at large on the public highways, open range, or national forest reserve within the state of Montana any bull other than a pure-bred bull of a recognized beef type.

History: En. Sec. 1, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919.

3404. Female bred cattle, pure-bred bull to accompany. Any person or persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon said range or national forest reserve one pure-bred bull of a recognized beef type, not less than fifteen months nor more than eight years of age, for every thirty head of female breeding cattle, pastured upon such range or national forest reserve; provided, however, that any two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed thirty head.

History: En. Sec. 2, Ch. 42, L. 1919.

3405. Penalty for violation of act. Any person or persons, firm, company, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and punishable by a fine of not less than twenty-five dollars nor more than two hundred fifty dollars.

History: En. Sec. 3, Ch. 62, L. 1917; amd. Sec. 3, Ch. 42, L. 1919.

3406. Taking up and castrating bulls, notice to owner. Any bull found running at large on the open range or national forest reserve in violation of the provisions of this act may be caught and castrated by any person finding such a bull; provided, any pure-bred dairy bull found running at large may be taken up and party holding bull shall notify the owner in person, and if the owner of such bull does not take possession of said bull within twenty-four hours after being notified, party holding such bull may castrate him.

History: En. Sec. 2, Ch. 62, L. 1917; amd. Sec. 4, Ch. 42, L. 1919.

CHAPTER 248.

BOUNTIES FOR KILLING WILD ANIMALS.

Section 3407. Bounties for Wolves, Coyotes, and Mountain Lions.
3408. Claimant Shall Exhibit Skin.
3409. Sheriff and Deputies to Act as Bounty Inspectors—Claims for Bounties.
3410. Bounty Claims and Certificates to Be Filed With Livestock Commission.
3411. Investigation and Indorsement of Bounty Claims and Certificates—Notice of Disapproval.
3412. Delivery of Claims and Certificates to Board of Examiners.
3413. Indorsement by Board of Examiners—Warrants.
3414. State Bounty Fund—Creation.
3415. Application of Surplus Funds.
3416. Perjury and Forgery—Penalty.
3417. Penalty for Fraudulent Claims.

3407. Bounties for wolves, coyotes, and mountain lions. There shall be paid from the bounty funds of the state for the killing of wild animals inimical to the stock industry the following bounties: For each grown wolf, fifteen dollars; for each coyote, two dollars and fifty cents; for each wolf pup, two dollars and fifty cents; for each coyote pup, two dollars and fifty cents; for each mountain lion, ten dollars.

History: Ap. p. Sec. 3070, Pol. C. 1895; amd. Sec. 1, p. 100, L. 1899; amd. Sec. 1, p. 129, L. 1901; amd. Sec. 2, Ch. 94, L. 1903; amd. Sec. 1, Ch. 49, L. 1905; re-en. Sec. 1904, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1911; amd. Sec. 1, Ch. 59, L. 1917.

Cited or applied as section 3070, Political Code, before amendment, in In re Terrett, 34 Mont. 325, 331, 86 Pac. 266.

3408. Claimant shall exhibit skin. Any person killing any of the aforesaid animals, except mountain lions, to obtain bounty thereon, shall, within sixty days of the date of the killing, exhibit the skin or skins of the said animal or animals, including the tail and the skin from the entire head, including the ears thereof, to the bounty inspector nearest to the locality in which the animal or animals were killed; and shall, at the same time, file with the bounty inspector, as hereinafter provided, an affidavit setting forth that he killed the animal or animals from which the skin or skins were taken; that the same was killed nearer to, or if more than one hide is presented, that the greater number were killed nearer to the residence of the said bounty inspector to which the same was presented, than to any other bounty inspector, and also state the county or counties in which said animals were killed; and every bounty inspector appointed under the provisions of this act shall be empowered to administer oaths to any and all persons making any affidavit as aforesaid; provided, however, that any person killing any mountain lion, to

obtain bounty thereon, shall present the same to a bounty inspector as provided in this section for wolves and coyotes, except that in addition to the requirements of this section the skins of mountain lions shall also contain the entire skin of the lower jaw, which shall be severed by the bounty inspector and thereafter treated in the same manner as scalps of wolves and coyotes herein provided.

History: En. Sec. 2, Ch. 49, L. 1905; re-en. Sec. 1905, Rev. C. 1907.

3409. Sheriff and deputies to act as bounty inspectors—Claims for bounties. It shall be the duty of the sheriff of any county in this state, and of all under-sheriffs and deputy sheriffs located at the county seat, but not elsewhere, to receive and examine all skins and pelts presented for bounty within their respective counties; the said sheriff shall receive ten cents for each skin examined, said amount to be paid by the owner of the skin. Each sheriff, under-sheriff, and deputy sheriff shall, to prevent fraud, minutely examine each skin presented, and should such examination disclose that the scalp and ears with the skin from the entire head of such animal or animals have not been severed, punched, patched, or in any manner marked, he shall there, in the presence of the person presenting such skin, mark such skin by severing the skin from the head, including the ears, and then redeliver the skin or skins to the person presenting the same, and shall require the following affidavit from the claimant:

Bounty Claim.

State of Montana, } ss. Affidavit of Claimant.
County of ..... }

....., whose postoffice address is....., being first duly sworn, deposes and says: That he killed or caused to be killed the animal.....from which the skin.....now here presented to....., the sheriff or deputy sheriff in and for said county of ....., was taken; that such an animal was killed within the bounds of the county of.....within the ninety days last past, and that the same or the greater number of them were killed nearer to the residence of said sheriff or deputy sheriff than to the residence of any other sheriff; that his claim is made for bounty pursuant to law for ..... (.....) and ..... (.....) actually killed or caused to be killed by affiant as aforesaid; and that all blanks in this affidavit have been filled out by affiant in his own handwriting, or that because of affiant's inability to write, such blanks were filled out by ....., a person other than the sheriff or deputy sheriff, at the request of said affiant; and that such person so acting for affiant, in filling out the blanks has signed his name hereto at affiant's request, below the name of affiant, for the purpose of identification of this affidavit, as by law required.

Subscribed and sworn to before me this.....day of....., 191...

.....

.....Sheriff .....County ....., Montana.

And shall require the written statement of one resident taxpayer residing in the vicinity in which such animal or animals were killed,

setting forth that he is a resident taxpayer and taxpayer on livestock, giving his postoffice address and stating that he is personally acquainted with the person presenting the skin or skins, and to his knowledge, information, and belief, said person did kill or cause to be killed the animal or animals from which the skin or skins were taken, within ninety days preceding the offering of such skin for a bounty to the sheriff, under-sheriff, or deputy sheriff to which the same is presented; and he shall at the same time make out and deliver to said person a certificate addressed to the county clerk of his county, and immediately deliver to said county clerk a duplicate thereof, showing the date, number, and kind of skins so marked by such severing, and the name of the person presenting the same; also the fact of the filing of the written statement of a taxpayer heretofore required, and the examination made as required, and said certificate shall be duly signed by him in his official capacity; provided, that when any doubt shall exist as to the kind of skin or skins presented, whether wolf or coyote, the certificate shall be issued for the lesser bounty; and each sheriff shall keep a record in a bound book of all the skins so marked and severed, showing the date, number, and kinds, and the names of the persons presenting the same, which book shall be a book of official record; and the sheriff, under-sheriff, or deputy sheriff shall immediately string upon a wire all of the said scalps, including the ears thereof as severed by him, and securely seal ends of said wire with a lead seal by means of a punch, both to be furnished by the livestock commission, each punch to contain a letter of the alphabet, and no two punches in the same county to contain the same letter, numbering seal with a number corresponding with the number of bounty certificate issued for the skin or skins contained thereon, together with his letter; all wolf, coyote, pup wolf, and pup coyote heads to be strung on separate wires respectively, and so noted on said certificate the number of heads on said wire. Neither the sheriff, under-sheriff, nor deputy sheriff shall perform any duties under the provisions of this act except at the county seat.

Wilfully making a false certificate or written statement in any material portion thereof by any taxpayer as herein provided shall be a felony, punishable the same as the crime of perjury. The sheriff, under-sheriff, or deputy sheriff is not authorized to examine any skin or issue any certificate except on the first ten days of each month; and any examination made or certificate issued on any other day is void. The sheriff shall, not later than the fifteenth of each month, render to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate, the kind and number of the skins so presented, as to each and every certificate which he has issued during said month. The county clerk shall, upon the receipt of each said certificate, file the same in the order in which they are received, and safely keep them until the arrival of the skin or skins mentioned in such certificate, properly sealed as hereinbefore provided; and upon the receipt of said skin or skins so sealed he shall call to his assistance either the county treasurer or in his absence, the clerk of the district court, who, being present, shall both, in order to prevent fraud, minutely examine each scalp strung upon each wire; and should such examination disclose

that the scalps, as heretofore specified, of such animal or animals, agree with the number and kind of scalps or lower jaw of mountain lion mentioned in the said certificate, the county clerk shall thereupon, in the presence of said treasurer or clerk of the district court, destroy said scalps, without removing same from said wire, by fire; and said county clerk shall then make out and deliver to the person named in said certificate a second certificate showing the same statement of facts as contained in the certificate of the sheriff, under-sheriff, or deputy sheriff, with the additional statement of the examination so made by him, and that he found said scalps to agree with the number and kind mentioned in the certificate of said sheriff, under-sheriff, or deputy sheriff, and so stated therein said certificate. In no case should a bounty certificate be issued by the county clerk for more scalps than are actually received and counted by him; and the county clerk shall receive for each scalp, or mountain lion lower jaw, accounted for by him, the sum of five cents, to be paid quarterly by the treasurer out of the bounty fund. The county clerk shall keep a record in a bound book of all certificates so received and issued, showing the date and description of the number and kind of hides, and the names of the persons presenting the same, which book shall be an official record.

History: En. Sec. 3, Ch. 49, L. 1905; re-en. Sec. 1906, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1913.

3410. Bounty claims and certificates to be filed with livestock commission. All bounty claims and certificates issued by the county clerks and recorders of the several counties of this state under the provisions of section 3409 of this code shall be filed in the office of the livestock commission and registered in a book provided for that purpose.

History: En. Sec. 1, Ch. 98, L. 1919.

3411. Investigation and indorsement of bounty claims and certificates—Notice of disapproval. It shall be the duty of the livestock commission to examine into and investigate every such bounty claim and certificate filed with such commission, and in making such examination and investigation, the commission may require the holder of any such certificate or claim to furnish the commission with such additional proof or evidence with reference thereto as the commission may deem necessary and proper, and such evidence may be either oral or documentary as required by the commission. The livestock commission shall, after making such examination and investigation, indorse on such certificate or claim its approval or disapproval thereof, and if the same or any part thereof be disapproved, such indorsement shall state the reasons for such disapproval. If any such certificate or claim be disapproved by the commission, either in whole or in part, the commission shall immediately notify the holder thereof of the action of the commission, and of the reasons therefor, and the date when said certificate or claim will be presented to the state board of examiners for its action thereon.

History: En. Sec. 2, Ch. 98, L. 1919.

3412. Delivery of claims and certificates to board of examiners. The livestock commission shall, after such examination and investigation has

been completed and the proper indorsement has been made on such certificate or claim, deliver the same to the state board of examiners for allowance or disallowance.

History: En. Sec. 3, Ch. 98, L. 1919.

3413. Indorsement by board of examiners—Warrants. If the state board of examiners approve and allow any such certificate or claim, they must indorse thereon over their signatures, "Approved for the sum of .....dollars" and transmit the same to the office of the state auditor, and the auditor must draw his warrant on the state bounty fund for the amount so approved and allowed, in favor of the claimant, or his assigns, in the order in which the same was approved. If there be insufficient funds in the state bounty fund to pay any warrant, it must be registered and thereafter paid in the order of its registration, and such warrant shall bear interest at the rate of four per cent. per annum from the date of its registration until called in for payment.

History: En. Sec. 4, Ch. 98, L. 1919.

3414. State bounty fund—Creation. For the purpose of providing for the payment of bounty claims there is hereby created a fund to be known as the state bounty fund which shall consist of five per cent. of all license money collected by the several county treasurers of the state and said money shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the state bounty fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921.

Cited or applied as section 3075, Political Code, in State v. Camp Sing, 18 Mont. 128, 129, 44 Pac. 516, 56 Am. St. Rep. 551, 32 L. R. A. 635.

Imposition of taxes for bounties, see note in 16 A. S. R. 369.

Right to use public money to pay bounties, see note in 14 L. R. A. 476.

3415. Application of surplus funds. If at the end of any fiscal year there shall be a surplus of said bounty fund, it shall be the duty of the state treasurer, and he is hereby authorized to apply such surplus on the payment of warrants on outstanding bounty certificates, on the order of the state board of examiners.

History: En. Sec. 3077, Pol. C. 1895; re-en. Sec. 1910, Rev. C. 1907.

3416. Perjury and forgery—Penalty. Any person who shall falsely make, alter, forge, or counterfeit any of said certificates or orders shall be deemed guilty of a forgery, and any person who shall swear falsely to any affidavit provided for by this act, or procure the same to be done by another, with the intent of obtaining any one of said certificates or orders, shall be deemed guilty of perjury, and any person convicted of any of the offenses declared in this section shall be punished by imprisonment in the state's prison for a term of not less than one year nor more than ten years.

History: En. Sec. 3078, Pol. C. 1895; re-en. Sec. 1911, Rev. C. 1907.

The crime of forgery denounced by this section is purely statutory, and it is not necessary to allege in the information extrinsic facts to show wherein or whereby a certificate might apparently be of legal efficacy, or the foundation of a legal liability. In re Terrett, 34 Mont. 325, 335, 86 Pac. 266.

The offense of forgery charged to have been committed by a bounty inspector in falsely making a bounty certificate is not

committed by making the false statements of fact in the certificate, but by making the certificate when certain conditions precedent to its issuance, with the fulfilment of which he is charged, have not been performed. In re Terrett, 34 Mont. 325, 334, 86 Pac. 266. See, also, In re Farrell, 36 Mont. 254, 266, 92 Pac. 785.

Cited or applied as section 3078, Political Code, in State v. Newman, 34 Mont. 434, 436, 87 Pac. 462.

3417. Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with intent to obtain the bounty on same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided, or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same is collected, or can be collected, shall be given to the informer, and the balance be converted into the state bounty fund.

History: En. Sec. 5, p. 102, L. 1899; re-en. Sec. 1912, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1921.

Cited or applied as section 3079, Political Code, before amendment, in In re Terrett, 34 Mont. 325, 331, 86 Pac. 266.

CHAPTER 249.

REGULATION OF QUARTZ MINING INDUSTRY.

Section 3418. Inspectors of Quartz Mines—Appointment, Term, and Compensation.
3419. Duties of Mine Inspector—Annual Inspection.
3420. Duty to Inspect Mine Upon Complaint.
3421. Notice to Owner of Defects.
3422. Annual Inspection—Report.
3423. Investigation After Accidents.
3424. Report.
3425. To What Mines Act is Applicable.
3426. Penalties.
3427. Safety Apparatus Must Be Used in Mines.
3428. Penalties.
3429. Code of Signals in Mines.
3430. Penalties.
3431. Fines Paid Into School Fund.
3432. Ventilation of Quartz Mines, Duty of Operator to Furnish.
3433. Toilet Places in Mines—Underground Stables.
3434. Protections and Guard-rails in Case of Shafts and Underground Openings.
3435. Violation of Act a Misdemeanor.

3418. Inspectors of quartz mines—Appointment, term, and compensation. The industrial accident board shall appoint not to exceed two inspectors of quartz mines and shall prescribe their term of office and fix their compensation.

History: En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921.

Statutory provisions for protection of workmen in mines, see note in 25 L. R. A. 848.

Effect of partial invalidity of statutes relating to mines and minerals, see note in Ann. Cas. 1916D, 70.

3419. Duties of mine inspector—Annual inspection. It is the duty of the inspectors of quartz mines to visit every mine in the state once every year and inspect its workings, timbering, ventilation, means of ingress and egress, and the means adopted and in use for the preservation of the lives and safety of the miners employed therein. For this purpose the inspectors at all times shall have access to any mine and all parts thereof. All mine owners, lessees, operators, or superintendents must render such assistance as may be necessary to enable the inspectors to make the examination. When upon such inspection any mine or portion thereof is found to be in an unsafe condition, the inspector shall at once serve a notice in writing upon the owner, lessor, lessee, agent, manager, or superintendent thereof, setting forth the nature of the defects which render such mine unsafe, and the point or place in such mine where such defects exist, and requiring the repairs necessary to remedy such defects to be made within a specified time, and if in his judgment the circumstances so require, he shall forbid the operation of such mine or portion thereof as has been declared unsafe, save and except for the purpose of making the repairs necessary for the purpose of remedying such defects and making such mine safe for the laborers employed therein.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907.

Note.—In this and succeeding sections the words "inspector of mines" have been changed to "inspectors of quartz mines" to conform to later enactments.

3420. Duty to inspect mine upon complaint. Whenever an inspector of mines receives a complaint in writing signed by one or more parties, setting forth that the mine in which he or they are working is dangerous in any respect, he must in person visit and examine such mine. Every complaint must set forth the nature of the danger existing at the mine, and the time the cause of such danger was first observed.

History: En. Sec. 2, Ch. 98, L. 1903; re-en. Sec. 1714, Rev. C. 1907.

3421. Notice to owner of defects. After such complaint has been received by an inspector of mines, he must, as soon as possible, visit such mine; and if from such examination he ascertains that the mine is from any cause in a dangerous condition, he must at once notify the owner, lessor, or agent thereof, such notice to be in writing, and to be served by copy on such owner, lessor, lessee, or agent, in the same manner as provided by law for the serving of legal process, and the notice must state fully and in detail in what particular manner such mine is dangerous or insecure, and require all necessary changes to be made without delay, for the purpose of making such mine safe for the laborers employed therein; and in any criminal or civil procedure at law against the party or parties so notified, on account of loss of life or bodily injury sustained by an employee subsequent to such notice and in consequence of a neglect to obey the inspectors' requirements, a certified copy of the notice served by the inspector is prima-facie evidence of the gross negligence of the party or parties so complained of. If the owner, lessor, lessee, or agent of any such mine shall neglect or refuse to obey or comply with the instructions of the inspector as contained in such notice, or shall neglect or refuse to cause the repairs necessary to remedy such defect to be made

within a reasonable time, or shall refuse to cause work to be stopped when so ordered, such party or parties so refusing may be prosecuted criminally by the inspector.

History: En. Sec. 3, Ch. 98, L. 1903; re-en. Sec. 1715, Rev. C. 1907.

3422. Annual inspection—Report. It is the duty of the inspectors of mines, at least once in each year, to visit each mining county in the state, and examine as many of the mines in the different counties as practicable, and make such recommendations as in their judgment are necessary to insure the safety of the workmen employed therein; and whenever, from his examination an inspector finds any mine to be in an unsafe condition, he shall at once serve a notice upon the owner, lessor, lessee, or agent thereof; and if any such owner, lessor, lessee, or agent fails to comply with such notice, he may prosecute them or any of them as provided in the next preceding section.

History: En. Sec. 4, Ch. 98, L. 1903; re-en. Sec. 1716, Rev. C. 1907.

3423. Investigation after accidents. Whenever a serious or fatal accident occurs in any mine, it is the duty of the person in charge thereof to immediately notify the industrial accident board, and upon receiving such notice an inspector must at once repair to the place of the accident and investigate fully the cause of such accident, and whenever possible to do so, the inspector shall be present at the coroner's inquest held over the remains of the person or persons killed by such accident and testify as to the cause thereof and state whether, in his opinion, the accident was due to the negligence or mismanagement of the owner or person in charge. If the inspector cannot be immediately present in case of a fatal or serious accident occurring, it is the duty of the owner or person in charge of the mine to have written statements made by those witnessing the same, and duly sworn to. In case no person was present at the time of the accident, then the verified statement of those first present after the accident must be taken, and such statement must be given to the inspector. If after making such investigation the inspector deems the facts warrant it, he may prosecute criminally the owner, lessor, lessee, or agent of the mine in which such accident occurred.

History: En. Sec. 5, Ch. 98, L. 1903; re-en. Sec. 1717, Rev. C. 1907.

Note.—In this and other sections reference to a deputy inspector has been omitted to conform to later enactments.

3424. Report. The industrial accident board must make an annual report to the governor on the first Monday of November, and in the report must state all the accidents that have occurred in the mines of the state which have occasioned serious injury or resulted fatally, together with the nature and cause of such accidents. Such report must also contain statistical and other information which may tend to promote the development of the mineral resources of the state, and must set forth the result of the inspector's labors.

History: En. Sec. 588, Pol. C. 1895; re-en. Sec. 1719, Rev. C. 1907.

3425. To what mines act is applicable. The provisions of sections 3419 to 3431 of this chapter do not apply to mines in which less than five men are employed. But all owners, lessors, lessees, agents, or man-

agers operating any metalliferous mine in this state in which five or more men are employed shall report the same to the inspector of mines, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, postoffice address, and number of men employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C, 1907.

3426. Penalties. All violations of the provisions of sections 3419 to 3431 of this chapter are provided for in section 11280 of the Penal Code.

History: En. Sec. 590, Pol. C. 1895; re-en. Sec. 1721, Rev. C. 1907.

3427. Safety apparatus must be used in mines. It is unlawful for any person to sink or work through any vertical shaft, where mining cages are used, at a greater depth than two hundred feet, unless the shaft is provided with an iron bonneted safety-cage to be used in lowering and hoisting employees or any other persons. The safety apparatus, whether consisting of eccentrics, springs, or other device, must be securely fastened to the cage, and of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet must be made of boiler sheet-iron of good quality, at least three-sixteenths of an inch in thickness, and must cover the top of the cage in such manner as to afford the greatest protection to life and limb, from any debris or anything falling down the shaft.

History: En. Sec. 3650, Pol. C. 1895; re-en. Sec. 1722, Rev. C. 1907.

Care required of mine owner for protection of miners, see note in 87 A. S. R. 559.

What is "working place" under statute requiring miner to keep working place safe, see note in Ann. Cas. 1915A, 1231.

3428. Penalties. The penalty for violating any of the provisions of the preceding section is provided in section 11268 of the Penal Code.

History: En. Sec. 3651, Pol. C. 1895; re-en. Sec. 1723, Rev. C. 1907.

3429. Code of signals in mines. It is made the duty of the inspector of mines of Montana, and he is hereby required to prepare a complete code of signals for use in all mines in this state, worked through a shaft of seventy-five feet or more in depth, and employing ten or more men, and cause the same to be made known to each owner or operator of a mine in Montana by printed circular instructions, to the end that a uniform code of mine signals may prevail. The said inspector of mines of Montana may add to or change such code of signals as circumstances may require, but no change of signals shall go into effect until a time specified by him, not less than sixty days nor more than ninety days from the time such change shall be ordered by him; provided, that the code of signals first prepared by him shall be used in all said shaft mines from and after June 1, 1895.

History: En. Sec. 3652, Pol. C. 1895; re-en. Sec. 1724, Rev. C. 1907.

Cited or applied as section 1724, Revised Codes, in Daniels v. Granite Bi-Metallic Con. Mining Co., 56 Mont. 284, 184 Pac. 836.

3430. Penalties. Any owner or operator of a mine who shall refuse or neglect to cause the signals provided for in the preceding section to be used in his mine, to the exclusion of all other signals, shall be

deemed guilty of a misdemeanor, and upon conviction of such refusal or neglect shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days or more than ninety days, in the discretion of the court, for each and every offense.

History: En. Sec. 3653, Pol. C. 1895; re-en. Sec. 1725, Rev. C. 1907.

3431. Fines paid into school fund. All fines which may be collected under the provisions of this act shall be paid into and form a portion of the public school fund in the county in which conviction takes place.

History: En. Sec. 3634, Pol. C. 1895; re-en. Sec. 1726, Rev. C. 1907.

3432. Ventilation of quartz mines—Duty of operator to furnish. It shall be the duty of all mining operators of any and all quartz mines in this state, when working to a greater depth than three hundred feet, or any general manager, superintendent, or foreman acting on behalf of the above, whether said mining property is operated by tunnel, shaft, or other opening, to provide where necessary, feasible, and practicable, a suitable and practical method for ventilating said mine, either by separate shaft or other mine working of suitable size or capacity, which said ventilating system shall provide for the delivery of air to all portions of said mine that are being operated, and also provide reasonable means for carrying away of noxious fumes, gas, or smoke.

History: En. Sec. 1, Ch. 72, L. 1911.

3433. Toilet places in mines—Underground stables. It shall be the duty of all mining operators to provide suitable and practicable toilet arrangements, or places which may be used for toilet purposes, for the use of employees in mines. Such toilets or sanitary arrangements may consist of a properly constructed toilet-car or receptacle, where it is practicable and feasible to use the same, that may be taken into the different working levels of a mine, and when such cars or receptacles are used they shall be sent to the surface each day for proper cleaning or disinfecting. Where proper toilet apparatus is not provided, the employee shall be allowed to go to the surface or other suitable place, which place shall be kept in a reasonably sanitary condition. Underground stables shall be cleaned and droppings in waste taken to the surface each day. This section applies to mines working thirty men or over.

History: En. Sec. 2, Ch. 72, L. 1911.

Statute requiring mine owner or operator to furnish wash-rooms or similar conveniences for employees, see notes in Ann. Cas. 1915D, 991; Ann. Cas. 1918E, 622; L. R. A. 1915B, 420.

3434. Protections and guard-rails in case of shafts and underground openings. Underground workings consisting of chutes, manways, and winzes, or any opening kept for ventilating purposes, or for the removal of ore or waste material, shall when necessary be protected by guard-rails, or by a suitable cover known as a grizzly, made of good, substantial timbers or metal bars. Shafts at stations shall be protected by guard-rails at every level. In vertical manways used by employees exclusively for traveling purposes, in addition to proper ladders there shall be suitable landings, placed not to exceed thirty feet apart, and so far as feasible

and practicable all such manways or air-courses used as an escape for men must be kept free from all obstructions.

History: En. Sec. 3, Ch. 72, L. 1911.

Liability of mine owner or operator for injuries resulting from unguarded excavation, see note in Ann. Cas. 1916E, 484.

3435. Violation of act a misdemeanor. Every mining operator, whether person or corporation, failing to comply with any of the provisions of this act, or any general manager, superintendent, or foreman acting on behalf of such mining operator, and failing to comply with any of the provisions of this act, shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 72, L. 1911.

CHAPTER 250.

SAMPLING AND ASSAYING ORE.

Section 3436. Purchasers and Samplers of Ore to Maintain Sample-Room.
3437. Samples of Fifty Pounds per Ton to Be Retained Until Settlement.
3438. Penalty for Commingling Foreign Substances With Ore.
3439. Umpire Assayers—Appointment, Qualifications, and Duties.
3440. Notice of Selection.
3441. Violation of Act a Misdemeanor—Penalty.

3436. Purchasers and samplers of ore to maintain sample-room. Any person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal, shall maintain a sampling-room or house to which the ore shippers, their agents, or representatives, shall have access at all times during the sampling of ores, or while the same is being carried on, and in which shall be samples of all ores he or they may buy or smelt.

History : En. Sec. 1, Ch. 54, L. 1909.

3437. Samples of fifty pounds per ton to be retained until settlement. Every such person, association, or corporation which shall buy any ores upon any agreement to pay for the same in amount dependent upon the metallic contents of the same, or smelt any ore, shall retain from the pulp or crushed ore, as the same is sampled, an amount selected regularly and at equal intervals from any lot of ore so brought or to be smelted, a quantity not less than fifty pounds out of each ton of such ore, and shall keep the same separate and apart from any other ores or pulp for a period of thirty days, or until full settlement is made and accepted by the shipper; and until such settlement is made and accepted, the ore shipper, his agents, or representatives, shall be entitled to take from the quantity so retained any part thereof for the purpose of sampling or assaying the same; provided, that the value of any part so taken by such owner or shipper may be deducted from the total value of the ore delivered by him.

History: En. Sec. 2, Ch. 54, L. 1909.

3438. Penalty for commingling foreign substances with ore. Any person, or persons, corporation, association or copartnership who shall, with intent to defraud, in any manner introduce any foreign substance into any ore, or commingle any foreign substance with any ore intended for

sale in any smelter or which any person, association, or corporation shall have undertaken for hire to smelt; or into any sample retained for tests or assays, as in the next preceding section provided, in any manner whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than sixty days nor more than twelve months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 54, L. 1909; amd. Sec. 1, Ch. 44, L. 1921.

3439. Umpire assayers—Appointment, qualifications and duties. Any person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt the same, whether for themselves or as the agent or agents for other purchasers, shall, on or before the tenth day of April, 1909, choose an assayer or assayers who, for at least one year prior to the passage of this act, shall have operated an assay office or chemical laboratory within this state, and to such selected assayer or assayers shall be submitted all samples of ore, sampled by such person, association, or corporation, over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of such ore. Said chosen assayer or assayers shall be known as the umpire or umpires for such person, association, or corporation.

History: En. Sec. 1, Ch. 115, L. 1909.

3440. Notice of selection. Upon the selection of such assayer or assayers, who shall be actively engaged in the assaying business in this state, every person, association, or corporation selecting the same shall, within ten days after such choice is made, post a notice of such choice, in which shall appear the name of the assayer or assayers so selected, in a conspicuous place with and without the room or house where the sampling of ores is carried on by such person, association, or corporation.

History: En. Sec. 2, Ch. 115, L. 1909.

3441. Violation of act a misdemeanor—Penalty. Every person, association, or corporation engaged in the sampling of ores belonging to others, who fails to comply with the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars nor less than five hundred dollars.

History: En. Sec. 3, Ch. 115, L. 1909.

CHAPTER 251.

PAYMENT FOR CONSIGNMENTS OF ORE—PURCHASERS FROM LEASED MINES.

Section 3442. Time for Settlement for Ores Purchased by Smelters, etc.
3443. Violation of Act a Misdemeanor—Penalty.
3444. Purchasers of Ore from Leased Mines to Furnish Statement.
3445. Shipper—Penalty for Violation.
3446. Smelters—Penalty for Violation.

3442. Time for settlement for ores purchased by smelters, etc. Every person, association, company, or corporation, engaged within this state in purchasing ores, minerals, or metals from, or in smelting, milling, or otherwise reducing or preparing the same for market for any other per-

son, or persons, association, company, or corporation, shall, within twenty days after any such ores, minerals, or metals shall have arrived at his, their, or its smelter, mill, reduction works, yards, or other place for receiving such ores, minerals, or metals, make full settlement with and payment of the amount due to the consignor, or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction. Every such person, association, company, or corporation, to whom or to which any such ores, minerals, or metals have heretofore been shipped and delivered, and for which settlement and payments have not been made or had, shall, within twenty days after this act takes effect, make full settlements and payments therefor to, and with the consignor or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction.

History: En. Sec. 1, Ch. 37, L. 1911.

3443. Violation of act a misdemeanor—Penalty. Any person, association, company, or corporation, violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars, nor less than five hundred dollars.

History: En. Sec. 2, Ch. 37, L. 1911.

3444. Purchasers of ore from leased mines to furnish statement. All persons or corporations buying or treating ores from leased mines or mining claims, shall furnish both to the lessor and lessee, or lessors and lessees, of such mines or mining claims, a true and correct copy of the statement of returns of ores from such sale or shipment, such statement to show both the gross and net proceeds derived from such sale or shipment of ores. Upon shipment of any such ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating same the name, or names, and postoffice address of the lessor or lessors, lessee or lessees, interested in such shipment of ores, and within seven days after receipt of such statement from such sampling works or smelter the said shipper shall make settlement with such lessor or lessors, lessee or lessees, for such shipment or sale of ores, based upon such said statement received by the parties from such sampling works or smelter.

History: En. Sec. 1, Ch. 79, L. 1921.

3445. Shipper—Penalty for violation. Any person or corporation who, as such shipper, shall violate the provisions of the preceding section shall be liable to the lessor or lessors, lessee or lessees, for ten per cent. of the net returns from such shipment, or sale, of ores referred to in said section, in addition to the value of the interest of the lessor or lessors, lessee or lessees in said shipment, the same to be recovered in an action in any court of competent jurisdiction.

History: En. Sec. 2, Ch. 79, L. 1921.

3446. Smelters—Penalty for violation. Any person or corporation operating any sampling works, or smelter, within this state who shall

violate any of the provisions of section 3444 of this code shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than fifty dollars nor more than one hundred dollars.

History: En. Sec. 3, Ch. 79, L. 1921.

CHAPTER 252.

REGULATION OF COAL-MINING INDUSTRY.

Section 3447. Title of Act.
3448. Coal Mine Inspector—Appointment, Compensation and Term.
3449. Qualifications of Inspector.
3450. Powers and Duties of Inspector.
3451. Inspector Must Not Be Employed by Companies.
3452. Instruments to Be Furnished to Inspector.
3453. Inspector to Post Statement of Mine at Entrance.
3454. Inspector Ex-Officio Sealer of Weights and Measures.
3455. Standard Test Weights to Be Furnished to Inspector.
3456. Refusal of Mine Operator to Furnish Facilities for Examination.
3457. Investigation of Charges for Neglect of Duty.
3458. Removal of Coal-Mine Inspector—Procedure—Costs.
3459. Board of Examiners of Applicants for Coal-Mine Inspector—Appointment.
3460. Examination of Applicants—Scope—Certificates of Competency—Revocation.
3461. Applications for Examinations—How Made.
3462. Selection by Governor.
3463. Oath and Meetings of Examining Board—Basing Per Cent.
3464. Examination of Candidates.
3465. Compensation of Board of Examiners—Expenses.
3466. Coal Mine Inspector—Appointment and Term.
3467. Board of Examiners of Coal-Mine Inspectors.
3468. Examining Board May Adopt Rules.
3469. Vacancies in Examining Board—How Filled.
3470. Board for Examination of Applicants for Position of Mine Foreman, etc.
3471. Scope of Examination.
3472. Certificates of Qualification, When and How Granted.
3473. Qualifications for Mine Examiners.
3474. Examining Board Shall Grant Certificates.
3475. Certificates May Be Issued to Those Holding Proper Certificates.
3476. Applications for Examination—How Made—Fees.
3477. Compensation of Examining Board.
3478. Violations.
3479. Necessary to Have Maps of Coal Mines.
3480. Underground Survey.
3481. Map for Every Seam.
3482. Map of the Surface.
3483. Copies of Maps for State Coal-Mine Inspector.
3484. Annual Surveys.
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3486. Mine Operators to Furnish Wash Houses for Employees.
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3489. General Equipment of Shafts.
3490. Passageway Around the Bottom of Shafts.
3491. Gates at the Top of Shafts.
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3493. Unlawful to Employ More Than Ten Men.
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3497. Stairway or Cages in Escapement Shaft.
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3499. Weekly Inspection of Escapements.
3500. Communication with Adjacent Mines.
3501. Ventilation of Mines.

3502. Pressure-Gauges.
3503. Number of Persons Permitted to Work in Same Air Current.
3504. Cross-cuts and Brattices for Ventilation.
3505. Operation of Ventilating Fans—Furnaces, etc.
3506. Overcasts, Air-Bridges and Doors—How to Be Constructed.
3507. Underground Stables.
3508. Precautions When Approaching Abandoned Workings.
3509. Timber and Supplies.
3510. Hauling Roads.
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3513. Examination by Foreman.
3514. Removal of Combustible Matter.
3515. Mine Foreman and His Duties.
3516. Mine Examiners and Their Duties.
3517. Safety-Lamps.
3518. Only Safety-Lamps to Be Used.
3519. Keys for Safety-Lamps.
3520. Firing of Blasts Where Safety-Lamps Are Used.
3521. Storing of Explosives in Mines.
3522. Manner of Handling Explosives.
3523. Copper Tools.
3524. System of Blasting.
3525. Care of Working Places.
3526. Duties of Machine-Men.
3527. Duties of Motormen, Trip Riders, and Drivers.
3528. Duties of Other Employees.
3529. Persons Permitted to Ride on Haulage Trips.
3530. Employees Shall Not Loiter Nor Use Intoxicants Around the Mine.
3531. Top and Bottom Men.
3532. Lights on Landings.
3533. Regulations for Hoisting or Lowering of Men.
3534. Rights of Men to Come Out.
3535. Stretchers, Blankets, etc.
3536. Oils to Be Used in Coal Mines.
3537. Boundary Lines.
3538. Notice to Inspectors.
3539. Duty of Inspectors.
3540. Coroner's Inquest.
3541. Code of Signals at Coal Mines.
3542. Duties of Hoisting Engineers.
3543. Qualifications of Miners.
3544. Operators Must Make Reply to Statistical Inquiry.
3545. Penalties.
3546. Definitions.

3447. Title of act. This act shall be known as the coal-mining code of the state of Montana.

History: En. Sec. 1, Ch. 120, L. 1911.

Note.—Throughout the entire act the necessary changes have been made to conform to subsequent legislation placing the office of coal-mine inspector under the control of the industrial accident board.

The common-law rule that the master must exercise ordinary care and diligence to provide his employees with a reasonably safe place in which to work, though not applying when they and their fellow-servants are creating the place to work, when it is constantly being changed in character by their work, or when it only becomes dangerous by their carelessness or negligence, does obtain where the place is a completed one, such as that part of a mine tunnel behind the miner driving it, and is applicable to coal mines as well as to any other place of employment. Kallio v. Northwestern Improvement Co., 47 Mont. 314, 321, 132 Pac. 419, Ann. Cas. 1915A, 1228.

The provisions of this and following sections, the purpose of which is to reduce as far as possible the hazards incident to coal mining, cannot be nullified by any agreement between employer and employee, or any rule or custom in derogation of the duties imposed. Kallio v. Northwestern Improvement Co., 47 Mont. 314, 324, 132 Pac. 419, Ann. Cas. 1915A, 1228.

Constitutionality of statutes with respect to safety regulations in coal mines, see note in 2 Ann. Cas. 781.

3448. Coal-mine inspector—Appointment, compensation and term. The industrial accident board shall appoint a coal-mine inspector and shall fix his compensation and term of office.

History: En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921.

3449. Qualifications of inspector. No person shall be eligible to the office of state coal-mine inspector until he shall have attained the age of thirty years. He shall be a citizen of the United States, a qualified resident of the state of Montana, shall have been actually employed at coal mining ten years prior to his appointment, and shall possess a competent knowledge of all the different systems of coal mining and working and properly ventilating coal mines, and the nature and constituent parts of noxious and explosive gases of coal mines, and of the various ways of expelling the same from the said mines. He shall have passed a successful examination by the board of examiners, and his certificate of qualification shall have been filed with the governor by the said board of examiners, as provided by law.

History: En. Sec. 3, Ch. 120, L. 1911.

3450. Powers and duties of inspector. The state coal-mine inspector shall have the right, and it is hereby made his duty, to enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine, and when such inspection is contemplated he shall first notify the person in charge of his intention to make such examination. He shall also have the right and it is his duty to make inquiry into the condition of such mine, workings, machinery, scales, ventilation, drainage, method of lighting or using lights, and into all methods and things connected with or relating to, as well as to make suggestions providing for the health and safety of persons employed in or about the same, and especially to make inquiry whether or not the provisions of the laws providing for the regulation of coal mines, or other acts which may hereafter be enacted governing coal mines, have been complied with. The owner, operator, or superintendent of such mine is hereby required to furnish the means necessary for such entry, inspection, examination, inquiry, and exit. It shall also be the duty of the said coal-mine inspector to carefully examine all the coal mines in operation in this state at least every three months, and oftener if necessary, to see that every precaution is taken to insure the safety of all the workmen that may be engaged in said coal mine. The said inspector shall make a record of the visit, noting the time and the material circumstances of the inspection. At the time of making his regular quarterly inspection, in the event of the inspector having in his possession any complaint in writing to the effect that the mining code is being violated, he shall notify the employees that he is about to make such inspection, and if the employees, in some proper manner, select one of their number to accompany the inspector on such inspection, he shall permit such employee to so accompany him. In the event of no such selection being made, the inspector may, if he so desire, request some employee to accompany him. The

owner or operator shall at all times have the right to personally accompany the inspector while inspecting his property, or to designate some one to so accompany him.

History: En. Sec. 5, Ch. 120, L. 1911.

3451. Inspector must not be employed by companies. The said state coal-mine inspector, while in office, shall not act as agent for any corporation, superintendent or manager of any mines, and shall in no manner whatever be under the employ of mining companies, nor shall he be interested in any coal-mining operation, either as owner, lessee, or otherwise. It shall be the duty of the industrial accident board, on or before the first day of January of every year, to make a report to the governor of the proceedings of such state coal-mine inspector and the conditions of each and every coal mine in the state, stating therein all accidents that have happened in or about said mine or mines, and to set forth in said report all such suggestions as he may deem important as to any further legislation on the subject of coal mines.

History: En. Sec. 6, Ch. 120, L. 1911.

3452. Instruments to be furnished to inspector. For the more efficient discharge of the duties herein imposed upon him, the said state coal-mine inspector shall be furnished, at the expense of the state, with an anemometer, a safety-lamp, and whatever other instruments or other appliances may be necessary in order to carry into effect the provisions of the acts regulating coal mines.

History: En. Sec. 7, Ch. 120, L. 1911.

3453. Inspector to post statement of mine at entrance. The state coal-mine inspector shall post up in some conspicuous place at the top of each mine visited and inspected by him a plain statement of the conditions of such mine, showing what, in his judgment, is necessary for the better protection of the lives and health of persons employed in such mine; such statement shall give the date of inspection, and be signed by the said inspector. He shall also post a notice at the landing used by the men, stating what number of men may be permitted to ride on the cage, car or cars at one time, and at what rate of speed men may be hoisted and lowered on the cage, car or cars in accordance as hereinafter provided for in this act. He must observe especially that the code of siganls provided in the act of regulating coal mines between engineer and topmen and bottommen is conspicuously posted for the information of all employees.

History: En. Sec. 8, Ch. 120, L. 1911.

3454. Inspector ex-officio sealer of weights and measures. The state coal-mine inspector is hereby made, equally with the secretary of state, ex-officio sealer of weights and measures, in so far as the same relates to coal mines and coal mining, and as such is empowered to test and compare all weights and measures used in weighing and measuring coal at any coal mines, or used in measuring air-passages or other openings in coal mines, with the standards of weights and measures kept by the state sealer of weights and measures. Upon the written request of any coal-mine owner or operator, or ten coal miners employed at any one mine, it shall be his duty to test and prove any scale or scales at such mine against which com-

plaint is directed, and if he shall find that they or any of them do not weigh correctly, he shall call the attention of the mine owner, lessor, or operator to the fact, and direct that said scale or scales be at once overhauled and readjusted so as to indicate only true and correct weights, and he shall forbid the further operation of such scale until such scales are adjusted. In the event that such test shall conflict with any test made by any other sealer of weights and measures, or under and by virtue of any municipal ordinance or regulation, then the test by such state coal-mine inspector shall prevail.

History: En. Sec. 10, Ch. 120, L. 1911. Note.—The above section changed in this code to conform to later enactments.

3455. Standard test weights to be furnished to inspector. For the purpose of carrying out the provisions of this act, the state coal-mine inspector shall be furnished by the state with such sets of standard weights suitable for testing the accuracy of track-scales, and of all smaller scales at mines, as may in the judgment of the state coal-mine inspector be necessary; said test weights shall remain in the custody of the state coal-mine inspector for use at any point within the state, and for any amounts expended by him for the storage, transportation, or the handling of the same, he shall be fully reimbursed upon making proper entry of the proper items in his expense voucher.

History: En. Sec. 11, Ch. 120, L. 1911.

3456. Refusal of mine operator to furnish facilities for examination. If any owner, lessor, or operator shall refuse to permit such inspection, or to furnish the necessary facilities for making such examination and inspection, the inspector shall file his affidavit setting forth his refusal with the judge of the district court in said county in which said mine is situated, either in term-time or vacation, and obtain an order on such owner, operator, or agent so refusing as aforesaid, commanding him to permit and furnish such necessary facilities for the inspection of such coal mine, or to be adjudged to stand in contempt of court and punished accordingly.

History: En. Sec. 12, Ch. 120, L. 1911.

3457. Investigation of charges for neglect of duty. Whenever a petition signed by fifty or more reputable citizens, legal residents of the state, verified by oath by two or more of the said petitioners, and accompanied by a bond in the sum of five hundred dollars, running to the state, executed by two or more freeholders, approved and accepted by the clerk of the district court of the county or counties of their residence, conditioned for the payment of all costs and expenses arsing from the investigation of the charges, is filed with the clerk of the district court setting forth that the state inspector of mines neglects his duties or is incompetent, or is guilty of malfeasance in office or misfeasance in office, it shall be the duty of the district court of the county to issue a citation in the name of the state to the said inspector to appear, at not less than five days' notice, on a day fixed, before said court, and the court shall then proceed to inquire into and investigate the allegations of the petitioners; such action shall be prosecuted by the county attorney.

History: En. Sec. 13, Ch. 120, L. 1911.

3458. Removal of coal-mine inspector—Procedure—Cost. If the court finds that the said state coal-mine inspector is neglectful of his duties or incompetent to perform the duties of his office, or that he is guilty of malfeasance or misfeasance in office, the court shall certify the same to the industrial accident board, who shall declare the office of said state coal-mine inspector vacant, and proceed in compliance with the provisions of this act to fill the vacancy; and the costs of such investigation shall, if the charges are sustained, be imposed upon the said state coal-mine inspector.

History: En. Sec. 14, Ch. 120, L. 1911; amd. Sec. 2, Ch. 20, L. 1921.

3459. Board of examiners of applicants for coal-mine inspector—Appointment. The industrial accident board of the state shall within sixty days after the approval of this act, upon the recommendation of the coal miners of the state, appoint one practical coal miner, who shall be a certified mine foreman, and actively employed in coal mining in the state of Montana; one mine manager or superintendent who shall be recommended to the industrial accident board by a majority of the coal operators of the state of Montana, who, with the state coal-mine inspector, shall constitute a board of examiners to pass upon the qualifications of all applicants for the position of state coal-mine inspector, mine foreman and mine examiner for the state of Montana. They shall hold office for four years and until their successors, appointed in the same manner, are appointed and qualified. Vacancies upon the said board of examiners shall be filled by the industrial accident board, in accordance with the intent and provisions of this act.

History: En. Sec. 15, Ch. 120, L. 1911; amd. Sec. 1, Ch. 160, L. 1921.

3460. Examination of applicants—Scope—Certificates of competency—Revocation. It shall be the duty of the said board to examine into the qualifications of all applicants for the appointment to the position of state coal-mine inspector, and applicants for the examination for mine foreman and mine examiner of the state of Montana, by conducting a thorough examination as to their knowledge of mine workings, ventilation, gases, fire-damp, machinery and actual experience in underground coal mining, and general worthiness of each applicant. The examination for applicants for state coal-mine inspector shall be in writing, and accompanied by an affidavit that the applicant is a citizen of the United States, a resident of the state of Montana, and that he has attained the age of thirty years; has had at least ten years' experience in underground coal mining in the United States, and at least one year's experience in underground coal mining in the state of Montana; and the manuscript and other papers of all applicants, together with the tally sheet and the solution of each question as given by the examining board, shall be filed with the industrial accident board as public documents, but such applicant shall undergo an oral examination pertaining to explosive gases and safety-lamps. The board of examiners shall file with the industrial accident board the names of all persons who shall have successfully passed the examination. From those so named the industrial accident board shall select one person to be state coal-mine inspector, but no man shall be eligible for the appointment as state coal-mine inspector who has any pecuniary interest in any

coal mines, either directly or indirectly, as owner, lessee, or employer, or otherwise.

(a) The examination for mine foreman shall consist of oral and written questions, on theoretical and practical mining, on the nature and properties of noxious, poisonous and explosive gases found in the mines, and on the different systems of working and ventilating coal mines. The board shall issue to those examined and found to possess requisite qualifications, certificates of competency for the position of mine foreman, but such certificates shall be granted only to persons of twenty-three years of age, or over, of good, moral character, citizens of the United States and residents of the state of Montana, and with at least five years' practical experience as a coal miner.

(b) Persons seeking certificates of competency as mine examiner or fire boss must produce evidence, satisfactory to the board, that they are citizens of the United States, residents of the state of Montana; have had at least five years' practical experience as a coal miner; at least twenty-three years of age, and of good repute and temperate habits. They must prepare to submit to, and satisfactorily pass, an examination as to their experience in mines generating dangerous and explosive gases; their practical and technical knowledge of the nature and properties of fire-damp, the laws of ventilation, and the structure and use of the safety-lamp. Manuscripts and other papers of all the applicants for the position of mine foreman, and mine examiner, together with the tally sheets and the solution of each question as given by the examining board, shall be filed with the industrial accident board as public documents. All papers and blanks, blank books and stationery used at the examination, must be furnished by the industrial accident board, and each candidate for examination for the position of state coal-mine inspector, mine foreman, and mine examiner shall be given such questions, as are required, in writing, and each question shall be on a separate paper. Candidate must return such papers to the board, with answers to questions thereon, attested by his signature.

(c) When any person having been granted a certificate of competency by the state of Montana, to act as mine foreman, fire boss or mine examiner, is charged with gross, or criminal carelessness, or intemperance, while in the performance of his duties, it shall be the duty of the state coal-mine inspector to make a thorough investigation of the charge, and, upon satisfactory proof of such charge, to revoke said certificate of competency; provided, that such person whose certificate has been so revoked may appeal from such action of the state coal-mine inspector to the state board of coal-mine examiners, but such revocation shall continue until the state board of coal-mine examiners, as provided for in this act, shall otherwise determine.

History: En. Sec. 16, Ch. 120, L. 1911; amd. Sec. 2, Ch. 160, L. 1921.

3461. Applications for examinations—How made. Applications to the said board for examination for state coal-mine inspector must be made in writing, and accompanied by an affidavit that the applicant is a citizen of the United States, a resident of the state of Montana, and that he has attained the age of thirty years; has had at least ten years' experience in

underground coal mining in the United States, and at least one year's experience in underground coal mining in the state of Montana.

History: En. Sec. 17, Ch. 120, L. 1911.

3462. Selection by governor. The board of examiners shall file with the governor the names of all persons who shall have successfully passed the examination. From those so named the industrial accident board shall select one person to be state coal-mine inspector; provided, that any one who has served capably as state coal-mine inspector for one full term, upon making written application to the board setting forth these facts, shall be certified to the governor as properly qualified for appointment, but no man shall be eligible for the appointment as state coal-mine inspector who has any pecuniary interest in any coal mine, either directly or indirectly, as owner, lessee, or employer, or otherwise.

History: En. Sec. 18, Ch. 120, L. 1911.

3463. Oath and meetings of examining board—Basing per cent. The board of examiners appointed under this act shall each take the constitutional oath before some person duly authorized by law to administer an oath.

The board shall meet at the call of the state coal-mine inspector for the purpose of examining applicants as provided for in section 3459 of this code, on the second Monday in June of each year, in the city of Billings, in the county court house, and on the third Monday in June of each year, in the city of Great Falls, in the county court house. Public notice of meetings of the board for the purpose of holding examinations, shall be given by the board, by posting of notices in the postoffice and at the coal mines in the several coal mining towns throughout the state, at least fifteen days previous to the examination, and the publication in at least one paper in the county wherein coal mines are located, two consecutive weeks previous to the holding of examination.

No person shall be certified as competent whose average per cent. shall be less than seventy-five per cent., and his certificate shall show what per cent. the applicant has attained, and such certificate shall be valid only when signed by a majority number of the examining board. The examining board shall, immediately after the examination, furnish to each person who comes before it to be examined, a copy of all questions, whether oral or written, which were given at the examination, which shall be marked solved right, imperfect or wrong, as the case may be, together with a certificate of competency to each candidate who shall have at least seventy-five per cent.

History: En. Sec. 20, Ch. 120, L. 1911; amd. Sec. 4, Ch. 160, L. 1921.

3464. Examination of candidates. The board shall then proceed to examination of those who may present themselves as candidates for examination as provided for in section 3459 of this code, and who shall have complied with the requirements necessary to entitle such applicant to be examined as provided for in section 3460 of this code.

History: En. Sec. 21, Ch. 120, L. 1911; amd. Sec. 5, Ch. 160, L. 1921.

3465. Compensation of board of examiners—Expenses. The members of the examining board, except the state coal-mine inspector, shall receive

as a compensation the sum of ten dollars each day, for a term not exceeding two meetings of five days each in any year, and whatever sum is necessary to reimburse them for such traveling expenses as may be incurred in the discharge of their duties. All such salaries and expenses of the members of the board shall be paid upon vouchers duly sworn to by each member of the said board and approved and ordered by the state board of examiners, and the state auditor is hereby authorized to draw his warrants on the state treasurer for the amounts thus shown to be due, payable out of any money in the state treasury, not otherwise appropriated.

History: En. Sec. 22, Ch. 120, L. 1911; amd. Sec. 6, Ch. 160, L. 1921.

3466. Coal-mine inspector—Appointment and term. The industrial accident board shall, from the names certified to them by the said board of examiners, appoint a state coal-mine inspector for the state of Montana, who shall hold office at the pleasure of said board.

History: En. Sec. 23, Ch. 120, L. 1911; amd. Sec. 3, Ch. 20, L. 1921.

3467. Board of examiners of coal-mine inspectors. Every four years the industrial accident board shall in the manner provided in section 3459 of this code appoint a board of examiners to pass upon the qualifications of applicants for coal-mine inspector, which board shall be constituted, sworn and paid, and shall perform the same duties as the board provided for in said section during the term for which they were appointed.

History: En. Sec. 24, Ch. 120, L. 1911; amd. Sec. 4, Ch. 20, L. 1921.

3468. Examining board may adopt rules. Each successive board of examiners shall have the power to adopt their own rules and regulations for examination as will best serve the purpose of this act; said rules not to conflict with the manner of examination as prescribed by section 3460 of this code.

History: En. Sec. 26, Ch. 120, L. 1911.

3469. Vacancies in examining board—How filled. Vacancies upon the said board of examiners shall be filled by the governor, in accordance with the intent and provisions of this act.

History: En. Sec. 27, Ch. 120, L. 1911.

3470. Board for examination of applicants for position of mine foreman, etc. On petition of the state coal-mine inspector, a judge of the district court of any county where coal is mined shall appoint an examining board of three persons, consisting of the state coal-mine inspector, a miner, and an operator or superintendent, to be known as the county examining board. The members of said examining board shall be citizens of the United States and legal residents of the state of Montana, and shall hold office for the term of two years, or until their successors have been appointed and qualified. The persons so appointed shall, after being duly organized as a board, take and subscribe before an officer authorized to administer the same the following oath, namely: "We, the undersigned, do solemnly swear (or affirm) that we will perform the duties of examiners of applicants for the position of mine foreman, mine examiner, or fire-boss for the coal mines of Montana to the best of our abilities, and that in certifying or rejecting said applicants we will be governed by the evidence

of the qualifications to fill the positions under the law creating the same, and not by any consideration of personal favors; that we will certify all whom we find qualified, and none other."

History: En. Sec. 28, Ch. 120, L. 1911.

3471. Scope of examination. The examination shall consist of oral and written questions on theoretical and practical mining, on the nature and properties of noxious, poisonous, and explosive gases found in the mines, and on the different systems of working and ventilating coal mines. During the progress of the examination the use of such text-books as the board shall approve shall be allowed applicants during the examination, and the board shall issue to those examined and found to possess requisite qualifications, certificates of competency for the position of mine foreman, mine examiner, or fire-boss; but such certificates shall be granted only to persons of twenty-three years of age, or over, of good moral character, citizens of the United States and residents of the state of Montana, and with at least five years' practical experience in the working of coal mines. All papers and blanks, blank books, and stationery used at the examination to be furnished by the board of county commissioners of the said county, and each candidate for examination shall be given such questions as are required, in writing, and each question shall be on a separate paper.

Candidates must return such papers to the board, with answer to questions thereon, attested by his signature. All question papers and answers shall be filed in the office of the county clerk and recorder, in and for the county where examinations are held, and kept by him in some secure place, subject to examination at any time.

History: En. Sec. 29, Ch. 120, L. 1911.

3472. Certificates of qualification, when and how granted. Certificates of qualification to state coal-mine inspector, mine foreman, and mine examiner shall be granted by the board of examiners herein provided for, to each applicant who shall have passed a successful examination. The certificate shall be in a manner and form as shall be prescribed by the industrial accident board, who shall keep a record in their department of all such certificates granted. Each certificate shall contain the full name and age and birthplace of applicant, and also the length or nature of his previous service in coal mines.

History: En. Sec. 30, Ch. 120, L. 1911; amd. Sec. 7, Ch. 160, L. 1921.

3473. Qualifications for mine examiners. Persons seeking certificates of competency as mine examiners or fire-boss must produce evidence satisfactory to the board that they are citizens of the United States, residents of the state of Montana, have had at least five years' practical experience in working of coal mines, at least twenty-three years of age, and of good repute and temperate habits. They must prepare to submit to and satisfactorily pass an examination as to their experience in mines generating dangerous and explosive gases, their practical and technical knowledge of the nature and properties of fire-damp, the laws of ventilation, and the structure and use of the safety-lamp.

History: En. Sec. 31, Ch. 120, L. 1911.

3474. Examining board shall grant certificates. The said board of examiners shall meet at the call of the state coal-mine inspector, who shall call them upon receipt of five requests for examination, and shall grant certificates to all persons whose examination shall disclose their fitness for the duties of mine foreman as above classified, or mine examiner or fire-boss, and such certificate shall be sufficient evidence of the holder's competency for the duties of said position as far as it relates to the purpose of this act; provided, that any person who shall have been employed as mine foreman continually for a period of one year preceding the approval of this act, by the same firm, person, or corporation, shall be granted a certificate without undergoing such examination, but shall not be employed by any other person, firm, or corporation without having successfully undergone such examination. No person shall be certified as competent whose average percentage shall be less than seventy-five per centum on his entire examination, and such certificates shall designate the position qualified for, and shall be valid only when signed by a majority of the examining board.

History: En. Sec. 32, Ch. 120, L. 1911.

3475. Certificates may be issued to those holding proper certificates. The board may exercise its discretion in issuing certificates of any class, without examination, to persons presenting with proper credentials certificates for the same or a similar position issued by competent authorities in this or other states; provided, however, that for every such certificate issued the board shall charge a fee of five dollars.

History: En. Sec. 33, Ch. 120, L. 1911.

3476. Applications for examination—How made—Fees. An applicant for examination for any certificate herein provided for, before being examined, shall register his name with the state coal-mine inspector at Helena, Montana, and file with him the credentials required by this act, to-wit, an affidavit as to all matters of fact establishing his right to and qualifications for receiving the examination, and a certificate of good character and temperate habits, signed by at least ten of the citizens who know him best in the place in which he lives. Each candidate, before receiving the examination, shall pay to the state coal-mine inspector the sum of two dollars as an examination fee, and those who pass the examination for which they are entered, before receiving their certificate, shall also pay to the state coal-mine inspector the further sum of three dollars each as a certificate fee. All such fees shall be duly accounted for by the state coal-mine inspector, and turned into the state treasurer at the close of the fiscal year.

History: En. Sec. 34, Ch. 120, L. 1911.

3477. Compensation of examining board. The members of the examining board, except the state coal-mine inspector, shall receive as a compensation the sum of five dollars each day, for a term not exceeding two meetings of five days each in any year, and whatever sum is necessary to reimburse them for such traveling expenses as may be incurred in the discharge of their duties. All such salaries and expenses of the members of the board shall be paid upon vouchers duly sworn to by each member of

the said board, and approved and ordered by the state board of examiners, and the state auditor is hereby authorized to draw his warrants on the state treasurer for the amount thus shown to be due, payable out of any money in the state treasury not otherwise appropriated.

History: En. Sec. 35, Ch. 120, L. 1911.

3478. Violations. Any person who acts in the capacity of mine foreman, mine examiner, or fire-boss, without a certificate of competency as provided for in this act, shall be deemed guilty of an offense against this act; provided, however, the state coal-mine inspector shall have the power to grant permits to persons to perform the duty of mine foreman, mine examiner, or fire-boss as provided for in this act, who may be employed by any company, corporation, association, person, or persons engaged in the operating of any coal mines in the state of Montana, until such time as the person so employed has had an opportunity to be examined as to his competency by the board of examiners provided for in this act, but no longer.

Every company, corporation, association, person, or persons operating any coal mine or coal mines in the state of Montana, who employs any uncertified mine foreman, mine examiner, or fire-boss, except as provided for in section 3475 of this code, shall be deemed guilty of an offense against this act; provided, however, that in cases of emergency any competent man may be employed and act as a temporary mine foreman, examiner, or fire-boss, until a certificate or permit can be obtained, not to exceed a period of thirty days, without violating this act or incurring any of its penalties.

History: En. Sec. 36, Ch. 120, L. 1911.

3479. Necessary to have maps of coal mines. Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of such mine, drawn to a scale of not less than two hundred feet to one inch, and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911.

3480. Underground survey. For the underground working the said map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine, all excavations, entries, rooms, and cross-cuts, the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings, the location of the fan or furnace, the location of the permanent pumps, hauling engines, engine-planes, and fire-walls, the location of any standing water which might prove a menace to life or danger to property from flood, and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911.

3481. Map for every seam. A separate and similar map, drawn to the same scale in all cases, shall be made of each and every seam, which, after

the passage of this act, shall be worked in any mine, and the maps of all such seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting the same.

History: En. Sec. 39, Ch. 120, L. 1911.

3482. **Map of the surface.** Every such map or plan, or, at the option of the operator, a separate map, shall show the surface boundary lines contiguous to the workings and pertaining to each mine, also all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the said boundary lines; and in all cases, if of a separate surface map, the same shall be drawn on transparent cloth or paper, so that it can be laid upon the map of the underground workings, and thus truly indicate the relative location of the lines and objects on the surface to the excavations of the mine.

History: En. Sec. 40, Ch. 120, L. 1911.

3483. **Copies of maps for state coal-mine inspector.** The orginal or true copies of all such maps shall be kept in the office at the mine, and true copies thereof shall also be furnished the state coal-mine inspector within thirty days after the completion of the same. The maps so delivered to the inspector shall be the property of the state, and shall remain in the custody of the said inspector during his term of office, and be delivered by him to his successor in office. They shall be kept at the office of the inspector and be open to inspection by all persons interested in the same, but such examination shall only be made in the presence of the inspector, and he shall not permit any copies of the same to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

History: En. Sec. 41, Ch. 120, L. 1911.

3484. **Annual surveys.** An extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1st of every year, and the result of said survey, with the date thereon, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine, and all extensions of the workings to the most advanced face or boundary of said workings which have been made since the preceding survey. The said changes and extensions shall be entered upon the copies of the maps in the hands of the state coal-mine inspector, or new copies thereof be furnished him, within thirty days after the last survey is made. Whenever the operator of any mine shall neglect or refuse, or for any cause not satisfactory to the state coal-mine inspector fail, for a period of three months, to furnish the said state coal-mine inspector the map or plan of such mine, or a copy thereof, or of the extension thereto, as provided for in this act, the said state coal-mine inspector is hereby authorized to make or cause to be made an accurate map or plan of such mine at the expense of the owner or leaser thereof, and the cost of the same may be recovered by

law from said owner, leaser, or operator, in the same manner as other debts by suit in the name of the state.

History: En. Sec. 42, Ch. 120, L. 1911.

3485. Abandoned mines. When any coal mine is worked out, or is about to be abandoned or indefinitely closed, the operator of the same same shall make or cause to be made a final survey of all available parts of such mine, and the results of the same shall be duly extended on all maps of the mine and copies thereof, so as to show all excavations and the most advanced workings of the mine, and their exact relations to the boundary or section lines on the surface.

The state coal-mine inspector may order a survey to be made of the workings of any mine which is about to be abandoned, or of which he has reason to believe the maps are inaccurate, whenever in his judgment the safety of the workmen, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. Such survey shall be paid for by the state.

History: En. Sec. 43, Ch. 120, L. 1911.

3486. Mine operators to furnish wash houses for employees. It shall be the duty of the owner, operator, or superintendent of any coal mine in the state of Montana to provide a suitable building, not an engine or boiler house, for the use of the persons employed in such mine, for the purpose of washing themselves and changing their clothes when entering the mine and returning therefrom. The said building shall not be over eight hundred feet from and convenient to the principal entrance of such mine when practicable to do so. When not practicable to build the wash house within the said distance and still conform to the other requirements of this section, the state coal-mine inspector may give written permission to place the building at a greater distance from the mine than that herein specified, and the operator shall not be guilty of violation of this section. The said building shall be maintained in good order, be properly lighted and heated, and supplied with pure cold and warm water, and be provided with facilities for persons to wash, and a suitable locker for each person to be used by him as a repository for his clothes.

If any person shall maliciously injure or destroy, or cause to be injured or destroyed, the said building or any part thereof, or any of the appliances or fittings used for supplying light, heat, or water therein, or doing any act tending to the injury or destruction thereof, he shall be deemed guilty of an offense against this act and subject to a fine as hereinafter provided for.

History: En. Sec. 44, Ch. 120, L. 1911.

3487. Oath of weighman—Check weighman. The weighman employed at any mine shall subscribe to an oath or affirmation before some officer authorized to administer oaths, to do justice between employer and employee, and to truly and correctly weigh the output of coal from the mines as herein provided. The miners employed by or engaged in working for any mine owner, operator, or lessee of any mine in this state shall have the privilege, if they desire, of employing at their own expense a check weighman, who shall have like equal rights, powers, and privileges in the

weighing of coal as the regular weighman, and be subject to the same oath and penalties as the regular weighman. Said oath or affirmation shall be kept conspicuously posted in the weight office, and any weigher of coal or person so employed, who shall knowingly violate any of the provisions of this section, or any owner, operator, or agent of any coal mine in this state, who shall forbid or hinder miners employing or using a check weighman as herein provided, or who shall prevent or wilfully obstruct any such check weighman in the discharge of his duty, shall be deemed guilty of an offense against this act. Whenever the state coal-mine inspector, or his deputy, shall be satisfied that the provisions of this section have been wilfully violated, it shall be his duty to forthwith inform the prosecuting attorney of any such violation, together with all the facts within his knowledge, and the prosecuting attorney shall thereupon investigate the charges so preferred, and if he is satisfied that the provisions of this section have been violated, it shall be his duty to prosecute the person or persons guilty thereof.

History: En. Sec. 45, Ch. 120, L. 1911.

Validity of statutes regulating weighing of minerals which are mined by employees by weight, see note in 11 Ann. Cas. 74.

3488. Must not use false weights. Any person or persons having or using any scale or scales for the purpose of weighing the output of coal at mines must not arrange or construct them so that fraudulent weighing may be done thereby, and must not knowingly resort to or employ any means whatsoever by reason of which such coal is not correctly weighed and reported in accordance with the provisions of this act.

History: En. Sec. 46, Ch. 120, L. 1911.

3489. General equipment of shafts. Every hoisting shaft must be equipped with safely constructed substantial cages fitted to guide rails running from the top to the bottom of shaft. Said cages must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and with sheet-iron or steel casings on each side, not less than one-eighth inch in thickness, or wire netting of not less than one-eighth inch in diameter. They must be equipped with safety-catches, said safety apparatus, whether consisting of eccentrics, springs, or other devices, must be securely fastened to each cage, and must be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. Every cage must be fitted with iron bars, chains, or rings in proper place, and sufficient in number to furnish a secure hand hold for every person permitted to ride thereon. Gates not less than four feet high from the bottom of the cage shall be fitted to each cage, and must be used during the regular hoisting or lowering of men; provided, that when such cage is used for sinking only it need not be equipped with such doors as are hereinbefore provided for. At the top landing cage supports, when necessary, must be carefully set and adjusted so as to act automatically and securely hold the cage when at rest.

History: En. Sec. 47, Ch. 120, L. 1911.

3490. Passageway around the bottom of shafts. At the bottom of every shaft and at every caging place therein a safe and commodious

passageway must be cut around such landing place to serve as a travelway, by which men or animals may pass from one side of the shaft to the other without passing under or on the cage.

History: En. Sec. 48, Ch. 120, L. 1911.

3491. Gates at the top of shafts. The upper and lower landings at the top of each shaft, and the opening of each intermediate seam from or to the shaft, shall be kept free and clear from loose materials, and shall be securely fenced with automatic or other gates, so as to prevent either men or materials from falling into the shaft.

History: En. Sec. 49, Ch. 120, L. 1911.

3492. Two places of egress. For every coal mine in this state, whether worked by shaft, slope, or drift, there shall be provided and maintained, in addition to the hoisting shaft, slope, or drift, or other place of delivery, a separate escapement shaft, slope, or drift, or opening to the surface, or an underground communication passageway between every such mine and some other contiguous mine, such as shall constitute two distinct and available means of egress to all persons employed in such coal mine. The time allowed for completing such escapement shaft or drift or making such connections with an adjacent mine, as is required by the terms of this act, shall be three months for shafts, slopes, or drifts, two hundred feet or less in depth or length, six months for shafts, slopes, or drifts less than five hundred feet in depth or length, and more than two hundred, and twelve months for all other shafts, slopes, or drifts or connections with adjacent mines. The time to date in all cases from hoisting of coal from main shaft, slope, or drift.

History: En. Sec. 50, Ch. 120, L. 1911.

3493. Unlawful to employ more than ten men. It shall be unlawful to employ at any one time more men than in the judgment of the state coal-mine inspector is absolutely necessary for speedily completing the connections with the escapment shaft, slope, or drift, or adjacent mine, and said number must not exceed ten men at any one time for any purpose in said mine until such escapement connection is completed.

History: En. Sec. 51, Ch. 120, L. 1911.

3494. Passageways to escapement. Such escapement shaft or opening, or communication with an adjacent mine aforesaid, shall be constructed in connection with every seam of coal worked in such mine, and all passageways communicating with the escapement shaft or place of exit, from the main hauling ways to said place of exit, shall be maintained free of obstructions, at least five feet wide and five feet in height. Such passageways must be so graded and drained that it will be impossible for water to accumulate in any depression or dip of the same, in quantities sufficient to obstruct the free and safe passage of men. At all points where the passageway to the escapement shaft or other place of exit is intersected by other roadways or entries, conspicuous sign-boards shall be placed indicating the direction it is necessary to take in order to reach such place of exit. Where pillars are being drawn on an entry outside of where other men are working, or where more than fifty per cent. of the coal is taken out in rooms, connec-

tions for escapement shall be made with some adjoining entry to provide a safe exit for the men.

History: En. Sec. 52, Ch. 120, L. 1911.

3495. Distance of escapement from main shaft. The distance between the main shaft and escapement shall not be less than one hundred feet where steel head-frames are used, nor less than three hundred feet where wooden head-frames are used; provided, that where slopes or drifts are driven in or on the coal strata, the distance between the escapement road or travelway and the slope drift or hauling way shall not be less than fifty feet.

History: En. Sec. 53, Ch. 120, L. 1911.

3496. Buildings on surface. It shall be unlawful to erect any inflammable structure or building in any space intervening between the main shaft, slope, or drift and the escapement shaft, slope, or drift on the surface, or any powder-magazine in such location or manner as to jeopardize the free and safe exit of the men from the mine by said escapement shaft, slope, or drift, in case of fire in the main shaft, slope, or drift buildings.

History: En. Sec. 54, Ch. 120, L. 1911.

3497. Stairway or cages in escapement shaft. The escapement shaft at every mine which does not exceed one hundred feet in vertical depth shall be equipped with safe and ready means for the prompt removal of men from the mine in time of danger, and such means shall be a substantial stairway which shall be provided with the hand-rails and with platforms or landings not more than ten feet apart. Where the escapement exceeds one hundred feet in vertical depth, in place of the stairway, it may be equipped with a cage for hoisting men, and such cage must be suspended between guides and be so constructed that falling objects cannot strike persons being hoisted upon it. Such cage must be operated by steam or electricity, which power shall be kept available for immediate use at all times, and equipment of said hoisting apparatus shall include a depth indicator, a brake on the drum, a steel or iron cable and safety-catches on the cage; and all such hoisting machinery must be inspected at least once each week by some competent person representing the operating company or owner.

History: En. Sec. 55, Ch. 120, L. 1911.

3498. Obstructions in escapement shaft. No accumulation of ice or obstruction of any kind shall be permitted in any escapement shaft, nor shall any steam be discharged into said shaft; and all surface or other water which flows therein shall be conducted by rings or otherwise to receptacles for same, so as to keep the stairway or cage free from falling water.

History: En. Sec. 56, Ch. 120, L. 1911.

3499. Weekly inspection of escapements. All escapement shafts and passageways leading thereto or to the works of a contiguous mine must be carefully examined at least once each week by the mine foreman, or by a man specially delegated by him for that purpose, and the date and findings of such inspection must be entered in a record book in the office

at the mine. If obstructions are found, their location and nature must be stated, together with the date on which they were removed.

History: En. Sec. 57, Ch. 120, L. 1911.

3500. Communication with adjacent mines. When operators of adjacent mines have by agreement established underground communication between said mines as an escapement outlet for the men employed in both mines, the roadways to the boundary on either side shall be regularly patrolled once each week and kept clear of all obstructions to travel by respective operators, and the intervening door shall remain unlocked and ready at all times for immediate use. When such communication has once been established between adjacent mines, it shall be unlawful for the operator of either mine to close the same without the consent of the contiguous operator and the state coal-mine inspector; provided, that when either operator desires to abandon mining operations, the expense and duty of maintaining such communication shall devolve upon the party continuing operations and using the same.

History: En. Sec. 58, Ch. 120, L. 1911.

3501. Ventilation of mines. The owner, operator, or superintendent of every coal mine, whether operated by shaft, slope, or drift, shall provide and hereafter maintain ample means of ventilation for the circulation of air through the main entries, cross entries, and all other working places, to an extent that will dilute, carry off, and render harmless the noxious or dangerous gases generated in the mine, affording not less than one hundred cubic feet per minute for each and every person employed therein, and not less than six hundred cubic feet per minute for each and every animal in the mine; but in any mine, or section of a mine, where fire-damp is generated, not less than one hundred and fifty cubic feet of air per minute shall be provided for each person, or as much more as may be necessary to keep such section free from fire-damp. The quantities of air in circulation shall be ascertained with an anemometer or other efficient instrument; such measurement shall be made by the foreman or his assistants once a week at the inlet and outlet airways, and also at or near the face of each entry, and shall be recorded in the book kept for that purpose at the mine office. The quantity of air as provided for in this act for each person shall be conducted to each working place.

In rooms generating fire-damp, the volume of air required by this act shall be conducted to the face thereof by the use of brattice-cloth or other suitable means.

History: En. Sec. 59, Ch. 120, L. 1911.

Master's liability for vice-principal's negligence in failing to keep place of work properly ventilated, see note in 34 L. R. A. 133.

3502. Pressure-gauges. At each mine generating fire-damp so as to be detected by a safety-lamp a water-gauge for the purpose of recording the pressure of vacuum of the main air current shall be provided and maintained, which shall be kept in constant use, and records preserved subject to the inspection of the state coal-mine inspector or his authorized representative.

History: En. Sec. 60, Ch. 120, L. 1911.

3503. Number of persons permitted to work in same air current. The current of air in mines must be split or subdivided so as to give a separate current to a number not exceeding one hundred men at work, and the inspector has the discretion to order a separate current for a smaller number of men if special conditions render it necessary.

History: En. Sec. 61, Ch. 120, L. 1911.

3504. Cross-cuts and brattices for ventilation. Cross-cuts between the entries, except where same are within the confines of shaft bottom pillars, shall be made not exceeding sixty feet apart, unless sufficient brattice is used to keep the air current up to the entry face, in which case they shall not exceed one hundred feet apart. When there is a solid block on one side of a room, cross-cuts shall be made between such room and the adjacent room not to exceed sixty feet apart; where there is a breast or group of rooms, a cross-cut shall be made on one side or the other of each room, except the room adjoining said block, not to exceed fifty feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and on the opposite side of the same room a cross-cut shall be made not to exceed ninety feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and thereafter cross-cuts shall be made not to exceed eighty feet apart on each side of the room. The required air current shall be conducted to the cross-cut nearest the face of each entry or room.

Brattices between permanent inlet and outlet air-ways shall hereafter be constructed in a substantial manner of brick, blocks, masonry, concrete, or non-perishable material. Rooms must not be worked in advance of the ventilating current.

History: En. Sec. 62, Ch. 120, L. 1911.

3505. Operation of ventilating fans—Furnaces, etc. All ventilating fans, furnaces, and any means in use to ventilate mines shall be kept in constant operation, day and night, in mines generating fire-damp, or where two shifts are being worked. Where no fire-damp is generated, or only one shift is worked, the fan, furnace, or other means of ventilation shall be started and kept running not less than two hours before the time to begin work. Should it at any time become necessary to stop the fan or other means of ventilation on account of accident or needed repairs to any part of the machinery, furnace, or other means of ventilation connected therewith, or by reason of any unavoidable cause, it shall then be the duty of the mine foreman, or any official in charge, after first having provided as far as possible for the safety of the persons employed in the mine, to order said fan or other means of ventilation to be stopped so as to make the necessary repairs or to remove any other difficulty that may have been the cause of such stoppage. All ventilating furnaces in mines shall, for two hours before the appointed time to begin work and during working hours, be properly attended by a person employed for the purpose.

History: En. Sec. 63, Ch. 120, L. 1911.

3506. Overcasts, air-bridges and doors—How to be constructed. In all mines, all main air-bridges or overcasts built after the passage of this act shall be constructed of masonry or other incombustible material of

ample strength, or be driven through the solid strata. In all mines the doors used in guiding and directing ventilation of the mine shall be so hung and adjusted that they will close themselves, or can be supplied with springs or pulleys so that they cannot be left standing open, and an attendant shall be employed at all principal doors through which cars are hauled, for the purpose of opening and closing said doors when trips of cars are passing to and from workings, unless an approved self-acting door is used. Necessary room shall be provided at each door so as to protect said attendant from being run over by the cars while attending to his duties, and persons employed for this purpose shall at all times remain at their post of duty during working hours. On every inclined plane, or where haulage is done by machinery, and where a door is used, an extra door shall be provided to use in case of necessity.

History: En. Sec. 64, Ch. 120, L. 1911.

3507. Underground stables. Where livestock is kept underground, the stables or stalls shall be separated from the main air-course by not less than twenty feet of solid strata, or a solid wall of brick masonry or concrete not less than twelve inches in thickness. The construction of the stable shall, as far as possible, be free from all combustible material. No hay or straw shall be taken into the mine unless same be compressed into compact bales, and only from time to time in such quantities as will be required for two days' use. No greater quantity of hay or straw shall be stored in the mine or stable, and when such is taken inside the mine it shall be taken to the stable at once and placed in a separate room provided therein for the same. The stable must be so placed that the air ventilating the same is returned immediately to the main outlet air-course, and not allowed to go further into the mine to where men are working. The connections between the air-courses and the stables must be fitted with substantial doors, placed so that they can be readily reached in the event of fire in the stable. Where conditions prohibit the use of entirely incombustible material in the construction of the stable, the doors leading to or from the same shall be made of iron or steel plate, not less than one-quarter inch in thickness, set in masonry or concrete walls. The lights used in the stable shall be incandescent lamps placed so that same will not be injured by the stock or the persons required to enter the stable, or lanterns of railroad type suitable for using lard or signal oil, and only such oil shall be used therein. All refuse and waste shall be promptly removed from the stable in the mine, and shall not be allowed to accumulate.

Stables constructed underground after the passage of this act shall be located not nearer than one hundred and fifty feet to any opening to the mine used as a means of ingress or egress.

History: En. Sec. 65, Ch. 120, L. 1911.

3508. Precautions when approaching abandoned workings. Whenever any working place of a mine approaches within one hundred feet of the abandoned workings of another mine, as indicated by an accurate survey, or while driving any working place parallel with the workings of such abandoned mine within one hundred feet thereof, and such abandoned

mine cannot be explored, or when same contains fire-damp or water which may inundate such working place, the mine foreman shall not permit such working place to be advanced until a drill hole has been extended not less than twelve feet in the center of such working place, and a flank hole not less than twelve feet extended on each rib, starting at the working face after taking out each cut of breaking.

Whenever the limits of an abandoned mine are not known by actual survey, the above rule shall apply whenever any working place approaches within two hundred feet of the supposed limits of such abandoned mine.

History: En. Sec. 66, Ch. 120, L. 1911.

3509. Timber and supplies. The operator of any mine shall keep an adequate supply of suitable timber constantly on hand, and deliver to the working place of each miner the props of approximate length, caps, and other timbers necessary to securely prop the roof thereof. Such props, caps, and other timbers shall be delivered in mine cars at the point where the miner receives his empty cars, or unloaded at the entrance to the room.

History: En. Sec. 67, Ch. 120, L. 1911.

3510. Hauling roads. On all hauling roads or entries on which the hauling is done by machinery, where men have to pass to or from their work, and on all entries on which the hauling is done by draft-animals, there shall be a clearance on one side of at least two and one-half feet between the car and the rib of such entry. This place shall be kept free from all obstructions, and no material shall be placed thereon. In mines already opened prior to the passage of this act where such clearance does not exist, or in mines where mining conditions prohibit the driving of entries wide enough to give such clearance, places of refuge must be cut in the side wall at least three feet wide, two and one-half feet deep, five feet high, and not more than twenty yards apart, but such places of refuge shall not be required in entries from which rooms have been driven at regular intervals not exceeding twenty yards. All such places of refuge must be kept clear of obstructions, and no material shall be stored nor allowed to accumulate therein.

History: En. Sec. 68, Ch. 120, L. 1911.

3511. Airways. It shall be the duty of the owner, lessee, or operator of every coal mine to provide and maintain airways of sufficient dimensions, and in no case shall the area of the air-course be less than twenty-five feet in mines operated on the room and pillar system.

History: En. Sec. 69, Ch. 120, L. 1911.

3512. Drainage—Traveling ways. Standing or stagnant water shall not be allowed to remain in traveling ways, nor shall the intake airways be used by miners or other persons as a depository for excrement or any other refuse. Obstructions of any kind must not be placed in cross-cuts, rooms, or entries used as main airways. Where necessary to provide a traveling way other than the main entries, slope, or drift in any mine for men going to or returning from their work, the same shall be kept clear from debris or obstructions of any kind, and all loose coal,

slate, and rock overhead or in rib in traveling ways, where miners have to travel to or from their work, must be taken down or carefully secured.

History: En. Sec. 70, Ch. 120, L. 1911.

Cited or applied as section 70, chapter 120, Laws of 1911, in Kallio v. Northwestern Improvement Co., 47 Mont. 314, 323, 132 Pac. 419, Ann. Cas. 1915A, 1228.

3513. Examination by foreman. All main airways or traveling ways in any underground workings shall be examined at least twice a week by the mine foreman or some other competent person so directed by said mine foreman, and a record of such inspection shall be kept at the mine office.

History: En. Sec. 71, Ch. 120, L. 1911.

3514. Removal of combustible matter. It shall be the duty of the mine foreman or his assistant in charge of any coal mine where coal dust or any other inflammable material may accumulate, to cause the same to be properly saturated with water or with some compounds or chemicals used for such purpose as often as necessary in either air-courses or entries, and all accumulated matter, explosive in its nature, shall be removed from the mine.

History: En. Sec. 72, Ch. 120, L. 1911.

3515. Mine foreman and his duties. In order to secure efficiency in the coal mines, the operator or superintendent shall employ a competent and practical foreman; said mine foreman shall have passed an examination and obtained a certificate of competency as required by this act, and said mine foreman shall devote the whole of his time to his duties at the mine when in operation.

The mine foreman or his assistant shall visit and examine every working place in the mine at least each alternate day while the miners of such places are or should be at work, and shall examine and see that each working place is secured by timbering so that the safety of the mine is assured; he shall see that a sufficient supply of timbers and material is always on hand at the working places in compliance with this act.

When the mine foreman is personally unable to carry out the requirements of this act as pertaining to his duties, on account of sickness or of other unavoidable conditions, a competent person shall be appointed to act in his place. The said person so appointed shall possess a certificate of competency, either as mine foreman or mine examiner, as provided for in this act, or shall receive a permit to act as such from the state coal-mine inspector's office within thirty-days after taking charge.

Whenever such mine foreman, his assistant, or assistants, shall have an unsafe place reported to him or them, he or they shall order and direct that the same be placed in a safe condition, and until such is done no person or persons shall enter such unsafe place except for the purpose of making it safe.

History: En. Sec. 73, Ch. 120, L. 1911.

Defendants being aware of the existence of a pot-hole in a coal mine for a sufficient time before an accident to an employee to enable them to make a proper examination and repairs, they were bound by this section and were liable in damages for their failure to perform their duty in this respect. McInness v. Republic Coal Co., 49 Mont. 112, 118, 140 Pac. 235.

3516. Mine examiners and their duties. A mine examiner shall be required at all coal mines generating dangerous and explosive gases.

His duty shall be to visit the mine before the men are permitted to enter it, and, first, he shall see that the air current is traveling in its proper course and quantity. He shall inspect all places where men are expected to pass or to work, and observe if there are any recent fall or obstructions in rooms and roadways or accumulations of fire-damp or other unsafe conditions.

He shall especially examine the edges and accessible parts of recent falls and old gobs and air-courses. As evidence of such examination, he shall mark with chalk upon the face of the coal his initial and the date of the month and year; if there is any standing gas discovered he shall leave a danger-signal across every entrance to such place.

He shall make a report on a blackboard provided on the outside of the mine, or at some other convenient place for that purpose, and arranged so that the men can inspect it while passing to their work, showing the conditions of the mine as to the presence of fire-damp, and indicating the place or places where present, if any is present, before he permits any person or persons to enter the mine. He shall complete his inspection before the time for the day-shift men to go to work, and shall personally check each miner or loader into the mine, advising each as to the condition of his working place, and holding back any man whose working place is in dangerous condition. He shall return to the mine with such miners or loaders thus held back, and remain there attending to the removal of any standing gas.

He shall examine parts of the mine not in actual course of working and available, not less than once each three days. He shall see that every part of the mine is kept free from standing gas and all old workings are properly fenced off. He shall examine the mine on idle days and Sundays if any men are required to work in any part of it, and, if any time elapse between the day turn leaving and night turn starting, the places to be worked by night turn must be examined by him with a safety-lamp and reported safe before persons go to them. He shall make a daily record of the conditions of the mine as he has found them, in a book kept for that purpose, which shall be preserved in the office of the company. No miner or loader, when advised by the mine examiner that his working place is dangerous, shall leave the bottom of the shaft or the main partings on slopes or drifts until accompanied by the mine examiner.

History: En. Sec. 74, Ch. 120, L. 1911.

3517. Safety-lamps. At any mine where fire-damp or other explosive gases are being generated so as to require the use of safety-lamps in any part thereof, the operator of such mine, upon receiving notice from the state coal-mine inspector or the mine examiner that one or more lamps are necessary to the safety of the men in such mine, shall at once procure and keep for use such number of the most improved safety-lamps as may be necessary. All safety-lamps used for working therein shall be the property of the operator, and shall remain in the custody of the mine foreman or other competent person, who shall clean, trim and fill, examine,

and deliver the same, locked and in safe condition, to the men when entering the mine, and shall receive the same from the men at the end of their shift. Persons using such lamps shall be responsible for the conditions and proper use of safety-lamps while in their possession.

History: En. Sec. 75, Ch. 120, L. 1911.

3518. Only safety-lamps to be used. In every working approaching any place where there is likely to be an accumulation of explosive gases, or in any working where danger is imminent from explosive gases, no light or fire other than a locked safety-lamp shall be allowed or used.

History: En. Sec. 76, Ch. 120, L. 1911.

3519. Keys for safety-lamps. No one except a duly authorized person shall have in his possession a key or other contrivance for the purpose of unlocking any safety-lamp in any mine where locked safety-lamps are used. No lucifer matches or any other apparatus for striking light shall be taken into said mine or parts thereof.

History: En. Sec. 77, Ch. 120, L. 1911.

3520. Firing of blasts where safety-lamps are used. In any mine where locked safety-lamps are used, no blast shall be fired in such portion of the mine except by permission of the mine foreman or his assistants, and before a blast is fired the person in charge must examine the place and adjoining places and satisfy himself that it is safe to fire such blast before such permission is given.

History: En. Sec. 78, Ch. 120, L. 1911.

3521. Storing of explosives in mines. No workman shall have at any time more than one twenty-five pound keg of black powder in the mine, nor more than five pounds of high explosives. Every person who has powder or other explosives in a mine shall keep it or them in a wooden or metallic box or boxes, securely locked, and said boxes shall be kept at least five feet from the track, and no two powder-boxes shall be kept within twenty-five feet of each other, nor shall black powder and high explosives be kept in the same box.

History: En. Sec. 79, Ch. 120, L. 1911. Regulating keeping or storing of explosives, see note in 41 L. R. A. (N. S.) 460.

3522. Manner of handling explosives. Whenever a workman is about to open a box or keg containing powder or other explosives, and while handling the same, he shall place and keep his lamp at least five feet distant from such explosive, and in such position that the air current cannot carry sparks to it, and no person shall approach nearer than five feet to any open box containing powder or other explosives with a lighted lamp, lighted pipe, or other thing containing fire.

History: En. Sec. 80, Ch. 120, L. 1911.

3523. Copper tools. In the process of charging and tamping a hole, no person shall use an iron or steel pointed needle. The needle used in preparing a blast shall be made of copper, and the tamping-bar shall be

tipped with at least five inches of copper. Some soft material must always be placed next the cartridge or explosive.

History: En. Sec. 81, Ch. 120, L. 1911.

3524. System of blasting. A workman who is about to explode a blast with a squib shall not shorten the match, saturate it with oil, or ignite it except at the extreme end; he shall see that all persons are out of danger from probable effects of such shots, and shall take measures to prevent any one from approaching by shouting "Fire" immediately before lighting the fuse or squib.

When firing shots in close proximity to other workmen on rib or in cross-cut driven for air or other purposes, he or they, firing such shots, shall notify in person or by signals the workmen in adjoining rooms or other place or entry.

When a squib is used and a shot misses fire, no person shall return until five minutes shall have elapsed. When a fuse is used and a shot misses fire, no person shall return until one hour for each foot of fuse shall have elapsed. When it is necessary to tamp dynamite, nothing but a wooden tamper shall be used.

No hole shall be drilled to a greater depth than the cut or shearing, neither shall fine coal, coal dust, or any combustible material be used for tamping any hole.

No workman shall put off any blast in any mine known as a "following shot."

At all coal mines the firing of shots shall be restricted to a specific time at the end of each shift, except that in entries, slants, and doom necks, when necessary, one snubbing shot may be fired in each at the middle of the shift. No miner shall fire a shot until the time appointed for him to do so, and then only in such rotation as designated by the proper authority. After each blast he shall exercise great care in examining the roof and coal, and shall secure them safely before beginning to load coal. Where shooting is done by shift work, the same precaution shall be used by some person or persons designated by the operator.

When draw slate is over the coal, the miner shall not go underneath the draw slate until it is made safe from falling by securely posting it, and he shall not remove the posts until the coal is removed and he is ready to take down the draw slate. He shall not place in the gob or refuse pile any fine coal or coal dust, but shall load same into cars. When more than one shot is to be fired at the same time with fuse, in the same working place, different lengths of fuse shall be used so as to prevent any possibility of the shots going off simultaneously.

History: En. Sec. 82, Ch. 120, L. 1911.

Liability of mine owner to servant for injuries caused by premature explosion, see note in Ann Cas. 1913C, 954.

3525. Care of working places. Each miner shall examine his working place upon entering the same, and shall not commence to mine or load until it is made safe. He shall be very careful to keep his working place in safe condition at all times.

Should he at any time find his place becoming dangerous from any cause or condition, to such an extent that he is unable to take care of

the same personally, he shall at once cease work and notify the mine foreman or his assistant, as provided for hereinbefore in this act, of such danger, and upon leaving such place he shall place some plain warning at the entrance thereof to warn others from entering into the said danger, and he shall not return to his place until ordered to do so by the mine foreman or his assistant. Each miner, or other person employed in a mine, shall securely prop the roof of the working place therein under his control, and shall obey any order or orders given by the superintendent or mine foreman relating to the width of his working place or safety of the same. Such miner or other person shall not be held to have violated the provisions of this section if the owner, lessee, agent, superintendent, or mine foreman fail to supply the necessary props, caps, timber, or necessary material as provided for in this act.

Each miner or other person shall avoid waste of props, caps, timber, or other material. When he has props, caps, timber, or other material unsuited for his purpose, he shall not cover them up or destroy them, but shall place same near the track where they can be readily seen.

History: En. Sec. 83, Ch. 120, L. 1911.

A positive duty is imposed upon the employee to examine and keep in a safe condition his working place, or in the event of his inability to do so, to cease operations and report to the employer, and in the event of his absence to observe this statutory duty, recovery cannot be had for injuries sustained, where no examination was made prior to commencing work, though the employer had failed to discharge its duty in keeping the place safe, since both were in pari delicto. Kallio v. Northwestern Improvement Co., 47 Mont. 314, 323, 132 Pac. 419, Ann. Cas. 1915A, 1228; McInnes v. Republic Coal Co., 49 Mont. 112, 115, 140 Pac. 235.

The "working place," within the meaning of the above section, of a miner engaged in loading coal, was the place where he was about to load the coal previously blasted down by him, and not the place in the tunnel where the accident occurred. McInness v. Republic Coal Co., 49 Mont. 112, 115 et seq., 140 Pac. 235; Kallio v. Northwestern Improvement Co., 47 Mont. 314, 132 Pac. 419, Ann. Cas. 1915A, 1228.

3526. Duties of machine-men. Machine runners and helpers shall use care while operating mining machines. They shall not operate a machine unless the shields are in place, and shall warn all persons not engaged in the operating of a machine of the danger in going near a machine while in operation, and shall not permit such persons to remain near the machine while in operation. They shall examine the roof of the working place and see that it is safe before starting to operate the machinery. They shall not move the machine while the cutter-chain is in motion.

When connecting the power cable to electric wires, they shall make the negative or grounded connections before connecting to the positive, and, when disconnecting the power cable, shall disconnect from the positive line before disconnecting the negative, or grounded. When positive feed wires extend into rooms, they shall connect such wires to the positive wire on the entry before connecting the power cable, and as soon as the power cable is disconnected shall disconnect such wire from the wire on the entry. They shall use care that the cable does not come in contact with metallic rails of the track, and shall avoid, where possible, leaving the cable in water. If any machine-men remove props which have been placed by the miner for the security of the roof, they shall reset such props as promptly as possible.

History: En. Sec. 84, Ch. 120, L. 1911.

3527. Duties of motormen, trip riders, and drivers. Motormen and trip riders shall use care in handling the motors and cars, and shall see that signals or markers, as provided for, are used as provided, and shall be governed by the speed provided for in this act in handling cars. They shall not run the motors with the trolley ahead of the motors, except in case where they cannot do the alternative, and then only at a speed of two miles an hour. They shall warn persons forbidden to ride on the motors or cars, and shall not permit such persons to ride on motors or cars contrary to the provisions of this act.

Drivers shall use care in handling cars, especially when going down extreme grades and at junction points.

Motormen, trip riders, and drivers in charge of hauling trips, passing through doors used as a means of directing the ventilation, shall see that such doors are closed promptly after the trip passes through.

History: En. Sec. 85, Ch. 120, L. 1911.

3528. Duties of other employees. No person shall enter a mine generating fire-damp so as to be detected by a safety-lamp until the mine examiners make a report on the blackboard for that purpose, as hereinbefore provided for in this act.

No person, unless accompanied by the mine examiner, shall go beyond a danger-signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. Any person, being ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation, shall not re-enter the mine until given permission to do so by the mine foreman.

No person other than the mine examiner shall remove any caution board or danger-signal placed at the entrance to any working place, or at the entrance to any old workings in a mine.

No person shall erase or change a mark of reference or monument made in connection with a measurement; change marks or dates or any caution board, or erase or change the dates at room or entry face, when made by the mine examiner; change the checks on cars, wrongfully check a car, or do any act with intent to defraud. No person shall take a lighted pipe or other thing containing fire, except lanterns as provided for in this act, into any underground stable or barn.

No person shall place refuse in or obstruct any airway or breakthrough used as an airway. No workman or other person shall injure a water-gauge, barometer, air-course, brattice equipment, machinery, or livestock; obstruct or throw open any airway; handle or disturb any part of the machinery of the hoisting-engine of a mine; open a door of a mine and neglect to close it; endanger the miners or those working therein; disobey an order given in pursuance of law, or do a wilful act whereby the lives and health of persons working therein or the security of a mine or machinery connected therewith may be endangered.

History: En. Sec. 86, Ch. 120, L. 1911.

3529. Persons permitted to ride on haulage trips. No person or persons, except those in charge of trips, superintendents, mine foremen, mine examiners, electricians, mechanics, and blacksmiths, when required by

their duty, shall ride on haulage trips, except where by mutual agreement in writing between the superintendent or agent and the employees a special trip of empty cars is run for the purpose of taking employees into or out of the mine, or empty cars are attached to loaded trips, which shall not be run at a speed exceeding six miles per hour.

History: En. Sec. 87, Ch. 120, L. 1911.

3530. Employees shall not loiter nor use intoxicants around the mine. Each employee of a mine shall go to or from his place of duty by the traveling ways provided; shall not travel around the mine or the buildings, where duty does not require, and when not on duty shall not loiter at, in, or around the mine, the buildings, or machinery connected therewith, except by permission of the owner, lessee, operator, superintendent, or foreman.

No person shall go into or around a mine, the buildings, or the machinery connected therewith, while under the influence of intoxicants. No person shall use, carry, or have in his possession, at, in, or around a mine, the buildings, or the machinery connected therewith, any intoxicants.

History: En. Sec. 88, Ch. 120, L. 1911.

3531. Top and bottom men. At every shaft, operated by steam or other power, the operator must station at the top and the bottom of such shaft a competent man, charged with the duty of attending to signals, preserving order, and enforcing rules, during the carriage of the men on cages.

History: En. Sec. 89, Ch. 120, L. 1911.

3532. Lights on landings. Whenever the hoisting or lowering of men occurs before daylight or after dark, or when the landing at which men leave or take the cage, car, or cars is at all obscured by steam or otherwise, there must always be maintained at such landing a light sufficient to show the landing and surrounding objects distinctly. Lights shall also be maintained at each landing and the bottom of all shafts while men are at work underground.

History: En. Sec. 90, Ch. 120, L. 1911.

Liability of master for injury to servant resulting from insufficient lighting of mine, see note in 20 Ann. Cas. 5.

3533. Regulations for hoisting or lowering of men. Cages in shafts, or cars in any slope, on which men are riding, shall not be lifted or lowered at a rate of speed greater than six hundred feet per minute.

No more than twelve persons shall ride on any cage or car at any one time, except where specially constructed man-cars are used on a slope.

No person shall carry any explosives, tools, timber, or other material with him on a cage, car, or cars in motion, in any shaft or any slope or incline plane while the men are being hoisted or lowered, except for use in repairing the shaft, slope, or incline plane.

No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials, unless the same is provided with some device by which the platform can be securely locked, and unless it is so locked whenever men or materials are being conveyed thereon.

The rope-rider on any slope or incline plane shall, during working hours, see that all ropes and signals are in perfect working order, and, if he perceives anything wrong, he shall at once report the same to the mine foreman or his assistant.

He must be cautious when men are being hoisted out of or lowered into any slope, and shall see that all safety appliances are properly attached, and that all cars are securely coupled. He shall pay strict attention to all signals.

When more than twelve persons get on a cage or on one car on a slope or incline plane, except as above provided for, the bottomman, topman, or rope-rider in charge of the lowering and hoisting of such persons shall order a sufficient number to get off to reduce the number to twelve persons on the cage or car, and the person or persons so ordered shall immediately comply.

The car or cars used to hoist or lower men into or out of any slope or on any plane shall be connected by safety-chains, or some safety appliance must be used to maintain the trip in case of breakage of coupling or other connection.

History: En. Sec. 91, Ch. 120, L. 1911.

3534. Rights of men to come out. Whenever men who have finished their day's work, or who have been prevented from further work for any cause, shall come to the bottom of any shaft to be hoisted out, a cage shall be given them for that purpose, unless there is an available exit by slope or stairway in an escapement shaft, and providing there is no coal at the bottom to be hoisted. Whenever the designated number of persons for a cage load shall arrive at the bottom of the shaft in which persons are regularly hoisted or lowered, they shall be furnished with an empty cage and be hoisted.

History: En. Sec. 92, Ch. 120, L. 1911.

3535. Stretchers, blankets, etc. At every mine where men are employed underground, it shall be the duty of the operator thereof to keep always on hand and at some readily accessible place, a properly constructed stretcher, a woolen and water-proof blanket, and roll of bandages, in good condition and ready for immediate use, for binding, covering and carrying anyone who may be injured at the mine; also to provide a comfortable apartment near the mouth of the mine in which anyone so injured may rest while awaiting transportation home, and to provide for the speedy transportation of anyone injured in such mine to his home. When more than one hundred and fifty men are employed in any one mine two stretchers, two woolen and two water-proof blankets, with a corresponding supply of bandages, shall be provided and kept on hand. There shall also be provided and kept in store a suitable supply of linseed or olive oil, for use in case men are burned by an explosion or otherwise. There shall also be provided at any mine where more than five hundred men are employed an ambulance of standard make or kind to be used for the purpose of transporting sick or injured workmen from the mine to the hospital or home of such sick or injured workmen; provided, however, that mines employing less than five hundred men may jointly,

when located within a radius of six miles of each other, provide an ambulance as provided in this section for the joint service of such mines, which ambulance shall be kept at the mine or garage that is most centrally or conveniently located for the service of the joint users.

History: En. Sec. 93, Ch. 120, L. 1911; amd. Sec. 1, Ch. 185, L. 1921.

3536. Oils to be used in coal mines. No person, firm, or corporation shall compound, sell, or offer for sale, for illuminating purposes in any coal mine, any oil, other than oil composed of not less than eighty-four per cent. of pure animal or vegetable oil, or both, and not more than sixteen per cent. pure mineral oil. The gravity of such animal or vegetable oil shall not be less than twenty-one and one-half and not more than twenty-two and one-half degrees Baumé scale measured by Tagliabue or other standard hydrometer, at a temperature of sixty degrees Fahrenheit; the gravity of such mineral oil shall not be less than thirty-four and not more than thirty-six degrees Baumé scale, measured by Tagliabue or other standard hydrometer, at a temperature of sixty degrees Fahrenheit, and gravity of the mixture shall not exceed twenty-four degrees Baumé scale, measured by Tagliabue or other standard hydrometer, at a temperature of sixty degrees Fahrenheit. It is provided, however, that any material that is as free from smoke and bad odor, and of equal merit as an illuminant as a pure animal or vegetable oil, may be used at the pleasure of mine operators and miners.

Each person, firm, or corporation compounding oil for illuminating purposes in a coal mine or mines, shall, before shipment thereof is made, securely brand, stencil, or paste upon the head of such barrel or package, a label which shall have plainly printed, marked, or written thereon the name and address of the person, firm, or corporation compounding the oil therein contained, the name and address of the person, firm, or corporation having purchased same, the date of shipment, the percentage and gravity in degrees Baumé scale, at a temperature of sixty degrees Fahrenheit, of each of the component parts of animal, vegetable, and mineral oil contained in the mixture, and the gravity in degrees Baumé scale of the mixture, at a temperature of sixty degrees Fahrenheit.

Each label shall have printed thereon, over the facsimile signature of the person, firm, or corporation having compounded the oil, the following: "This package contains oil for illuminating purposes in coal mines in the state of Montana, and the composition thereof as shown herein is correct."

No person, firm, or corporation shall sell or offer for sale any oil for illuminating purposes in any coal mine, unless the barrel or package in which such oil was received bears the label of the compounder as provided for in this act.

Each person, firm, or corporation selling or offering for sale any oil for illuminating purposes in any coal mine, shall, upon request of the state coal-mine inspector, or of any officer or duly authorized agent of any owner or lessee of a coal mine located within five miles of the point where such oil is offered for sale, or of any coal-miner, submit such oil for examination, and upon request give a sample of such oil from one or more original containers selected by such inspector, officer, agent, or miner for the purpose of making a test thereof.

No person shall adulterate any oil, either before or after taking same from original containers, and shall not alter, transfer, or reuse any label placed upon any container.

No person shall use for illuminating purposes in any coal mine any oil other than oil specifically provided for in this act. Each person while in a coal mine shall, upon the request of the inspector of mines, or any officer or duly authorized agent of the owner or lessees, submit his lamp and supply of oil for examination, and upon request give sample of oil for purpose of making test thereof, and state from whom purchased.

The provisions of this act relating to compounding, sale, and use of oil for illuminating purposes in coal mines shall apply to oil used in lamps for open lights only, but do not apply to drivers, rope-riders, or motormen while acting in such capacity. The oil used in safety-lamps may be of such composition as will best serve the purpose.

History: En. Sec. 94, Ch. 120, L. 1911.

3537. Boundary lines. In no case shall the workings of a coal mine be driven nearer than ten feet to the boundary line of the coal rights pertaining to said mine, except for the purpose of establishing connecting workings between properties owned by the same person, or an underground communication between contiguous mines as provided for elsewhere in this act.

History: En. Sec. 95, Ch. 120, L. 1911.

Right to drill through coal of another owner, see note in 25 L. R. A. 225.

3538. Notice to inspectors. Immediate notice must be conveyed to the state coal-mine inspector by the operator interested.

First. Whenever an accident occurs whereby any person receives serious or fatal injury.

Second. Whenever work is commenced to sink a shaft, slope, or drift, either for hoisting or escapement purposes.

Third. Whenever it is intended to abandon any mine or to reopen any abandoned mine.

Fourth. Upon the appearance of any large body of fire-damp in mine, whether accompanied by explosion or not, and upon the occurrence of any serious fire within the mine or on the surface around the mine.

Fifth. When the workings of any mine are approaching near any abandoned mine believed to contain accumulation of water or gas.

Sixth. Upon the accidental closing or intended abandonment of any regularly established passageway to an escapement outlet.

History: En. Sec. 96, Ch. 120, L. 1911.

3539. Duty of inspectors. When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the state coal-mine inspector shall, if he deem it necessary from the facts reported, and in all cases of loss of life, immediately go to the scene of said accident, or send some competent person authorized by him. It shall, moreover, be the duty of every operator of a coal mine, or his agent, to make and preserve for the information of the inspector, upon uniform blanks

furnished by the said inspector, a record of all injuries sustained by any employees in the pursuance of their regular occupation.

The state coal-mine inspector may also make any original or supplementary investigation which he may deem necessary as to the nature and cause of any accident within his jurisdiction, and shall make a record of the circumstances attending the same and of the result of his investigations for preservation in the files of his office.

To enable him to make such investigation, he shall have the power to compel the attendance of the witnesses and to administer oaths or affirmations to them, and the cost of such investigation shall be paid by the county in which such accident has occurred, in the same manner as the cost of coroner's inquest is paid.

History: En. Sec. 97, Ch. 120, L. 1911.

3540. Coroner's inquest. If any person is killed by any explosion or other accident, the operator must also notify the coroner of the county, his authorized deputy, or, in the absence of either or in the inability of either to act, any justice of the peace of said county, for the purpose of holding an inquest concerning the cause of such death. At such inquest the state coal-mine inspector, his deputy or authorized representative, shall offer such testimony as he may be possessed of, and he may question or cross-question any witness appearing in the case; and the owner, agent, or manager of the coal mine, either in person or by counsel, shall also be at liberty to examine or cross-examine any witness at any such inquest.

Any person having personal interest in or employed in the management of the mine in which the accident occurred shall not be qualified to serve on the jury impaneled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such to be sworn or sit on the jury; nevertheless, when possible, one-third of the jurymen shall be miners.

Unless the state coal-mine inspector, or some person authorized by him, is present at an inquest held upon the body of any person, where death may have been caused by any such accident, the coroner shall adjourn the same, and, by written notice or telegram delivered or sent to the state coal-mine inspector, at least two days before holding the adjourned inquest, give notice of the time and place of the holding of the same. Before such adjournment the coroner, his authorized deputy, or the justice of the peace, may take evidence to identify the body and order the interment therof.

History: En. Sec. 98, Ch. 120, L. 1911.

3541. Code of signals at coal mines. At any coal mine operated by shaft more than one hundred feet in depth, or by slope, the manner of signaling to and from the bottomman, the topman, the rope-riders, and the engineer shall consist of wires, or a tube or tubes, through which signals shall be communicated by electricity, compressed air, or other pneumatic devices.

The following signals are provided for use at coal mines where signals are required:

One ring or whistle—One ring or whistle shall signify to hoist coal or the empty cars or cage, and also to stop either when in motion.

Two rings or whistles—Two rings or whistles shall signify to lower cage or car.

Three rings or whistles—Three rings or whistles shall signify that men are coming up; when return signal is received from engineer, either by bell, whistle, or slight movement of the trip, men will get on cage or cars and the cager or rope-rider shall ring or whistle "one" to start.

Four rings or whistles—Four rings or whistles shall signify to hoist slowly, implying danger.

Five rings or whistles—Five rings or whistles shall signify accident in the mine and call for stretchers.

From top to bottom—One ring or whistle shall signify—All ready, get on cage or cars.

From top to bottom—Two rings or whistles shall signify—To send away empty cage or cars.

Provided, that the management of any mine may, with the consent of the state coal-mine inspector, add to or change this code of signals at their discretion, for the purpose of increasing its efficiency or of promoting the safety of the men in said mine, but, whatever code may be established and in use at any mine, it must be approved by the state coal-mine inspector, and shall be conspicuously posted at the top and at the bottom of every shaft or slope, and at the landing-place on all rope-haulage systems, also in all engine-rooms, for the information and instruction of all persons. In any coal mine where more than fifty men are employed underground, one or more telephones shall be installed communicating with the surface.

History: En. Sec. 99, Ch. 120, L. 1911.

3542. Duties of hoisting engineers. The hoisting engineer on any shaft, slope, or drift at any mine shall be in constant attendance at his engine during working hours when there are workmen underground. He shall not permit anyone to enter or to loiter in the engine-room except those authorized by their positions or duties to do so, and he shall hold no conversation with any officer of the company or other person, or leave his engine while in motion, or while his attention is occupied with the signals. A notice to this effect shall be posted on the door of the engine-house.

The hoisting engineer must thoroughly understand the established code of signals, and such signals must be delivered in the engine-room in a clear and unmistakable manner, and he shall not recognize any signals other than those provided for in this act, or such as have been approved by the state coal-mine inspector; and when he has the signal that men are on the cage, car or cars, he must work his engine only at the rate of speed herein provided for by this act. He shall permit no one to handle or meddle with any machinery under his charge, nor suffer anyone who is not a certified engineer to operate his engine except for the purpose of learning to operate it or repair same, and then only in the presence of the engineer in charge, and when men are not on the cages, car, or cars.

History: En. Sec. 100, Ch. 120, L. 1911.

3543. Qualifications of miners. Each person desiring to work by himself at mining or loading shall first produce satisfactory evidence, in writing, to the mine foreman of the mine in which he is employed, or to be employed, that he has worked at least nine months with, under the direction of, or as a practical miner; provided, however, that if the mine in which such person is to be employed generates explosive gas or fire-damp, he shall have worked not less than twelve months with, under the direction of, or as a practical miner. Until a person has so satisfied the mine foreman of his competency, he shall not work or be permitted to work at mining or loading unless accompanied by a miner holding the foregoing qualifications.

History: En. Sec. 101, Ch. 120, L. 1911.

3544. Operators must make reply to statistical inquiry. Every coal-mine operator, whether person, copartnership, or corporation, shall, within thirty days after receipt of blanks from the state coal-mine inspector asking for statistical data relative to any coal mine operated by the person, copartnership, or corporation addressed, fill in the blanks of such forms, answering all interrogations correctly and mail the same to the state coal-mine inspector.

History: En. Sec. 102, Ch. 120, L. 1911.

3545. Penalties. If any operator, company, or corporation neglects to comply with or violates the requirements of this act, either in part or in whole, or if any owner, operator, manager, superintendent, mine foreman, or his assistant coerces, intimidates, or causes any employee to do the things prohibited, or causes them to do as provided against in this act, such operator, company, corporation, manager, superintendent, mine foreman, or his assistant shall be liable to a penalty of twenty-five dollars for each and every day during which the offense continues; proceedings to be instituted in any court of competent jurisdiction in the county in which such offense is committed.

In case of the failure of any operator, company, or corporation to comply with the provisions in this act in relation to the sinking of escapement shaft or the ventilation of mines, the state coal-mine inspector, through the county attorney for the county in which such failure occurs, or through any other attorney in case the county attorney fails to act promptly, shall proceed against such operator by injunction, without bond, to restrain him from continuing to operate such portion of the mine until all legal requirements have been complied with.

When the state coal-mine inspector shall discover that any section of this act, or any part thereof, is being neglected or violated, he shall order immediate compliance therewith, and in case of continued failure to comply shall, through the county attorney or any other attorney in case of his failure to act promptly, take the necessary legal steps to enforce compliance therewith through the penalties herein prescribed.

If it becomes necessary, through refusal or failure of the county attorney to act, for any other attorney to appear for the state in any suit involving the enforcement of any of the provisions of this act, reasonable fees for the services of such attorney shall be allowed by the county

commissioners in and for the county in which such proceedings are instituted.

Any employee engaged at work in or around any coal mine in the state of Montana, or any other person, who violates any part of this act, shall for each offense be liable to a penalty not exceeding five dollars, or in default of payment shall be imprisoned in the county jail for a period of time not exceeding ten days, proceedings to be instituted in any court of competent jurisdiction in the county in which such offense is committed. Any person, firm, or corporation who compounds, sells, or offers for sale to dealers any oil for illuminating purposes in any coal mine in this state, contrary to the provisions of section 3539 of this code, shall, upon conviction thereof, be fined not less than fifty dollars nor more than one hundred dollars, and for the second offense, or any subsequent offense, shall be fined not less than one hundred dollars, or imprisonment not less than thirty days nor more than sixty days, or both, at the discretion of the court; proceedings to be instituted in any court of competent jurisdiction.

Any person, firm, or corporation who sells, or offers for sale, to any employee of a coal mine any oil for illuminating purposes in a mine contrary to the provisions of section 3539 of this code shall, upon conviction thereof, be fined not less than twenty-five dollars or more than fifty dollars, and for a second or subsequent offense shall be fined not less than twenty-five dollars and not more than fifty dollars, or imprisonment not less than ten days and not more than twenty days, or both, at the discretion of the court; proceedings to be instituted in any court of competent jurisdiction.

History: En. Sec. 103, Ch. 120, L. 1911.

Cited or applied as section 103, chapter 120, Laws of 1911, in Kallio v. Northwestern Improvement Co., 47 Mont. 314, 322, 132 Pac. 419, Ann. Cas. 1915A, 1228.

3546. Definitions. In this act the words "mine" and "coal mine," used in their general sense, are intended to signify any and all underground parts of the property of a mining plant which contribute, directly or indirectly, under one management, to the mining or handling of coal.

The words "excavations" and "workings" signify any and all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working place, whether abandoned or in use.

The term "shaft" means any vertifical opening through the strata which is or may be used for the purpose of ventilation or escapement, or for hoisting or lowering of men or material in connection with the mining of coal.

The terms "slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

A "following shot" is a shot which is dependent in its action on the result of another shot.

The term "operator," as applied to the party in control of a mine under this act, signifies the person, firm, or body corporate who is the immediate proprietor as owner or lessee of the plant, and, as such, responsible for the condition and management thereof.

The "mine foreman" is a person who is charged with the general

direction of the underground work, or both the underground work and the outside work of any coal mine, and who is commonly known and designated as "mine boss."

The "mine examiner" is the person charged with the examination of the condition of the mine before the miners are permitted to enter it, and who is commonly known as the "fire-boss."

History: En. Sec. 104, Ch. 120, L. 1911.

CHAPTER 253.

CASING OF OIL AND GAS WELLS—WASTEFUL USE OF GAS.

Section 3547. Incasing of Oil and Gas Wells.
3548. Filling and Plugging of Wells About to Be Abandoned.
3549. Violation of Act a Misdemeanor—Penalty.
3550. Wasteful Use of Natural Gas Prohibited.
3551. Use of Gas for Carbon Prohibited.
3552. Violation of Act, Misdemeanor.
3553. Owners Abandoned Oil Wells to File Statements.
3554. Penalty for Violation of Act.

3547. Incasing of oil and gas wells. The owner or operator of any well put down for the purpose of exploring for and producing oil or gas shall, before drilling into the oil or gas-bearing rock, incase the well with good and sufficient wrought-iron oil-well casing, and in such manner as to exclude all surface or fresh water from the lower part of such well, and from penetrating the oil or gas-bearing rock. Should any well be put down through the first into a lower oil or gas-bearing rock, the same shall be cased in such manner as will exclude all fresh or salt water from both upper and lower oil or gas-bearing rocks penetrated.

History: En. Sec. 1, Ch. 43, L. 1917.

Constitutionality of statute to prevent waste of oil or gas, see notes in 23 L. R. A. (N. S.) 436; L. R. A. 1918B, 134.

Right of owner of land to waste gas or petroleum to injury of neighbor, see note in 4 Ann. Cas. 357.

3548. Filling and plugging of wells about to be abandoned. The owner of any well, when about to abandon or cease operating the same, for the purpose of excluding all fresh or salt water from penetrating the oil or gas-bearing rock or rocks, and before drawing the casing, shall fill the well with sand or rock sediment to the depth of two feet below the top of each oil or gas-bearing rock, and drive therein a round, seasoned, wooden plug, at least two feet in length and in diameter equal to the full diameter of the well below the casing, and immediately upon drawing the casing, shall fill in on top of such plug with sand or rock sediment to the depth of five feet, and again drive into the well a round, wooden plug three feet in length, the lower end tapering to a point, and to be of the same diameter at the distance of eighteen inches from the smaller end as the diameter of the well below the point at which it is driven; and after such plug has been driven, the well shall be filled with sand or rock sediment to the depth of twenty feet.

History: En. Sec. 2, Ch. 43, L. 1917.

3549. Violation of act a misdemeanor—Penalty. Any owner or operator or person who shall violate any of the provisions of this act shall be deemed

guilty of a misdemeanor, and shall be fined in the sum of not less than one hundred dollars nor more than five hundred dollars for each and every offense, and for a second violation of any of the provisions of the preceding section of this act shall be fined in a sum of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than six months, or both such fine and imprisonment.

History: En. Sec. 3, Ch. 43, L. 1917.

3550. Wasteful use of natural gas prohibited. The use, consumption, or burning of natural gas taken or drawn from any natural gas well or wells, or borings from which natural gas is produced for the products where such natural gas is burned, consumed, or otherwise wasted without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes is hereby declared to be a wasteful and extravagant use of natural gas and is hereby declared to be unlawful.

History: En. Sec. 1, Ch. 125, L. 1921.

3551. Use of gas for carbon prohibited. No person, firm, or corporation, having the possession or control of any natural gas well or wells, except as herein provided, or borings from which natural gas is produced, whether as a contractor, owner, lessee, agent, or manager, shall use, sell, or otherwise dispose of natural gas, the product of any such well or wells, or borings for the purpose of manufacturing or producing carbon or other resultant products from the burning or consumption of such natural gas, without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes.

History: En. Sec. 2, Ch. 125, L. 1921.

3552. Violation of act, misdemeanor. Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars for each offense, and each and every day in which any person, firm or corporation shall violate any of the provisions hereof shall constitute a separate offense hereunder and subject the offender to the penalty hereby provided.

History: En. Sec. 3, Ch. 125, L. 1921.

3553. Owners abandoned oil wells to file statements. Whenever any person, firm, association, or corporation have abandoned or ceased operating any well or wells in the state of Montana, drilled, bored, operated, or possessed for the purpose of exploring for or producing oil or gas, said person, firm, association, or corporation shall within ten days after such abandonment or cessation of operations, file with the county clerk of the county in which such well or wells are located, a sworn statement setting out the location of such well or wells and the manner in which such well or wells have been plugged. Said statement shall be subscribed and sworn to by not less than two persons who shall have performed or assisted in performing the actual work of plugging said well or wells.

History: En. Sec. 1, Ch. 244, L. 1921.

3554. Penalty for violation of act. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished accordingly, and any person who wilfully executes a false affidavit under the provisions of this act shall be guilty of perjury, and shall be punished accordingly.

History: En. Sec. 2, Ch. 244, L. 1921.

CHAPTER 254.

THE DEPARTMENT OF AGRICULTURE, LABOR AND INDUSTRY—REGULATION OF AGRICULTURE, HORTICULTURE, APICULTURE, POULTRY HUSBANDRY, DAIRYING, GRAIN GRADING AND INSPECTION, STATISTICAL DATA AND THE STATE FAIR.

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3555. Department of agriculture, labor, and industry—Creation. There is hereby created a department of the government of the state of Montana to be known as the "Department of Agriculture, Labor, and Industry." The general purpose of said department is the promotion of the agricultural and labor interests of the state of Montana as hereafter more specifically provided.

History: En. Sec. 1, Ch. 216, L. 1921.

3556. Commissioner of agriculture—Appointment and term. The chief executive officer of the department of agriculture, labor, and industry, hereinafter referred to as the commissioner of agriculture, shall be a commissioner of agriculture, to be appointed by the governor, by and with the consent of the senate, and such commissioner shall hold office for a term of four years or until his successor is appointed and qualified.

History: En. Sec. 2, Ch. 216, L. 1921.

3557. Bond, salary, and office of commissioner. Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office, and shall give a surety company bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state. The commissioner shall receive an annual salary of five thousand dollars, payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at the state capitol.

History: En. Sec. 3, Ch. 216, L. 1921.

3558. Commissioner may prescribe regulations—Seal. The commissioner of agriculture is empowered to prescribe regulations not inconsistent with law for the government of his department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use, and preservation of the records, papers, books, documents, and property pertaining thereto. He shall also have authority to designate the form of and to use a seal to authenticate his official acts.

History: En. Sec. 4, Ch. 216, L. 1921

3559. Appointment and compensation of assistants. The commissioner of agriculture shall have the authority to appoint for the performance of the work of said department such number of secretaries, assistants, clerks, and other employees as he shall deem necessary for the performance of the work of the department, subject, however, to the approval of the state board of examiners. All persons so employed shall receive the compensation fixed by law or fixed by the board or department to whom may be entrusted the power to fix the compensation of deputy state officers and employees; if not so fixed, the commissioner of agriculture shall determine the amount of said compensation. No employee of the department of agriculture, labor, and industry who is paid a fixed compensation shall receive pay for any extra services rendered by him unless expressly authorized by law.

History: En. Sec. 5, Ch. 216, L. 1921.

3560. Annual report. The commissioner of agriculture shall annually on or before the first day of December, and at such other times as the governor may require, make a report in writing to the governor concerning the condition, management, and financial transactions of his department.

History: En. Sec. 6, Ch. 216, L. 1921.

3561. Powers and duties of department. The department of agriculture, labor, and industry shall have power and it shall be its duty:

1. To encourage and promote, in every practicable manner, the interests of agriculture, including horticulture and apiculture, domestic arts, dairying, cheese making, poultry raising, the production of wool, and all other allied industries.

2. To collect and publish statistics relating to the production and marketing of crops and live stock, and of beef, pork, poultry, fish, mutton,

wool, butter, cheese, and other agricultural products so far as such statistical information may be of value to the agricultural and allied interests of the state.

3. To assist, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture.

4. To establish and promulgate standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products.

5. To co-operate with producers and consumers in devising and maintaining economical and efficient systems of distribution, and to aid in whatever way may be consistent or necessary in accomplishing the reduction of waste and expense incidental to marketing.

6. To have authority to maintain a market news service, including information as to crops, freight rates, commission rates, and such other matters as may be of service to producers and consumers, acting as a clearing house for information between producer and consumer.

7. To gather and diffuse timely information concerning the supply, demand. prevailing prices, and commercial movement of farm products.

8. To investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, dairy products, eggs, livestock, vegetables, or other farm products, to the end that the distribution of such commodities through such factors, commission merchants, and others shall be efficiently and economically accomplished without hardship, waste or fraud.

9. To co-operate with the state college of agriculture, the agricultural experiment stations and the federal government to the end that all available agencies may be employed, to the best advantage, for the betterment of the agricultural industries of the state, for the improvement of country life and for promoting equality of opportunity for the farmers of the state.

10. To ascertain, as far as possible, what conditions make for the success of a homeseeker and what conditions make for his failure, and to assist in remedying such of the conditions which make for failure as are capable of remedy. To examine or cause to be examined upon application of any land colonization company or lands proposed for colonization, and to certify his findings when conditions warrant:

(A) That the land is suitable for agricultural purposes.

(B) That the location of the land with reference to public roads and shipping facilities is favorable to colonization development.

(C) That the plan of colonization in each instance is in the interest of the settlers or homeseeker.

(D) That the terms of payment are on the amortization plan.

(E) That satisfactory assurance has been given to the commissioner that the plan of colonization adopted will not be changed to the detriment of the homeseeker.

11. To conduct and manage the state fair and to have custody of the state fair grounds, buildings, and other property belonging thereto.

12. To take and hold in the name of the state of Montana property,

real and personal, acquired by gifts, subscriptions, donations, and bequests.

13. To sell and dispose of personal property owned by it in such manner as the commissioner may provide, when in the judgment of the department such sale or disposal best promotes the purposes for which the department is established.

14. To contract with the approval of the state board of examiners in respect to any matter within the scope of its authority.

History: En. Sec. 7, Ch. 216, L. 1921.

3562. Organization of divisions. For the purpose of the orderly administration of the affairs of the department of agriculture, labor, and industry, the same shall be organized into divisions, which divisions shall have charge of the matters hereinafter designated, and such other matters properly within the scope of the department, as shall be allotted to them by the commissioner of agriculture.

History: En. Sec. 8, Ch. 216, L. 1921.

3563. Divisions defined. There shall be four main divisions of the department of agriculture, labor, and industry, to-wit:

The division of farming and dairying.

The division of grain standards and marketing.

The division of horticulture.

The division of labor and publicity.

The divisions hereby created are intended for the sole purpose of promoting the logical and convenient classification of the work of the department, and nothing herein contained shall be deemed to prevent any person engaged in the work of a particular division from performing the work of another division; the commissioner may likewise create additional divisions at his discretion.

History: En. Sec. 9, Ch. 216, L. 1921.

3564. The division of farming and dairying. The department of agriculture, labor, and industry, through the division of farming, shall enforce all the laws of Montana now existing or hereafter enacted for the protection and regulation of the farming industry in Montana; it shall also make a special study of the conditions of farm life in Montana and the problems of marketing and distribution of farm products, and shall from time to time make recommendations to the governor concerning needed legislation upon said subjects; it shall enforce the provisions of sections 3593 to 3602 of this code, relating to the purity of agricultural seeds, and of sections 3603 to 3607 of this code, relating to the eradication of the barberry plant, and of sections 3631 to 3633 of this code, relating to the control of insect pests and plant diseases. The word "farming" is used in this section shall not be deemed to include horticulture, nor the regulation of the livestock industry.

History: En. Sec. 10, Ch. 216, L. 1921.

3565. Same—Duties concerning poultry raising. The division of farming and dairying shall investigate and bring to the attention of the public the value and importance of poultry raising in Montana, and shall publish for free distribution reports and bulletins pertaining to the advancement

of poultry husbandry. Said division shall also supervise and promote local poultry associations, and shall supervise the holding of an annual state poultry exhibition.

History: En. Sec. 11, Ch. 216, L. 1921.

3566. Same—Powers and duties concerning apiculture. The division of farming and dairying shall regulate and promote the business of apiculture in Montana, and shall be charged with the duty of instructing the bee-keepers of Montana in the approved methods of bee-keeping and management of apiaries, control of bee diseases, and other matters pertaining to the promotion of the bee-keeping industry in Montana. The commissioner of agriculture shall have authority to prescribe such regulations as in his judgment may be necessary to eradicate, prevent, or control the introduction and dissemination of American or European foul brood of bees.

The authority hereby given shall include the power to order the transfer of clans of bees from hives or containers which cannot be easily examined for brood diseases to other hives or containers; to order the destruction of infected or contaminated bees, beehives, brood combs, and other equipment; or to order the disinfection thereof; to define and prescribe the limits of apiary control districts; quarantine any apiary or district where foul brood or any dangerous or infectious disease is present; to prevent the removal from such quarantined apiary or district of bees, used bees supplies or equipment, excepting under permit, or to issue or withhold such permits. The commissioner may refuse such permit whenever necessary in his judgment to prevent the dissemination of any bee diseases or until he shall have ascertained whether or not such disease is present. No person shall sell or offer for sale any apiary, bees, comb, or used bee-keeping apparatus within a quarantined district without a permit from the commissioner of agriculture. The commissioner of agriculture shall have authority, and it shall be his duty upon request of owners or of not less than three resident bee-keepers to visit and examine, either personally or by deputy, any apiary for the purpose of ascertaining the existence of diseases among bees or brood. The commissioner of agriculture is hereby authorized to employ temporarily some competent and qualified person to make the inspection and to perform the other duties relative to apiaries imposed upon the commissioner by the terms of this act.

History: En. Sec. 12, Ch. 216, L. 1921.

3567. Separate division may be created. The commissioner of agriculture may, in his discretion, create a separate division to have charge of the subject of poultry husbandry and apiculture.

History: En. Sec. 13, Ch. 216, L. 1921.

3568. Division of farming and dairying—Powers and duties. The department of agriculture, labor, and industry, through the division of farming and dairying, shall have general regulation of the industry of dairying in the state of Montana, save and except as to the sanitary inspection of dairies, creameries, butter and cheese factories, and receiving stations, which said duties shall be administered by the livestock sanitary board. It shall be the duty of the department of agriculture, labor, and industry to compile and publish statistics concerning all phases

of the dairy industry in the state, and to encourage and advertise said industry in every possible manner; to carry on a campaign of education in conjunction with the extension work of the college of agriculture and mechanic arts of Montana for the purpose of encouraging interest in the dairy industry and of furnishing scientific and practical information concerning the same.

It shall be the duty of the department of agriculture, labor, and industry to provide suitable means for the taking of samples of dairy products and of all imitations thereof suspected of being made or sold in violation of the law, and to analyze or test the same, and the commissioner of agriculture may require the state chemist to test and analyze said samples.

History: En. Sec. 14, Ch. 216, L. 1921.

3569. Registry of location of dairy-product factories. It shall be the duty of every cheese factory, creamery, butter, and condensed-milk factory, or skimming station in the state, where milk or cream is purchased or contributed by three or more persons, to register the location of such cheese-factory, creamery, butter, and condensed-milk factory or skimming station, and the name of its owner or manager, with the commissioner of agriculture on or before the first day of April of each year. Before the organization of any new factory, notice shall be given at once to said commissioner of agriculture. It shall likewise be the duty of each and all of the establishments in this section named to render to the commissioner of agriculture, within three days after the last day of each month, a monthly report of the amount of butter, ice-cream, or other dairy products handled or manufactured during the month.

History: En. Sec. 15, Ch. 216, L. 1921.

Constitutionality of statutes regulating sale of milk, see notes in 4 Ann. Cas. 119; 5 Ann. Cas. 911; 18 Ann. Cas. 321; Ann. Cas. 1915C, 72.

Validity of statute regulating use of receptacles for sale of milk, see note in 14 Ann. Cas. 703.

3570. Babcock test—Regulation of use—Fee. The Babcock test is hereby adopted as the official dairy test for use in the state of Montana.

Every person operating the Babcock test in any creamery or cheese factory, or other place where milk or cream is bought and paid for on the basis of its fat contents, shall be required to pass such examination as the commissioner of agriculture shall prescribe, upon the successful completion of which examination he shall receive a certificate, signed by said commissioner, stating his competency to operate said test. A fee of two dollars shall be paid to the commissioner by the applicant for said certificate. Said money shall be turned in by said commissioner to the state treasurer for the use and benefit of the general fund of the state.

All test bottles, pipettes, and other glassware used in connection with the Babcock test, where the fat forms a basis for the payment of the product, shall be handled and calibrated by the commissioner of agriculture or his deputies, as often as the commissioner may prescribe such testing or calibrating to be done on the premises where such glassware is used. All bottles used for the purpose of making the Babcock test shall be standard bottles, and shall be designated as such by the word "standard" stamped thereon.

No owner, manager, agent, or employee of a cheese factory, creamery, or condensed-milk factory shall falsely manipulate or under-read or over-read the Babcock test, or any other contrivance used for determining the quality of milk or cream, or to make any false determination of the said Babcock test, or otherwise.

All acids used in Babcock tests shall be of the strength indicated by the specific gravity reading one and eighty-two hundredths on the standard hydrometer.

History: En. Sec. 16, Ch. 216, L. 1921.

Validity of regulations as to tests or analyses of milk, see notes in 1 L. R. A. (N. S.) 926; L. R. A. 1917C, 249.

Validity of statute requiring pasteurization of milk, see note in 10 A. L. R. 132.

3571. Standards of measure for dairy products. The standard measure of capacity for milk shall be the gallon containing two hundred thirty-one cubic inches; the half gallon shall contain one hundred fifteen and five-tenths cubic inches, and the quart one fourth as much as the gallon, and the pint one-half as much as the quart.

The standard measure for the sale of butter and cheese in the state of Montana shall be sixteen ounces (avoirdupois weight) to the pound, when wrapped or put in container exclusive of the wrapper or container. Where weight and measures are stated in pounds and ounces, they shall be exclusive of the wrapper or other container, and each pound shall contain sixteen ounces, each ounce containing four hundred and thirty-seven and one-half grains. Any person, persons, firm, or corporation selling or offering for sale any article of dairy products as a pound, or any multiple thereof, the net weight of which is less than sixteen ounces, or the proper multiple thereof, to represent the number of pounds sold or offered for sale, shall be guilty of a misdemeanor; provided, a reasonable variance be permitted, and that tolerances shall be established by rules and regulations made by the commissioner of agriculture in accordance with the provisions of this act.

Butter sold in the state of Montana, whether manufactured on a farm or in a creamery, must have the maker's name clearly written or printed on the package in which it is sold, and upon each pound package of butter so sold or offered for sale, the words "net weight sixteen ounces" shall appear.

History: En. Sec. 17, Ch. 216, L. 1921.

3572. Sanitary regulation of dairy products. All milk, butter, cheese, condensed milk, ice-cream, or any dairy products shipped into Montana for sale or use, must be produced under the same sanitary regulations and requirements as are required for the production of such products in the state of Montana. The commissioner of agriculture shall have authority to require a sworn statement relative to the sanitary production of milk and other dairy products shipped into Montana, but produced outside of the state of Montana, and if such products are not produced under similar sanitary regulations and statutes, as required for the production of such products within the State of Montana, they shall not be sold, given away, traded, or used in the state of Montana.

History: En. Sec. 18, Ch. 216, L. 1921.

3573. The division of grain standards and marketing. The department of agriculture, labor and industry, through the division of grain standards and marketing, shall enforce all the laws of the state of Montana concerning the handling, weighing, grading, inspection, storage and marketing of grain, and the management of public warehouses.

History: En. Sec. 19, Ch. 216, L. 1921.

3574. Definition of terms. The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, shipment, or handling, whenever such grain is carried or intended to be carried to or from such warehouse, elevator, mill, or structure by common carrier. The term "public warehouseman" shall be held to mean and include every person, association, firm and corporation owning, controlling or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together, and the identity of the different lots or parcels is not preserved. The term "grain dealer" shall be held to mean and include every person, firm, association, and corporation owning, controlling, or operating a warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling in car-load lots. The term "track buyer" shall mean and include every person, firm, association and corporation who engages in the business of buying grain for shipment or milling in car-load lots, and who does not own, control, or operate a warehouse or public warehouse. The terms "agents," "broker," and "commission man" shall mean and include every person, association, firm and corporation who engages in the business of negotiating sales or contracts for grain, or of making sales or purchases for a commission.

History: En. Sec. 20, Ch. 216, L. 1921.

3575. Testing of scales—Fee. The commissioner of agriculture shall employ an expert tester of scales, whose duty it shall be, under such rules and regulations as the commissioner may prescribe, to test the scales within this state where grain is weighed at public warehouses, as defined by this act. The person employed by the commissioner of agriculture as an expert tester of scales shall collect from each person, firm, co-partnership, or corporation, for each track scale tested, ten dollars; for each wagon scale, dump scale and shipping scale tested, five dollars, and for each portable scale and grain tester tested, one dollar.

History: En. Sec. 21, Ch. 216, L. 1921.

3576. Appointment of inspectors, samplers and weighers. The commissioner of agriculture shall appoint such number of inspectors, samplers and weighers as may be necessary to properly and thoroughly enforce the provisions of this act. Such inspectors shall be able to qualify under the terms and in accordance with the United States federal grain standards act; no such inspector, sampler or weigher shall be interested directly or indirectly in the handling, sorting, shipping, purchasing or selling of grain or grain products.

History: En. Sec. 22, Ch. 216, L. 1921.

3577. Penalty for misconduct by inspectors, etc. Any inspector, sampler, or weigher, who shall be guilty of any neglect of duty, or who shall knowingly or carelessly inspect, sample, or weigh any grain, or who shall, directly or indirectly, accept any money or other consideration for any neglect of duty or any improper performance of duty as such inspector, sampler, or weigher, or any person, persons, corporation, or agent, who shall improperly influence, or attempt to improperly influence, any inspector, sampler, or weigher in the performance of his duties, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 23, Ch. 216, L. 1921.

3578. Designation of inspection points—Deputy inspectors. Such cities and towns where grain is received in carload lots may be designated by the commissioner of agriculture as inspection points, and be provided with state inspection and weighing; provided, that the expenditures for the inspection and weighing at the points designated by the commssioner shall not exceed the receipts of fees at such point or points. The commissioner may also assign deputy inspectors to such territory or portions of the state as it may determine to be necessary, and it shall be the duty of such deputy inspectors to inspect grain delivered in less than carload lots in such territory or portions of the state to which they may be assigned, to furnish producers within such territory or portions of the state with such inspection as shall enable them to determine the grade of their grain, and to perform such other duties as the commissioner may prescribe.

History: En. Sec. 24, Ch. 216, L. 1921.

3579. Regulation of charges of public warehousemen. All charges made by any public warehouseman subject to the provisions of this act, for the handling or storage of grain, shall be just, fair, and reasonable, and the commissioner of agriculture is hereby vested with power and authority, upon the complaint of any person interested, or by inquiry upon his own motion, after a full hearing, to declare any existing charge for the handling or storage of grain, or any regulation whatsoever affecting such charge, or the receipt, handling, or storage, to be unreasonable or unjust, and to declare and order what shall be a just and reasonable charge or regulation to be imposed or enforced in place of that found to be unreasonable or unjust.

History: En. Sec. 25, Ch. 216, L. 1921.

3580. Establishment of standard grain grades—Procedure. The commissioner of agriculture shall fix and establish standard grades to apply to all grain bought or handled by public warehouses in this state. The commissioner of agriculture shall adopt as state grade standards all grades for grain now or hereafter established by the United States department of agriculture. Standards for grain, other than those fixed as above, shall be established by the commissioner of agriculture after due notice and

public hearing, notice thereof to be given by publication in three newspapers of the state, at least ten days prior to such hearing.

Grade standards, or any alteration or modification of such standards which the commissioner of agriculture may establish, shall not become effective within thirty days after publication, except in the case of grades established by the United States department of agriculture, which shall become effective ten days after publication.

All interested persons desiring to be heard shall be permitted to give testimony, and such other witnesses may be subpoenaed as the commissioner of agriculture may deem necessary, which witnesses shall be entitled to the same fees and mileage as are provided for witnesses in civil actions, and shall be paid out of the fund created by the provisions of this act. Such grain standards shall not apply to grain contracted for previous to their disposition.

The commissioner of agriculture shall, after such hearing, make and issue reasonable rules and regulations governing the dockage, which shall be made on inferior grades and in all executory contracts thereafter entered into; provided, that the same shall not conflict with the terms of the United States federal grain standard act. Where the price or amount to be paid therefor depends upon terminal weight or grade, such rules and regulations shall control the dockage in so far as the same affects the price to be paid, and such rules and regulations shall become part of the contract of sale. The commissioner of agriculture shall also make provisions for sample inspection of grain, make rules and regulations governing same and provide that such inspection when made shall be final.

The commissioner of agriculture shall have power to require, after personal notice of not less than thirty days served upon any warehouseman and a public hearing, cleaning apparatus to be established where none now exists to remove dockage and the return of same to the owner, or its equivalent in value, less cleaning charges, which may be fixed by the commissioner of agriculture.

The commissioner of agriculture shall, during the grain-marketing season, appoint such deputy inspectors as they deem necessary to visit the grain-growing districts for the purpose of investigating grain grading, dockage, and weighing, and enforcing the rules and regulations laid down by the commissioner.

It shall be the duty of the commissioner of agriculture, immediately after the establishment of such grades, and the promulgation of rules and regulations fixing dockage, as herein provided, to supply all public warehousemen which the records of his office show are then or thereafter engaged in operating such warehouses, with a copy of such grades, rules, and regulations. It shall be the duty of every public warehouseman to keep such copy on file in a convenient place in every such warehouse, and if an office is maintained in connection with such warehouse, a copy of such grades, rules and regulations shall be kept on file in such office, and a placard notice posted in a conspicuous place in every such warehouse and such office, reading as follows: "A copy of Montana grades, rules, and regulations is on file here for information of interested parties."

Every such warehouseman shall exhibit such copy of grades, rules, and

regulations to any interested party applying therefor at any such warehouse or office, and permit such interested party to examine and consult such copy.

History: En. Sec. 26, Ch. 216, L. 1921.

3581. Fee for inspection and weighing. The commissioner of agriculture shall fix the fees for inspection and weighing of grain, and such fees shall be a lien upon such grain until paid.

History: En. Sec. 27, Ch. 216, L. 1921.

3582. Records of weighing and grading—Certificate. The inspectors, samplers and weighers shall, at places provided for state inspection, have exclusive control of the weighing and grading of grain to be inspected, and the certificates of such officers relative to such weighing and grading, shall be conclusive upon all parties interested. Suitable books and records shall be kept, in which shall be entered a faithful and true record of every carload of grain inspected or weighed by them, and showing the number of and initial or other designation of the car containing such carload, its weight, the kind of grain and its grade, and if graded below standard No. 1 grade, the reason for such grade, if of inferior grade, the amount of such dockage, the amount of fees and forfeitures and disposition of the same, and for each car of grain they shall give a certificate of inspection, showing the kind and grade of the same and the reason for all grades below No. 1, the amount to be allowed for dockage, if any. They shall also furnish the agent of the railroad company, or other carrier over which such commodity was shipped or carried, a certificate showing the weight thereof, if requested to do so. They shall also keep a true record of all appeals, decisions, and a complete record of every official act, which books and records shall be open to inspection by any party in interest.

History: En. Sec. 28, Ch. 216, L. 1921.

3583. Removal of inspectors for misconduct. Upon written complaint filed with the commissioner of agriculture, charging an inspector, sampler, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commissioner of agriculture shall investigate such charges, and, if it be found sustained, shall remove such officer.

History: En. Sec. 29, Ch. 216, L. 1921.

3584. Appeals to commissioner of agriculture—Hearing and order. In case any owner, consignee, or shipper of grain, or any warehouseman, shall be aggrieved at the grading of such commodity, such aggrieved person may appeal to the commissioner of agriculture from such decision within ten days from the date of certificate, by giving notice of appeal and paying a fee to be fixed by the commissioner of agriculture, which shall be refunded if the decision appealed from is sustained. Such notice of appeal may be given by letter or notice to the commissioner of agriculture, stating that such party appeals from the decision of the inspector, and specifying the initials and numbers of the cars in which such grain was contained when inspected and graded.

The appellant shall also file with the commissioner of agriculture a list containing the names and addresses of all parties interested in the subject

matter. It shall be the duty of the commissioner of agriculture, upon receiving such notice and list of interested parties, to immediately notify the parties interested of the time and place designated by it for a hearing, and at such time and place, which shall be five days from the date of receiving such notice, hold a hearing and inquire into the reasonableness and correctness of such original grading, and such evidence shall be received as parties thereto may desire to offer. After such hearing, the commissioner of agriculture shall make such order affirming or modifying the grade so established by the inspector as the facts and evidence may justify.

History: En. Sec. 30, Ch. 216, L. 1921.

3585. Discrimination in charges by warehousemen prohibited. If any public warehouseman subject to the provisions of this act shall, directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person, or persons, a greater or lesser compensation for any service rendered, or to be rendered, in the handling or storage of grain, than he demands, collects, or receives from any other person or persons for a like and contemporaneous service in the handling or storage of grain, under substantially similar circumstances or conditions, or if any such public warehouseman shall make or give any undue or unreasonable preference or advantage to any person, company, or corporation in any respect whatever, or shall subject any particular person, company, firm, or corporation, to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever, such warehouseman shall be subject to a penalty as herein provided.

History: En. Sec. 25, Ch. 209, L. 1919.

3586. Duty of warehousemen to receive grain—Warehouse receipt. Every public warehouseman shall receive for storage and shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all grain tendered him in the usual course of business in suitable conditions for storage. A warehouse receipt, in form prescribed by law and the rules and regulations of the commissioner of agriculture, shall be issued and delivered to the owner, or his representative, immediately upon receipt of such load or parcel of grain.

History: En. Sec. 31, Ch. 216, L. 1921.
Note.—Earlier acts were section 26, chapter 209, Laws of 1919.

3587. Penalty for unlawful issue of warehouse receipt. It shall be unlawful for any public grain warehouseman to issue a receipt for grain, except on the actual delivery of the grain into the warehouse, or to issue a warehouse receipt for a greater amount of grain than that actually received.

Any person violating any of the provisions of this section, and any grain inspector knowingly permitting any grain to be delivered contrary to the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than six months.

History: En. Sec. 28, Ch. 209, L. 1919.

3588. Delivery of grain to holder of receipt—Instructions to warehousemen. Upon the return of the receipt to the proper warehouseman, properly indorsed, and upon payment or tender of all advances and legal charges, grain of the grade and quantity named therein shall be delivered to the holder of such receipt within forty-eight hours after the facilities for receiving the same have been provided, or such warehouseman shall deliver such grain at terminal, or the equivalent market value thereof on said date, less any freight charges to terminal, and such other charges and commissions as may be allowed by the commissioner of agriculture.

Owners of warehouse receipts surrendered for shipment shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company, and as to the manner of loading and billing shipments made in such cars as are furnished by the transportation company. The warehouseman shall load and bill all such shipments in exact accordance with instructions given, and shall be liable to the owner of the warehouse receipt so surrendered for the amount of any excess freight paid, or for other damages suffered by the owner of the warehouse receipt, resulting from the failure of the warehouseman to follow accurately the loading and billing instructions as given him.

History: En. Sec. 32, Ch. 216, L. 1921.

3589. Annual report of warehousemen—Bond—License fee—Penalty. On June 30th of each year every warehouseman shall make report, under oath, to the commissioner of agriculture, on blanks or forms prepared by him, showing the total weight of each kind of grain received and shipped from such warehouse licensed under the laws of Montana, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain on hand to cover the same. The commissioner of agriculture may also require special reports from such warehousemen at such times as the commissioner may deem expedient. The commissioner may cause every warehouse and business thereof and the mode of conducting the same to be inspected by one or more of its members, or by its authorized agent, whenever deemed proper, and the books, records, accounts, papers, and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. Each person, firm, corporation, or association of persons operating any public warehouse or warehouses subject to the provisions of this act, and every track buyer, dealer, broker, or commission man, or person or association of persons, merchandising in grain, shall, on or before the first day of July of each year, give a bond with good and sufficient sureties, to be approved by the commissioner of agriculture, to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by law. Every person or persons, firm, copartnership, corporation, or association of persons operating any public warehouse or warehouses, and every track buyer, dealer, broker, commission man, person or association of persons merchandising grain within the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of the state of Montana a license fee in the sum of fifteen dollars for each and every warehouse, elevator, or other place, owned, conducted, or operated by such persons or persons, firm,

copartnership, corporation, or association of persons, where grain is received, stored and shipped, and upon the payment of such fee of fifteen dollars for each and every warehouse elevator, or other place where grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, copartnership, corporation, or association of persons, a license to engage in grain merchandising at the place designated within the state of Montana, for a period of one year. Any person, firm, association, or corporation, who shall engage in or carry on any business or occupation for which a license is required by this act, without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked (save only that a public warehouseman shall be permitted to deliver grain previously stored with him), shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

History: En. Sec. 33, Ch. 216, L. 1921.

3590. Special inspection of grain. In case grain is sold for delivery on Montana grade to be shipped from places not provided with state inspection under this act, the buyer, seller, or person making the delivery may have it inspected out by notifying an inspector, whose duty it shall be to have such grain inspected, and after it is inspected, to issue to the buyer, seller, or person delivering it, on request, an inspector's certificate showing the grade of such grain. The person or persons calling for such inspection shall pay for the same a reasonable fee, to be fixed by the commissioner of agriculture.

Grain that is shipped to points within the state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of such grain. The charge for such service shall at least equal the entire cost thereof, and shall be paid by the party calling for the same.

History: En. Sec. 34, Ch. 216, L. 1921.

3591. Sampling grain. From all grain shipped to terminal warehouses, and from all grain inspected or weighed, samples may be drawn, which samples shall become the property of the state, and subject to disposition by the commissioner of agriculture, under such rules and regulations as the commissioner may prescribe.

It shall be the duty of the commissioner of agriculture to transmit samples of grain, showing the standards thereof adopted, to such chambers of commerce, boards of trade, exporters and persons, firms, corporations, or associations handling and dealing in grain, as the commissioner may designate, and upon request he shall furnish such samples to smaller parties in this state or the United States, under such reasonable rules and regulations as the commissioner may prescribe.

History: En. Sec. 35, Ch. 216, L. 1921.

3592. Examination of grain cars at destination—License of grain weighers. All inspectors, samplers and weighers, before opening the

doors of any car containing grain, upon arrival at any of the places designated by the commissioner of agriculture for inspection, shall first ascertain the condition of such cars, and determine whether any leakages have occurred while said cars were in transit, whether or not the doors were properly secured and sealed at point of shipment, and shall make a record of such facts in all cases, giving seal numbers.

After such examinations have been made, the state officials shall securely close and re-seal such doors as have been opened by them, using the special seal of the commissioner of agriculture for the purpose.

A record of all original seals broken by said officials and the date when broken, and also a record number of said seals, shall be made by them. An inspector, weigher, or sampler shall break the seal, weigh and superintend the unloading of all cars of grain subject to inspection, and it shall be unlawful for any other person, or persons, to break the seal or weigh such cars of grain.

The commissioner of agriculture shall have power to require all persons, firms, corporations, or warehousemen engaged in weighing grain within the state of Montana to obtain a license, and prescribe rules and regulations governing the application for and the issuance of such licenses, but no fee shall be charged therefor, and any person, firm, corporation, or warehouseman, who shall weigh any grain without first having obtained said license, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars.

All fees, licenses, and other charges collected under the provisions of this act shall be, by the person collecting the same, paid to the state treasurer of the state of Montana, and by said treasurer placed in the general fund.

History: En. Sec. 36, Ch. 216, L. 1921.

3593. Definition of agricultural seeds. The term "agricultural seeds" or "agricultural seed" as used in this act shall include the seeds of red clover, white clover, alsike clover, alfalfa, Kentucky blue-grass, timothy, brome-grass, orchard-grass, redtop, meadow fescue, oat-grass, rye-grass, and other grasses and forage plants, corn, flax, rape, wheat, oats, barley, rye, buckwheat and other cereals, and when the term "agricultural seed" or "agricultural seeds" is used in this act, it shall be construed to mean such seed when sold, or offered or exposed for sale, or had in possession within intent to sell, within this state for the purposes of seeding in this state.

History: En. Sec. 1, Ch. 12, L. 1913.

Validity of statute regulating sale of seed, see note in Ann. Cas. 1917E, 167.

3594. Labeling of agricultural seed. The owner or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the preceding section, which contains one pound or more of such agricultural seeds, whether in package or in bulk, shall affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy not smaller than eight-point heavy Gothic caps, such label containing a statement specifying:

1. The commonly accepted name of the kind or kinds of such agricultural seed, and the true variety or strain of such seed in so far as such variety or strain is known.

2. The approximate percentage of germination of such agricultural seed, together with the date of test of germination.

3. The approximate percentage by weight of each of the following seeds: Quack-grass, fan weed or french weed, mustard, wild oats, and dodder, if any such are found in such agricultural seed.

4. The approximate percentage by weight of all other foreign seeds combined in such agricultural seed.

5. The approximate percentage by weight of sand, dirt, broken, or shriveled seeds, sticks, chaff, and other inert matter combined in such agricultural seeds.

6. The county in which such seed was grown, if grown in this state.

7. The full name and address of the seedsmen, importer, dealer, or agent, or of other person or persons, firm, or corporation selling, offering, or exposing the said agricultural seed for sale.

History: En. Sec. 2, Ch. 12, L. 1913.

3595. Law not applicable to what seed. The provisions concerning agricultural seed contained in this act shall not apply to:

1. Any person selling agricultural seeds direct to merchants or farmers, to be cleaned or graded before being offered for sale for the purpose of seeding, and plainly marked on the outside of container "not clean seed."

2. Agricultural seed marked plainly on the outside of container "not clean," and held or sold for export outside of the state only.

History: En. Sec. 3, Ch. 12, L. 1913.

3596. Violation of law a misdemeanor—Penalty. Any person, firm, or corporation who sells, offers, or exposes for sale or distribution in this state any agricultural seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars and the costs of such prosecution, nor more than one hundred dollars and the costs of such prosecution, and upon the second or any subsequent offense shall be fined not less than one hundred dollars and the costs of prosecution, nor more than five hundred dollars and the costs of such prosecution.

History: En. Sec. 4, Ch. 12, L. 1913.

3597. Inspection by director of state grain and seed laboratory. The director of the state grain and seed laboratory of the Montana agricultural experiment station, by himself, his agent or agents, shall inspect, examine, or make analyses of and test seeds sold, offered, or exposed for sale in the state, at such time and place and to such an extent as he may determine. The said director of the state grain and seed laboratory of the Montana agricultural experiment station, or by his agent or agents, shall have free access at all reasonable hours upon and into any premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering pay-

ment thereof, at the current value, may take any sample or samples of such seeds.

History: En. Sec. 5, Ch. 12, L. 1913.

3598. Employment of agents—Salaries and expenses. The director of the state grain and seed laboratory, under the direction of the director of the Montana experiment station, may employ such agent or agents as may be deemed necessary to carry out the provisions of this act, and the salaries and expenses of such agents shall be paid out of moneys appropriated for the state grain and seed laboratory of the Montana agricultural experiment station.

History: En. Sec. 6, Ch. 12, L. 1913.

3599. Samples may be sent to laboratory for tests. Any citizen of the state of Montana, in accordance with the regulations prescribed by the Montana agricultural experiment station, and by prepaying the transportation charges, may send samples or a sample of seed to said grain laboratory of the Montana agricultural experiment station for examination, analysis, and tests, and such examinations, analyses, or tests shall be reported upon free of charge.

History: En. Sec. 7, Ch. 12, L. 1913.

3600. Certificate of test presumptive evidence. The certificate of the Montana agricultural experiment station, giving results of any examinations, analyses, or tests of any seed samples made under the authority of said Montana agricultural experiment station, shall be presumptive evidence of the facts therein stated.

History: En. Sec. 8, Ch. 12, L. 1913.

3601. Duty of experiment station on violations of act. When said Montana agricultural experiment station shall find by its examinations, analyses, or tests, that any person, firm, or corporation has violated any of the provisions of this act, it shall transmit the fact so found to the attorney-general or to the county attorney of the county in which the offense is committed.

History: En. Sec. 9, Ch. 12, L. 1913.

3602. Prosecutions by attorney-general and county attorneys. It shall be the duty of the attorney-general and county attorney to prosecute all persons violating any of the provisions of this act, when evidence thereof has been presented by the Montana agricultural experiment station.

History: En. Sec. 10, Ch. 12, L. 1913.

3603. Harmful barberry—Traffic in or permitting to exist unlawful. It shall be unlawful for any person, firm, or corporation to sell, offer for sale, barter, give away, exchange, deliver, ship, transport, receive, or accept for shipment or transportation, plant, or permit to exist on his or its premises in the state of Montana, any plant of the harmful barberry.

History: En. Sec. 1, Ch. 40, L. 1919.

3604. Duty of state board of horticulture to exterminate—Proceedings. It shall be the duty of the state board of horticulture, or its duly

authorized inspectors, to enforce the provisions of this act, and they are hereby empowered to cause to be eradicated any such harmful barberry plants found growing anywhere in the state. If the owner of the land on which such harmful plants are found growing shall fail or refuse to eradicate such plants, within ten days after receiving a written notice to that effect from a horticultural inspector, said inspector shall proceed to have such harmful barberry plants eradicated and destroyed wherever they may be found growing. As soon as the horticultural inspector has had such harmful barberry plants eradicated and destroyed, he shall make out a statement in duplicate of the actual cost and expense incurred by him in eradicating or destroying such harmful barberry plants. One of such statements shall be transmitted to the landowner affected by the work, and the other shall be filed in the office of the treasurer of the county wherein such land is situated. The treasurer shall place such amount so indicated in such statement, on the tax duplicate against the land of the landowner affected by such work, and such amount so entered shall be collected in the same manner and at the same time as taxes are collected, and when so collected shall be paid by the treasurer to the state board of horticulture, which shall remit to the state treasurer, to be added to the appropriation for the use of the state board of horticulture.

History: En. Sec. 2, Ch. 40, L. 1919.

Duty of land owner to destroy noxious weeds, see notes in Ann. Cas 1913D, 432; Ann. Cas. 1917A, 183.

3605. "Harmful barberry" defined. The term "harmful barberry," as used in this act, shall be construed to apply to any species of Berberis, and, as hereinafter provided for, to Mahonia, which are susceptible to infection by Puccinia graminis, commonly called black-stem rust of grain, but not including Japanese barberry (B. thunbergii), which does not propagate the rust.

History: En. Sec. 3, Ch. 40, L. 1919.

3606. Provisions of act made applicable to Mahonia. The state board of horticulture is hereby empowered to apply the provisions of this act to species of Mahonia, whenever in its judgment the necessity arises.

History: En. Sec. 4, Ch. 40, L. 1919.

3607. Violation of act a misdemeanor—Penalty. Any person, firm or corporation which shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not less than ten dollars and not more than twenty-five dollars for each offense.

History: En. Sec. 5, Ch. 40, L. 1919.

3608. Division horticulture—Duties. The department of agriculture, labor and industry, through the division of horticulture, shall enforce all of the laws of the state of Montana now in force or hereafter enacted, relating to the protection and regulation of the industry of horticulture in the state of Montana.

History: En. Sec. 37, Ch. 216, L. 1921.

3609. Horticultural districts. For the convenient administration of the laws of the state relative to the industry of horticulture, the commis-

sioner of agriculture may divide the state into horticultural districts, grouping the several counties in such manner as he may deem expedient.

History: En. Sec. 38, Ch. 216, L. 1921.

3610. Destruction of fruit pests—Use of crates. For the purpose of preventing the spread of contagious disease among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and diseases of fruit and fruit trees, and for the disinfection of grafts, scions, and orchard debris, empty fruit boxes or packages, or other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, the commissioner of agriculture may prescribe regulation for the inspection, disinfection or destruction thereof, which regulation shall be circulated in printed form by the commissioner among fruit growers and fruit dealers of the state, and shall be published at least ten days in two newspapers of general circulation in the state, and shall be posted in three conspicuous places in each county in the state, one of which shall be at the county court house thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person or persons, dealer or dealers, to allow, or cause to be used a second time, any crate, box, barrel, package or wrapping once having contained fruit or nursery stock, except that at the written request of a nurseryman, an inspector may permit boxes or packages having contained nursery stock to be thoroughly fumigated by him or in his presence, at the expense of the nurseryman, for which said inspector shall give a receipt and duly mark the box or package; otherwise, the destruction of the same must be made in its entirety, and the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this act.

The commissioner of agriculture or his authorized representative is hereby authorized to seize and destroy by burning, without breaking, such crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators.

History: En. Sec. 39, Ch. 216, L. 1921.

Validity of statute providing for destruction of diseased fruit trees, fruit or vegetables, see note in Ann. Cas. 1917E, 220.

3611. Inspectors of fruit pests—Appointment and duties. The commissioner of agriculture shall appoint inspectors of fruit pests in such number as he may deem necessary for the proper administration of the horticulture laws. Said inspectors shall be selected with reference to their knowledge and practical experience in horticulture. It shall be the duty of such inspectors to visit the nurseries, orchards, stores, packing houses, warehouses and other places where horticultural products and fruits are kept within their respective district, and shall see that the regulations of the department of agriculture, labor and industry, and the laws of the state with reference to the disinfection of fruits, trees, plants, grafts, orchard debris and empty fruit boxes and other material shall be fully complied with. Said inspectors shall have access, at all times, to all orchards or places where horticultural products or supplies are kept or handled, and shall have full power to enforce the rules and regulations of

the commissioner of agriculture, and to order the destruction and disinfection of any or all trees, plants, fruits or horticultural products or supplies when found to be infected.

History: En. Sec. 40, Ch. 216, L. 1921.

3612. Appointment horticultural inspector. The commissioner of agriculture shall have the power to appoint some competent and qualified person to enforce the laws of the state relative to the grading and marketing of fruits and traffic and nursery stock, the control and destruction of insect pests, fungus and bacterial diseases, to enforce the law relative to the licensing of persons engaged in the business of selling or importing fruits, trees, plants or nursery stock in this state, and to supervise and direct the horticultural inspection service and the dissemination of horticultural knowledge.

History: En. Sec. 41, Ch. 216, L. 1921.

3613. Employment specialist insect pests. The commissioner of agriculture, subject to the approval of the state board of examiners, in special instances, may employ a specialist for the purpose of investigating the source, control and destruction of insect pests, fungus and bacterial diseases of orchards, trees, shrubs, plants or nursery stock in this state; such employment shall be for a period not exceeding six months in any one year, and shall be on such terms as may be agreed upon by the commissioner of agriculture and the state board of examiners.

History: En. Sec. 42, Ch. 216, L. 1921. Validity of statute providing for extermination of insect pests, see note in Ann. Cas. 1913A, 412.

3614. Sale of nursery stock—Inspection—Fee. It shall be the duty of every person or persons, corporation or corporations, who sell or deliver to any person or persons, corporation or corporations, any trees, plants, vines, scions or grafts not previously inspected under the provisions of this act, to notify the commissioner of agriculture, whose duty it shall be to notify the inspector of said district wherein such vines, etc., are to be delivered, at least five days before said goods are to be delivered, giving the date and nursery or railroad station where said trees, plants, scions, etc., are to be delivered, together with the name of the party or parties who are to receive the same. It shall be the duty of the inspector receiving said notice to inspect the said trees, plants, grafts, scions, etc., as soon thereafter as practicable, and if the same be found free from any and all diseases and pests, he shall so certify, and attach a certificate of inspection to each lot or bill or trees, grafts, plants, scions, etc., which said certificate must contain a list of the said trees, grafts, scions, vines, or plants so inspected. But if any of the trees, grafts, scions, vines or plants so inspected shall be found to be diseased or infested with any of the pests, as prescribed by the commissioner of agriculture, then the inspector shall order the disinfection or destruction of said trees, grafts, scions, vines, etc., so diseased or infested, together with all boxes, wrapping or packing pertaining thereto; provided, that when any fruit or nursery stock is condemned by any inspector, said inspector shall notify the owner thereof, who may appeal to the commissioner of agriculture, whose decision shall be final, and charge and collect the sum of ten dollars

for the disinfection and inspection of each carload of said nursery stock, and a proportionate sum for less than carload lots, as fixed by the commissioner; provided, that the commissioner of agriculture shall have power to designate certain places as quarantine stations, where all nursery stock brought into the state shall be inspected and disinfected; provided, that the provisions of this act shall not apply to any plants known as greenhouse plants and grown under glass. For the inspection of fruit, a fee of two cents per box or package, with a maximum fee of five dollars for each separate lot or car, shall be charged and collected. The inspector shall collect such fees and shall not give certificates of inspection until the fees are paid.

History: En. Sec. 43, Ch. 216, L. 1921.

3615. Penalty for failure to obey rules. If any person or persons in charge or control of any nursery, orchard, storeroom, packing-house, or other place where horticultural products or supplies are handled or kept, shall fail or refuse to comply with the rules and regulations of the commissioner of agriculture, or shall fail or refuse to disinfect or destroy diseased or infected trees, plants, scions, vines, grafts, shrubs, or other horticultural supplies or products, when ordered so to do by the inspector of such district, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 44, Ch. 216, L. 1921.

3616. Duty to notify inspector of infection. It shall be the duty of every owner or manager of every orchard, nursery, storeroom, packing-house, or other place where horticultural products or supplies are kept or handled, which shall become diseased or infested with any injurious insect or pest, immediately upon discovery of the existence of such disease or pest, to notify the inspector of said district of the existence of the same. It shall be the duty of such owner or manager, at his own proper expense, to comply with and carry out all the instructions of said inspectors for the eradication of any disease or pest. Any person who shall fail or refuse to notify said inspector, as herein provided, or who shall fail or refuse to comply with the instructions of said inspector for the eradication of any disease or pest, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 1926, Ch. 121, L. 1911.

3617. Removal of infected trees—Assessment of costs. If any person, firm, or corporation, or the legal representative of any person, firm, or corporation, owning any orchard, tree, shrub, or plant which is known to be infected with any injurious insect pest or disease and which thereby becomes a menace to the agricultural or fruit industry of this state shall fail, refuse, or neglect to comply with the instructions of the department of agriculture, labor, and industry, or its authorized representatives, for the eradication or control of such injurious insect pests or disease or the destruction of said infected orchard, tree, shrub, or plant, if in the judgment of said department, or its authorized representative, such destruction

shall be deemed necessary, within the time specified by the said department, or its authorized representative, the said commissioner of agriculture, or his authorized representative, is hereby empowered to condemn, remove, or destroy any such orchard, tree, shrub, or plant, and if such owner or his legal representative shall fail, neglect, or refuse to pay the cost of such removal or destruction of such orchard, tree, shrub, or plant, within thirty days after due notice has been given by mailing to the owner at his last known postoffice address, then said cost and expense shall become a lien on the land of the owner and shall be added by the county treasurer to the taxes upon said property and collected as other taxes.

History: En. Sec. 45, Ch. 216, L. 1921.

3618. Penalty for delivery uninspected nursery stock. Every person who, for himself or as agent for any other person or persons, corporation or corporations, transportation company, or common carrier, shall receive, deliver or turn over to any person or persons, corporation or corporations any trees, vines, shrubs, nursery stock, scions, grafts and fruits without first having attached an inspector's certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 46, Ch. 216, L. 1921.

3619. Nurserymen's license — Application — Granting — Revocation — Duplicate copies of orders. It shall be unlawful for any person, firm, or corporation to engage in, conduct, or carry on the business of selling, dealing in, or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agriculture and having in force a license to do so, and it shall be unlawful for any person to falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock. No license shall be issued until the applicant therefor shall have attested to the application for a license furnished upon request by the commissioner of agriculture, paid the fee, and furnished the bond, as in this act required. The license fee shall be twenty-five dollars per annum for nurserymen and dealers in nursery stock, and all agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge. All licenses shall be in the name of the person, firm, or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurserymen or dealer licensed or represented by the agent, salesman, or solicitor. All applications for a license must be in the name of the person, firm, or corporation to be licensed, also it must show the nursery acreage represented by the applicant, and such other information as is desired by the commissioner of agriculture. All licenses shall bear the date of issue and shall expire the first day of July next following the date of issue; provided, that all licenses in force at the time of the taking effect of this act shall continue in force during the term for which they were

issued, unless sooner revoked, and any holder of such license applying for a license under this act prior to the first day of July next following the expiration of his former license shall be required to pay therefor only the proportional part of the fee required for the annual license, for the remaining portion of the year until the first day of July next following.

Every nurseryman or dealer in nursery stock, applying for a license under this act, shall make, execute, and file with the commissioner of agriculture a bond running to the state of Montana, in the sum of one thousand dollars, with surety or sureties to be approved by the commissioner of agriculture, conditioned for the faithful compliance by the applicant with all of the provisions of this act and the laws of the state of Montana relating to the sale, disposition, delivery, inspection, and disinfection of nursery stock grown, dealt in, imported, sold, handled, or delivered by him during the term of the license applied for, and the term or terms of renewal of the same, and conditioned further that all nursery stock sold or delivered by him during said term shall be true to name, age, and variety as represented, and free from the diseases and pests required to be guarded against by the horticultural laws and regulations of the state of Montana.

Every licensed nurseryman or dealer in nursery stock who shall have complied with the provisions of this act, shall be entitled, upon the expiration of his license or any renewal thereof, by the payment of the fee of twenty-five dollars on or before the date of the expiration of his license or any renewal thereof, to have his license renewed for the ensuing year ending July first, so long as the bond originally given in compliance with the provisions of this section shall remain in force.

A license may be refused at any time, or revoked when the person, firm, or corporation applying therefor has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by any court of competent jurisdiction.

The cancellation or revocation of, or the withdrawal of the sureties from any bond filed in accordance with the provisions of this act, shall ipso facto work a suspension of the license of the principal of said bond, and the license of all agents, salesmen, and solicitors employed by and representing him until such a time as such principal shall furnish a new bond to be approved by the commissioner of agriculture.

Upon complaint in writing, verified under oath by the complainant, being made to the commissioner of agriculture, that the holder of any license in this act provided for has violated or failed to comply with the provisions of this act or the laws of the state of Montana relating to horticulture, the commissioner of agriculture, if in his judgment the complaint is justified, may revoke the license of the nurseryman complained of.

It shall be unlawful for any person to falsely represent or to misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale, or to falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact such nursery stock was grown in or came from another location, or nursery, or to deceive or defraud any person

in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered, or to wilfully or intentionally bring into this state, or to offer for sale or distribution within this state, or to ship, sell or deliver upon any sale any nursery stock that is infected or infested with any disease or insect dangerous to the horticultural interests of the state, and in case of such misrepresentation, false representation, deceit, fraud, or substitution, shall be subject to punishment as provided by the statute for misdemeanor, and shall be liable to the person, firm, or corporation damaged or injured thereby, the amount of all damage sustained to be recovered in a civil action in any court of competent jurisdiction; and any person, firm, or corporation suffering damage by reason of having purchased any nursery stock of a licensed nurseryman, or dealer in nursery stock, delivered within this state, or shipped from a point within or without this state for delivery within this state, or by reason of the destruction of such infected or infested nursery stock by or under the direction of any horticultural inspector, as in this act provided, or by reason of receiving any nursery stock which is not true to name, age, variety, or class as represented by the nurseryman, dealer, agent, salesman, or solicitor selling the same, or as ordered, shall have recourse against the bond filed by the licensed nurseryman or dealer from whom such stock has been purchased, for all damages sustained, including damages in case of misrepresentation, deceit, fraud, or substitution, which damage may be recovered at the suit of the party injured against the nurseryman or dealer causing the damage and the sureties on such bond, in any court of competent jurisdiction; provided, no liability shall attach on such bond by reason of nursery stock being untrue to name, age, variety, or class, unless at least five per cent. of any variety ordered shall prove untrue to name, age, variety, or class.

It shall be the duty of all nurserymen or dealers in nursery stock, and all salesmen, solicitors, and agents therefor, to give to every person ordering any nursery stock a duplicate copy of such order which shall show:

1. The name and location of the nursery where such stock is grown.
2. The name of the nurseryman from whom ordered, and the name of the solicitor, salesman, or agent taking such order.
3. The date of the order and when delivery is to be made.
4. The number, name, age, and price of such variety of tree or plant ordered.

In the event of the shipment into this state from any point without this state of any nursery stock, by a person, firm, or corporation not licensed to do business in this state, as in this act provided, it shall be the duty of the purchaser or person receiving such nursery stock to have the same inspected by a horticultural inspector, in the same manner as is required upon the delivery of nursery stock sold and delivered by a licensed nurseryman or dealer in nursery stock within this state, and to pay an inspector's fee of ten per cent. of the invoice price of such shipment; provided, that the minimum fee for such inspection shall be fifty cents and the actual and necessary traveling expenses of the inspector making the inspection; and provided, further, that no inspection fees shall be collected in excess of the regular inspection fees, where such stock is

shipped to a person, firm, or corporation, holding a Montana license, as provided in this act.

Licenses granted under this act shall be for one year, unless revoked for any violation of this act.

History: En. Sec. 47, Ch. 216, L. 1921.

3620. Notice to commissioner shipment nursery stock. It shall be the duty of every person, firm or corporation, licensed to do business under this act to notify the commissioner of agriculture of his intention to ship an invoice of fruit trees, plants, or nursery stock not previously inspected under the provisions of this act, from one point to another in this state, or from any point without this state into this state. The said notice shall contain the name and address both of the consignor and consignee, and the list of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive the goods. Such notice shall be mailed at least five days before the day of shipment.

History: En. Sec. 48, Ch. 216, L. 1921.

3621. Penalty for receiving uninspected nursery stock. Any person or persons who shall receive and accept any nursery stock, fruit trees, plants, vines, scions, cutting, grafts, etc., that have not been inspected by a duly appointed inspector of the commissioner of agriculture, and shall use or dispose of said nursery stock, fruit trees, vines, plants, scions, cuttings, grafts, etc., without first notifying the inspector and furnishing him an opportunity to examine, and, if necessary, fumigate said nursery stock, will be deemed guilty of a misdemeanor, and will be subject to fine as further provided in this act.

History: En. Sec. 49, Ch. 216, L. 1921.

3622. Delivery of nursery stock without certificate. Every person who, for himself or as agent for any other person or persons, corporation or corporations, transportation company, or common carrier, shall deliver or turn over to any person or persons, corporation or corporations, any trees, vines, shrubs, nursery stock, scions, and grafts, without first having attached the inspector's certificate (as provided in section 1924 of this act), shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 1928, Ch. 121, L. 1911.

Note.—The bracketed section was repealed by chapter 216, Laws of 1921.

Cited or applied as section 1928, Revised Codes, as amended, in Welch v. Dean, 49 Mont. 263, 266, 144 Pac. 548.

3623. Right to hold produce for inspection. No person or persons, corporation or corporations, shall be liable to any other person or persons, corporation or corporations, for any damage to any trees, vines, or shrubs, nursery stock, scions or grafts, by reason of the same being held to await the certificate of the inspector (as provided in section 1924 of this act).

History: En. Sec. 1929, Ch. 121, L. 1911. Note.—See note to preceding section.

3624. Inspection of Montana nursery stock—Certificate. All nursery stock, trees, plants, vines, and cuttings grown or growing within the state of Montana, used for filling orders, shall after said stock shall in the manner and at the times designated by the commissioner of agriculture, and before the same shall have been packed for delivery, be inspected by a duly appointed inspector, and shall be disinfected by fumigating or other method, when in his judgment such is necessary. After such inspection if it be found that said nursery stock, trees, plants, vines, and cuttings are clean and free from insects and fungi pests, he shall issue his certificate to said nurseryman, and said certificate shall entitle him to use said stock, so inspected and disinfected, for filling orders for the next current delivery; and said inspector's certificate shall be furnished to those entitled to them at a price not to exceed forty cents per hundred.

Nurseries shall give to the commissioner of agriculture five days' notice of the time when said stock shall be ready for inspection under the provisions of this act.

History: En. Sec. 50, Ch. 216, L. 1921.

3625. Penalty for violation of act. Any person or persons, corporation or corporations, transportation companies, or common carriers, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and fined in the sum of not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 51, Ch. 216, L. 1921.

3626. Importation and sale of infected fruit. It shall be unlawful for any person, firm, or corporation to import into this state, sell, barter, or otherwise dispose of, or offer for sale, or have in his possession for the purpose of sale or barter, any fruit which is or has been infested with San José scale, or other scale insect pests, or the larvae of the codling moth, and the fact that any fruit bears the mark of any such scale insect, or is worm-eaten by the larvae of the codling moth, shall be deemed conclusive evidence that the fruit is infected within the meaning of this section, and may be condemned and confiscated by any legal horticultural inspector; provided, that nothing in this section shall be construed to prevent the growers of such infected fruit from manufacturing the same into a by-product, or selling and shipping the same to a by-product factory, after having first obtained a permit so to do from a horticultural inspector.

History: En. Sec. 1, Ch. 99, L. 1915.

Validity and construction of statutory regulations as to infected orchards, see notes in 43 L. R. A. (N. S.) 1080; L. R. A. 1915F, 894.

3627. Quarantine of orchards—Penalty for violation. The Montana commissioner of agriculture is hereby authorized and empowered to establish a quarantine over any orchard or place where fruits are grown or kept, that is infested with any injurious disease or insect pest; and said commissioner may establish such rules and regulations governing such quarantine, and regulating or restricting the use of such fruits upon the premises, or the shipment or disposition of the same, as he may

deem necessary to prevent the spreading of such disease or diseases or insect pests.

Any person who shall violate the provisions of this section, or the rules and regulations established by said commissioner of agriculture, or who shall ship or dispose of any diseased or infested fruit or fruit products in violation of the order of said commissioner, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars nor more than three hundred dollars.

History: En. Sec. 52, Ch. 216, L. 1921.

3628. Expenses of eradicating orchard diseases—Collection as tax. Whenever, under the direction or regulations of the Montana commissioner of agriculture, any money is expended by said board for the purpose of eradicating any disease or insect pest from any orchard or other place where fruits are grown or kept, said commissioner, through its representative, shall notify the owner of such orchard or premises in writing of the amount so expended plus an additional charge of twenty-five per cent. of the amount so expended. Said notice shall be mailed to the last known address of such owner, and if such owner shall fail to pay the amount so expended by said commissioner plus an additional charge of twenty-five per cent. of the amount so expended, within thirty days of the time such notice is sent, then and in that event the commissioner shall file a statement, verified under oath by himself or his representative, with the county treasurer in the county wherein said money shall have been expended. Said statement shall set forth the amount so expended plus an additional charge of twenty-five per cent. of the amount so expended, together with the correct description of the property on which such money was expended as it appears on the assessment-roll of the county. The county treasurer shall add the total amount as set forth in said statement to the taxes upon said propery, and shall collect the same as provided by the law for the collection of taxes for state and county purposes.

History: En. Sec. 53, Ch. 216, L. 1921.

3629. Same—Disposal of money. The county treasurer in any county where any money is collected as provided in the preceding section shall, on or before the first day of February of each year, remit the amount to the state treasurer, who shall deposit same to the credit of the general fund of the state.

History: En. Sec. 54, Ch. 216, L. 1921.

3630. Inspection of apples packed for sale—Procedure. It shall be the duty of the commissioner of agriculture, or his authorized representative or inspector, to inspect all apples packed for sale or shipment pursuant to the provisions of sections 4265 to 4272 of this code, and said commissioner is hereby authorized to certify to the grade and pack thereof, and to charge the owner, packer, or shipper of any such apples a fee to be fixed by said commissioner of agriculture for such services, and said commissioner may make such rules and regulations regarding such inspection, not in conflict with the laws of the state, as he may deem proper.

History: En. Sec. 55, Ch. 216, L. 1921.

3631. Quarantine against insect pests and plant diseases in other states. Whenever the governor of the state has good reason to believe that any pest, gypsy moth, brown-tail moth, Mediterranean fruit-fly, potato wart, potato canker, black scab, potato ellworm, pea-weevil, alfalfa weevil, alfalfa blight, flax canker, or flax-wilt, or other fruit or plant disease or insect pest, dangerous or inimical to the horticultural or the agricultural industry, exists in certain localities in another state, territory, or country, or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become diseased, he must by proclamation designate such localities, and prohibit the importation therefrom of any tubers, plants, nursery stock, fruit, or seeds or agricultural crops, plants, or seeds likely to introduce or spread infection, contagion, or insect pests into the state, except under such restrictions as he, after consulting with the state board of horticulture, the commissioner of agriculture, or the state entomologist may deem proper.

History: En. Sec. 1, Ch. 61, L. 1913.

3632. Governor may quarantine against insect pests. Whenever the governor of this state has good reason to believe that any pest, gypsy moth, brown-tail moth, potato wart, potato canker, black scab, potato ellworm, pea-weevil, alfalfa weevil, alfalfa blight, flax canker, flax wilt, or other plant disease or insect pest, dangerous or inimical to the agricultural or horticultural industry, exists within any county or locality within the state, it shall be specifically understood that he has authority to quarantine any county, district, locality or ranch, and it shall be his duty to prescribe and enforce such rules and regulations as may be necessary to prevent the movement of any designated articles or materials whatever across the boundaries of such quarantined counties, districts, localities, or ranches, and for the control and eradication of such pests or dieases.

History: En. Sec. 2, Ch. 61, L. 1913. amd. Sec. 1, Ch. 89, L. 1921.

3633. Penalties for receiving products from infected districts. Any person, firm, or corporation who, after publication of such proclamation, knowingly receives in charge any tubers, plants, nursery stock, fruit, seeds, or agricultural crops, plants, or seeds from any of the prohibited districts, and transports, conveys, sells, or uses the same within the limits of this state, is guilty of a misdemeanor, and punishable by a fine of not less than ten dollars or more than five hundred dollars, and is further liable for any and all damages and loss that may be sustained by any person by reason of the importation or transportation of such prohibited and diseased tubers, plants, nursery stock, fruits, seeds, or agricultural crops, plants, or seeds.

History: En. Sec. 3, Ch. 61, L. 1913.

3634. Arbor day proclamation. For the purpose of advancing the interests of tree planting and arboriculture in this state, the second Tuesday in May is hereby designated as Arbor day, and it is duty of the governor to annually make his proclamation setting apart that day for the planting of trees and for beautifying homes, cemeteries, highways, public grounds, and landscapes, and the teachers in the public schools

must on that day instruct the pupils as to the importance of tree planting and give practical lessons in landscape gardening.

History: En. Sec. 2040, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 103, Ex. L. 1887; re-en. Sec. 3380, Pol. C. 1895; amd. Sec. 2, Ch. 11, L. 1907; Sec. 2095, Rev. C. 1907.
Related Sections: 1068-1069.

Note.—In the above section the date of Arbor day has been changed to the second Tuesday of May to conform to amendment by chapter 76, Laws of 1913.

3635. Division labor and publicity—Duties. The department of agriculture, labor, and industry, through the division of labor and publicity, shall be charged with the duty of enforcing all the laws of Montana relating to hours of labor, conditions of labor, protection of employees, and all laws relating to child labor regulating the employment of children in any manner; it shall also be the duty of such division to administer all the laws of the state relative to free employment offices.

History: En. Sec. 56, Ch. 216, L. 1921.

3636. Maintenance employment offices by city council. It is the duty of the city council of any incorporated city of the first or second class within this state, and it shall be lawful for the city council of any other incorporated city, to provide for the establishment of a free public employment office to be conducted on the most approved plans, and to provide for the expenses thereof out of the revenues of the city in which the same is established. The annual report of the department of agriculture, labor, and industry shall contain a detailed account of all such free employment offices within the state showing the number of applicants for employment, the number securing employment, and the expenses of maintaining such office.

History: En. Sec. 57, Ch. 216, L. 1921.

3637. Examination of witnesses—Inspection of factories, etc. In discharging the duties imposed upon the division of labor and publicity, the commissioner of agriculture shall have power to administer oaths, to examine witnesses under oath, to take depositions or cause same to be taken, to deputize any male citizen over the age of twenty-one years to serve subpoenas upon witnesses, and to issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts. The commissioner of agriculture shall likewise have the authority to inspect any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment, and any person who shall refuse to the commissioner admission to any of the industrial establishments herein enumerated when admission is requested for the purpose of inspection, or who shall, when requested by the commissioner, wilfully neglect or refuse to furnish to him any statistics or other information which may be in the possession or under the control of such person, or who shall refuse to obey any subpoena issued by the commissioner, shall be deemed guilty of a misdemeanor and be punished accordingly. Nothing herein contained shall in any manner confer upon the commissioner of agriculture the authority to interfere in any manner with the conduct of the matters under the control of the industrial accident board, nor shall said commissioner be charged with the duty of enforcing any of the laws of the state of Montana pertaining to the affairs

of said industrial accident board, nor with the enforcement of the safety provisions of the Workmen's Compensation Act.

History: En. Sec. 58, Ch. 216, L. 1921.

3638. Statistics—Preparation and publication. The department of agriculture, labor, and industry, through the division of labor and publicity, shall prepare statistics and data, and shall publish a report relating to the agricultural, commercial, mining, manufacturing and other resources of the state, and such report shall be published and distributed in such form and quantity as in the judgment of said department may be deemed expedient and practicable. All reports sent out by said department shall bear a certificate thereon to the effect that they are issued by the authority of the state of Montana. The department shall also open correspondence with bureaus of emigration, boards of trade, and other organizations who are willing to assist in disseminating information in regard to the climate, industries, and resources of the state of Montana to the end that such information may become as generally available as possible.

History: En. Sec. 59, Ch. 216, L. 1921.

3639. Duty public officers to furnish statistics. It is hereby made the duty of all state and county officers to furnish to the division of labor and publicity any data, statistics, and information under their control when requested by said department, relating to the population, industries, climatic conditions, and assessed valuation of the state or any subdivision thereof.

History: En. Sec. 60, Ch. 216, L. 1921.

3640. Control of state fair. The department of agriculture, labor, and industry, through the division of labor and publicity, shall have entire charge and control of the Montana state fair, and it shall be its duty to cause the holdings of said fair in the manner provided by sections 1580 and 1581 of this code.

History; En. Sec. 61, Ch. 216, L. 1921.

3641. State fair advisory board—Composition, duties, and fee. To assist said department in the management and conducting of said state fair, there shall be a state fair advisory board consisting of one representative from each county to be appointed by the board of county commissioners; the members of said board shall hold office for a period of four years and until their successors are appointed and qualified; members of said board shall take the constitutional oath of office and shall file the same in the office of the secretary of state. The duties of the advisory board shall be to aid in making the state fair a success, to perform such duties as shall be imposed upon them by the commissioner of agriculture, and in particular to see that the several counties of the state are represented at said fair by proper and comprehensive exhibits. Members of said board shall be paid the sum of five dollars per day, together with actual traveling expenses for time expended by them in performing the duties of their office.

History: En. Sec. 62, Ch. 216, L. 1921.

3642. Assistants to state fair advisory board. The commissioner of agriculture is hereby authorized to appoint as many members of the state

fair advisory board or such other persons interested in agriculture, livestock or allied activities as he may see fit to act as a committee to assist him in the immediate management and control of the state fair, and it shall be the duty of such committee to attend upon the order of the commissioner of agriculture, and to perform such duties as he may require.

History: En. Sec. 63, Ch. 216, L. 1921.

3643. Custody of state fair property—Letting of privileges. The commissioner of agriculture shall have the care and custody of all property belonging to the state fair, and shall be entrusted with the direction and administration of all of its business and affairs, and shall adopt and enforce all necessary rules for the conduct and management of the fair and for the regulation of its officers and employees. Said commissioner shall arrange for the letting of stalls, stands, and all other privileges and concessions; provided, however, that as entrance fees, money derived from the letting of privileges and as to prizes offered, said matters shall be approved by the state board of examiners.

History: En. Sec. 64, Ch. 216, L. 1921.

3644. Location of state fair. The state fair shall be permanently located on the present grounds now owned by the state and devoted to that purpose, located north of the city of Helena, in Lewis and Clark county, and such additional lands as may hereafter be obtained in connection therewith are hereby dedicated for the use of the Montana state fair.

History: En. Sec. 65, Ch. 216, L. 1921.

3645. Disposal of fees—Revolving appropriation accounts. All fees and earnings of the department of agriculture, labor, and industry and its divisions and activities, from whatsoever source they may be derived, and all contributions which may be received from public or private bounty, are hereby annually and perpetually appropriated for the use of said department of agriculture, labor, and industry. All moneys received by the department of agriculture, labor, and industry in the administration of all laws and the management of the institutions under its control, belonging to or for the use of the state, shall be deposited with the state treasurer on the tenth and twenty-fifth days of each month without deduction of any sort on account of salaries, fees, costs, charges, or expenses, or otherwise, and shall be credited to the general fund of the state of Montana. The state auditor shall keep upon his books an account to be known as the "State Fair Revolving Appropriation Account," to which shall be credited all general fund receipts of every nature arising from the operation of the state fair, and from which shall be paid such claims as may be designated by the state board of examiners; and the state auditor shall keep upon his books another account to be known as the "Department of Agriculture Revolving Appropriation Account," to which shall be credited all other general fund receipts arising from all operations of the department of agriculture, labor, and industry other than the state fair, and from which shall be paid such other claims of the department of agriculture, labor, and industry as may be designated by the state board of examiners. The state board of examiners may, in its dis-

cretion, by resolution duly adopted and entered upon the minutes of said board, authorize the establishment and maintenance in the business office of the department of agriculture, labor, and industry or any of its divisions, one or more contingent revolving accounts, transferring in trust to said department such sum or sums of money as may appear necessary for the payment of demands requiring immediate cash payment, under specific regulations to be established by said board of examiners. But each and every division so granted a contingent revolving account shall report to the state board of examiners monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state board of examiners may cancel or modify such authorizations and recall such funds or any part thereof at pleasure; provided, however, that nothing in this act shall be construed as preventing the establishment and maintenance by the state board of examiners of contingent revolving accounts in the divisions of grain standards and marketing, of horticulture, and of labor and publicity, transferring in trust to the business offices of such divisions such sums of money as may appear necessary to be used by said divisions for the payment of demands, requiring immediate cash payment in connection with grain grading and inspection, orchard spraying and fruit and nursery stock inspection, and in conducting the state fair, under specific regulations to be established by said board of examiners. But each and every division granted a contingent revolving account shall report to the state board of examiners monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state board of examiners may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 66, Ch. 216, L. 1921.

3646. Existing departments abolished. The following offices, commissions, and departments of the state government heretofore constituted by law are hereby abolished, to-wit:

The state board of horticulture.

The state horticulturist.

The board of directors of the state fair.

The board of dairy commission examiners.

The department of labor and industry.

The department of agriculture and publicity.

The state dairy commissioner.

The grain grading inspection and warehousing commission of the state of Montana.

The state board of poultry husbandry.

History: En. Sec. 67, Ch. 216, L. 1921.

3647. Transfer special funds to general fund. The state treasurer is hereby authorized and directed, upon the taking effect of this act, to transfer to the general fund of the state of Montana any money in his hands belonging to any and all special funds heretofore created by law for the deposit of moneys received by the boards and departments mentioned in the preceding section.

History: En. Sec. 68, Ch. 216, L. 1921.

3648. Successor to existing departments. The department of agriculture, labor, and industry is hereby designated as the legal successor of all the offices, boards, commissions, and departments mentioned in section 3646 of this code; all books, papers, and records of said offices, boards, commissions, and departments shall be turned over to the department of agriculture, labor, and industry, and said department is hereby authorized to carry out any contracts, complete any business, or prosecute or defend any suits heretofore entered into or instituted by any of the offices, boards, commissions, or departments mentioned in said section.

History: En. Sec. 69, Ch. 216, L. 1921.

3649. Penalty for failure to obey orders of department. Any person, firm, company, or corporation who shall violate any of the provisions of this act, or who shall fail to comply with any order of the department of agriculture, labor, and industry, or of the commissioner of agriculture, or any of his lawfully constituted agents; provided, that said order be made in pursuance of the authority granted by this act, shall be deemed guilty of a misdemeanor and punishable by a fine of not to exceed five hundred dollars, or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

History: En. Sec. 70, Ch. 216, L. 1921.

CHAPTER 255.

FISH AND GAME LAWS—COMMISSION AND WARDEN.

Section 3650. State Fish and Game Commission—Creation.
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3650. State fish and game commission—Creation. There is hereby created for the state of Montana a state fish and game commission, which shall be composed of five members, with the powers and duties in this act specified, and which is hereinafter referred to as "the commission."

History: En. Sec. 1, Ch. 193, L. 1921.

Note.—The fish and game laws are arranged in this code in the following order:

First. Chapter 193, Laws of 1921, which relates chiefly to the powers and duties of the fish and game commission and fish and game warden.

Second. Chapter 238, Laws of 1921, which deals with the subject of licenses and closed seasons.

Third. The remaining unrepealed parts of chapter 173, Laws of 1917, and such other fish and game laws as were not repealed by either of the above acts.

Earlier acts creating fish and game commissions were chapter 176, Laws of 1907; sections 1980 et seq., Revised Codes 1907; amended section 1, chapter 18, Laws of 1911; amended section 8, chapter 173, Laws of 1917.

3651. Membership—Terms. The members of the commission hereby created shall be appointed by the governor of the state of Montana. The selection of said members shall be made without regard to political affiliation, but for the sole welfare of the fish, game, and wild life of the state, and not more than three of said members shall belong to the same political party. Two of said members shall be appointed to serve for one year, one to serve two years, one to serve three years, and one to serve four years, and thereafter to be appointed by the governor at the expiration of their first terms, to serve for four years, unless sooner removed. All vacancies in the commission shall be filled by the governor. The governor is hereby given the power to remove any member of said commission for cause or for the good of the commission. No person shall be appointed a member of said commission unless he shall be informed on, and interested in, the subject of wild life, fish, and game, and the requirements for the conservation and propagation of fish, game, and game birds and animals. The first members of the commission shall be appointed by the governor within thirty days after the passage and approval of this act. Each commissioner shall, before entering upon his official duties, execute and file a bond with the secretary of state, running to the state of Montana, in the penal sum of one thousand dollars, with sureties to be approved by the state treasurer, conditioned for the faithful performance of his duties, and that he will account for, and pay over to the fish and game fund of the state, all moneys received by him, and he shall be reimbursed for the premium on said bond from the state fish and game fund upon furnishing a proper voucher therefor.

History: En. Sec. 2, Ch. 193, L. 1921.

3652. Meetings. The members of the commission shall, within thirty days after their appointment and annually thereafter, meet and organize by electing from its membership a chairman, and shall hold quarterly or other meetings, at such times and places as it may deem necessary and proper, said meetings to be called by the chairman, or a majority of the commission, and to be held at the times and places specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all the business transacted by it; it shall have power to discharge any appointee or employee of such

commission, for or without cause, at any time. The chairman and secretary, hereinafter designated, shall sign all orders, minutes, or documents for the commission.

History: En. Sec. 3, Ch. 193, L. 1921.

3653. Powers and duties of commission. The commission hereby created shall have supervision over all the wild life, fish, game, game and non-game birds and water fowl, and game and fur-bearing animals of the state, and shall possess all powers necessary to fulfil the duties prescribed by law with respect thereto, and to bring actions in the proper court of this state for the enforcement of the fish and game laws of the state, and the orders, rules, and regulations promulgated by the commission. It shall have full power and authority to enforce all the laws of the state of Montana, respecting the protection, preservation, and propagation of fish, game, game and non-game birds within the state. It shall have the exclusive power to expend for the protection, preservation and propagation of fish, game, and game-birds, all funds of the state of Montana, collected or acquired for that purpose, whether arising from state appropriations, licenses, fines, gifts, or otherwise. It shall have full power and authority to dispose of all property owned by the state of Montana, used for the protection, preservation, and propagation of fish, game, and game birds, which shall have been found to be of no further value or use to the state, and shall turn over the proceeds arising therefrom to the state treasurer, to be by him credited to the state fish and game fund. It shall have full power and authority to use so much of the fish and game fund of the state as may be necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms, or other property or means and appliances for the protection and propagation of fish, game, or game-birds in the state of Montana; and it shall have the authority to appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish and game. It shall have authority to provide for the importation of game-birds and animals, and for the protection, propagation, and distribution of imported or domestic game-birds or animals, and for that purpose to acquire, by gift, purchase, lease, or otherwise, such lands as may be deemed necessary for the purpose of establishing a state game farm, and to employ a person or persons skilled in game breeding to run, operate, and manage said game farm and to distribute the output of such game farm on the public lands of the state, or where, in the judgment of the commission, such birds or animals will receive adequate protection and be most likely to thrive and multiply. It shall have authority to spend so much of the state fish and game funds as may be necessary to introduce and propagate such wild water-fowl food as will thrive, grow, and mature in the waters of this state, and for that purpose may secure expert advice as to what kinds of wild water-fowl foods are adapted to the climate, soil, and waters of this state. It shall be its duty to furnish plans for, and to direct and compel the construction and installation and repair, of fish ladders and dams and ways, upon dams and other obstructions in streams which, however, shall be installed and maintained at the proper cost and expense of the owner or owners of same. It shall

have the authority to purchase and maintain at the expense of the state fish and game fund, suitable fish screens or fish wheels, and to install them in irrigation ditches to prevent fish entering said ditches, and to maintain said fish screens or fish wheels after the installation thereof, in such a manner that no damage shall result therefrom to the owner or owners of the irrigation ditch or ditches in which said fish screens or fish wheels are installed. It shall have authority to locate, lay out, construct, and maintain nurseries and rearing ponds, where fry can be planted, propagated, and reared and, when of suitable size, liberated and distributed in the waters of this state, and may expend from the state fish and game funds such sums as may be necessary for this purpose. It shall have authority to acquire by gift, purchase, capture, or otherwise any fish, game, game-birds or animals for propagation, experimental, or scientific purposes. It shall have authority to divide the state into fish and game districts, and to create fish and game districts throughout the state of Montana, and to declare closed seasons for hunting or fishing in any of said specified districts, and to later open districts so closed, or a closed season on any species of game, fish, or game-birds threatened with undue depletion from any cause, and to close any stream, public lake, or portions thereof, for limited periods of fishing, when such action is necessary to protect a recently stocked water, to protect spawning waters, or spawn-taking stations, or to prevent the undue depletion of fish. It shall have authority to establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish, adjacent to game ranges, it being the purpose of this provision to establish small refuges rather than large preserves or rather than to close large areas to hunting; provided, however, that no refuge, preserve, or sanctuary shall be set aside or created by the commission except that the same be petitioned for by seventy-five per cent. of the actual property owners to be included within the proposed boundaries of said refuge, preserve, or sanctuary, or in case there are no property owners within the proposed boundaries of said area proposed to be set aside, then by a petition to the commission, signed by seventy-five per cent. of those directly interested or affected financially by the setting aside of said area. It shall have authority to designate and protect certain areas as rest grounds for migratory birds, in which hunting shall be forbidden, it being the purpose of this provision not to interfere unduly with the hunting of water-fowl but to provide havens in which they can rest and feed without molestation. It shall have authority to establish and maintain an educational and biological department of their work for the collection and diffusion of such statistics and information as shall be germane to the purpose of this act. After petition has been duly filed with the secretary of the commission praying that an area shall be set aside for any purpose or purposes in this section enumerated, the said secretary shall immediately publish a notice in a paper of general circulation in the county in which said area is proposed, that a hearing in connection therewith will be held at the courthouse in said county on a day not less than fifteen days from date of first publication to be specified in said notice at which time and place all interested parties shall have the right to

appear and be heard. In case the area proposed to be set aside is in more than one county, the commission shall have the right to designate a place in either county, but notice must be given of said meeting in a paper of general circulation in all counties affected. Said commission shall, in addition to the powers heretofore granted, have such other and further powers as may be necessary to fully carry out the purposes and intent of all the laws pertaining to fish, game-bird and animal propagation, protection and conservation of this act.

History: En. Sec. 4, Ch. 193, L. 1921.

3654. Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of ten dollars for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission receive as said per diem a sum in excess of two hundred dollars in any one year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission, which shall be paid quarterly upon proper vouchers, from the fish and game fund of the state.

History: En. Sec. 5, Ch. 193, L. 1921.

3655. State fish and game wardens—Qualifications—Duties. The state fish and game commission shall appoint and employ a state fish and game warden, who shall continue in office at the pleasure of said commission. He shall be a person having experience, special training, and skill in wildlife protection, conservation and management. He shall be the secretary of the state fish and game commission, attend the meetings of said commission, and keep a correct record of all its transactions. He shall be the administrative head of the state fish and game department, custodian of its property and records, and shall maintain his office at the seat of the state government. He shall devote all of his time to his official duties, and such state fish and game warden shall have all the powers and duties which are now or may hereafter be by law conferred upon and delegated to the state game warden or the state fish and game warden. His powers and duties shall include those of a deputy state fish and game warden hereinafter enumerated. He shall be subject to the supervision and control of said commission and may be removed from office by said commission for neglect of duty, incompetency, or any other good cause. The said state fish and game warden shall be paid a salary of not to exceed three thousand dollars per year, and in addition thereto shall be allowed his actual and necessary traveling expenses while away from the seat of government upon official business connected with his office; provided, however, that in no instance shall he be allowed as expenses in excess of two thousand dollars in any one year, the same to be paid upon proper vouchers from the fish and game fund of the state.

History: En. Sec. 6, Ch. 193, L. 1921.

Note.—Earlier acts relative to the fish and game warden were sections 1949-1979, inclusive, Revised Codes 1907; these sections together with several acts amendatory thereof were superseded by chapter 193, laws of 1921.

3656. Deputy fish and game wardens—Appointment. The state fish and game commission shall have power to employ and appoint a number of deputy state fish and game wardens, not exceeding eight in number, for the proper enforcement of the fish and game laws of the state, or for such other purposes as the commission may direct, who shall hold their offices for such time as the commission may direct, and who may be removed from office by said commission at any time. The said commission shall assign to each deputy state fish and game warden, appointed or employed by it, the territory or district in which he is to perform his duties and work, which may be changed at any time by said commission. Said deputy state fish and game wardens shall perform their duties at the direction of, and subject to, the supervision and control of the state fish and game commission and the state fish and game warden; provided, however, the commission may employ, for a limited period of time, a special game warden to patrol said district and enforce the game and fish laws of the state of Montana therein, and to perform such duties in said district as may be prescribed by said commission for the limited time for which they are so employed; and further, such special deputy game wardens shall receive in compensation such amount as the commission may allow per day for services rendered and actual expenses not to exceed two dollars per day.

History: En. Sec. 7, Ch. 193, L. 1921.

3657. Deputy state fish and game wardens under qualifications. All appointments of salaried deputy fish and game wardens shall be made under rules adopted and promulgated by the commission; such examination shall embrace an investigation of the character, habits, and qualifications of the applicant as well as his knowledge of the state fish and game laws, and the duties and responsibilities appertaining to the office of deputy fish and game warden. No person shall be appointed a salaried deputy state fish and game warden until a certificate shall have been issued to him by the commission to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office.

History: En. Sec. 8, Ch. 193, L. 1921.

3658. Political activity prohibited. While retaining the right to vote as he may please, and to express his opinions on all political questions, no fish and game warden or deputy shall take any active part in political management or political campaigns, nor shall he use his official authority or influence for the purpose of interfering with an election, or affecting the results, thereof, or for the purpose of coercing or influencing the political actions of any person or body.

History: En. Sec. 9, Ch. 193, L. 1921.

3659. Deputy state fish and game wardens—Qualifications—Duties. The deputy state fish and game wardens employed and appointed by virtue of this act shall be persons who have had experience, training, and skill in the protection, conservation, and propagation of wild life, game, fish, and game birds, and who shall be interested in said work; they shall devote all of their time for which they are appointed, to their official duties; it shall

be their duty to see that the laws of the state of Montana and the laws, orders, rules, and regulations of the state fish and game commission with reference to the protection, preservation, and propagation of game, fish, and game birds are strictly enforced; it shall be their duty to see that all those who hunt, fish, trap, or take game, game birds, fur-bearing animals, or fish, have the necessary license to enable them so to do; they shall have authority to serve subpoenas issued by any court for the trial or offenses against any of the fish and game laws of the state; they shall have authority to make a search, when they have cause to believe that any of the game, fish, birds, or quadrupeds, or any part thereof, have been killed, captured, taken, or possessed, in violation of the laws of this state, and without search warrant, to examine the contents of any camper's tent, boat, car, automobile, or other vehicle, box, locker, basket, creel, crate, game bag, or other package, to ascertain whether any of the provisions of the laws of this state for the protection, conservation, or propagation of game and fish or game-birds or quadrupeds have been violated, and with a search warrant to search and examine the contents of any dwelling house or other buildings, to seize all game, fish, game birds and quadrupeds, or any parts thereof, possessed in violation of the laws, or showing evidence of illegal taking, and seize and confiscate all devices used in the taking of game, fish, and game birds illegally, and to hold the same subject to law or the orders of said state fish and game commission; to arrest without warrant any person committing an offense against the fish and game laws of the state of Montana, in their presence, and to take such person immediately before a magistrate having jurisdiction of the same, and to exercise such other powers of peace officers, in the enforcement of the fish and game laws of the state, or of judgment obtained for the violation thereof, not herein specifically provided. It shall be their duty at all times to assist in the protection, conservation, and propagation of game, fish, and birds and to assist in the planting, distribution, feeding, and caring for fish and game and game-birds; it shall be their duty when ordered by the state fish and game commission to assist in the destruction of predatory animals, birds, and rodents; it shall be their duty to do and perform all other duties prescribed from time to time, by the state fish and game commission, and to make a monthly report to said commission correctly and truthfully informing the said commission of just what each said deputy fish and game warden has done during each day of the preceding month, with regard to the enforcement of the fish and game laws of this state, showing where his duties called him, and what he was called upon to do, and said report shall contain any recommendation said deputy making the same may see fit. No deputy or special deputy fish and game warden shall have authority to compromise or settle out of court any violations of the state fish and game laws.

History: En. Sec. 10, Ch. 193, L. 1921.

3660. Oath and bond of state fish and game warden and deputy wardens. Before entering upon his official duties, the state fish and game warden and deputy wardens shall take and subscribe the constitutional

oath of office and shall in addition thereto swear, or affirm, that he holds no other position or office, nor any position under any political committee or party. Such oath or affirmation shall be filed in the office of the secretary of state.

The state fish and game warden shall execute and file with the secretary of state a bond to the state of Montana in the sum of ten thousand dollars, with sureties thereon approved by the state treasurer, and each salaried deputy state fish and game warden shall file a bond with the secretary of state, to the state of Montana, in the sum of one thousand dollars, with sureties thereon approved by the state treasurer, conditioned for the faithful performance of the duties of their respective offices, and that they, respectively, will account for and pay over, pursuant to law, all moneys received by them respectively. The state fish and game warden and each of said deputies shall be reimbursed for the premium on said bonds from the state fish and game fund, upon the furnishing of a proper voucher therefor.

History: En. Sec. 11, Ch. 193, L. 1921.

3661. Deputy state fish and game wardens—Removal—Rating—Salary, etc. The state fish and game commission shall have power to remove, suspend without pay, to reduce in rank, to act as a trial board in hearing and passing upon charges against deputy state fish and game wardens, and to rate all such deputies on the basis of merit and efficiency, in accordance with such rules and regulations as it may adopt to secure a proper rating of deputy state fish and game wardens or to carry out the provisions of this section. It shall rate all deputy state fish and game wardens on the basis of merit and efficiency in three grades to be known as the first, second, and third grades. Any deputy in the first and second grade shall not be removed unless furnished with reason for removal and given a hearing in his own defense. The salary of the deputy state fish and game wardens shall be one hundred twenty-five dollars per month; provided, however, that each deputy state fish and game warden who shall have been rated in the first grade for a full year shall receive increased salary at the rate of ten dollars per month, and for each year thereafter in which he shall so qualify he shall receive a like increase until he receives the sum which shall be at the rate of eighteen hundred dollars per annum; and that each deputy state fish and game warden who shall have been rated in the second grade for a full year shall receive increased salary at the rate of five dollars per month, and for each year thereafter in which he shall so qualify he shall receive a like increase until he receives the sum which shall be at the rate of sixteen hundred fifty dollars per annum; but the commission shall have power in its discretion, for cause shown, to cancel such increase or any part thereof on the failure of any such deputy fish and game warden receiving such increase, to qualify for the first or second grade in any year. Only deputy fish and game wardens rated in the first grade shall be eligible to promotion. Each deputy state fish and game warden shall be allowed his actual and necessary traveling expenses while away from his place of residence, upon official business connected with his office, not exceeding the sum of

six hundred dollars per annum, except when a sum in excess thereof shall have been actually and necessarily expended upon the order of the state fish and game warden, said expenses to be approved by and to be paid upon proper voucher from state fish and game fund.

History: En. Sec. 12, Ch. 193, L. 1921.

3662. Special deputy state fish and game wardens. The state fish and game warden may appoint anyone who is a bona fide resident and citizen of the state as a special deputy fish and game warden. Such special deputy fish and game warden shall hold his appointment during the pleasure of the commission, or state game warden, and shall have the same powers and duties as other deputy state fish and game wardens, but shall receive no pay for his service, except that the commission may, in its discretion, allow him his actual and necessary traveling expenses, which, if allowed, shall be paid upon proper vouchers from the state fish and game fund.

History: En. Sec. 13, Ch. 193, L. 1921.

3663. Sheriffs, constables, peace officers and state forest officers. All sheriffs and their deputies, constables, all peace officers of the state, or any subdivision thereof, and all state forest officers, are hereby made ex-officio deputy state fish and game wardens, without pay, except that the commission may, in its discretion, allow actual and necessary traveling expenses, which, if allowed, shall be paid upon proper vouchers from the state fish and game funds, and shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed deputy state fish and game wardens, and it is hereby made their duty to assist, wherever possible, in the enforcement of said laws.

History: En. Sec. 14, Ch. 193, L. 1921.

3664. Superintendent of state fisheries, appointment and bond. The state fish and game commission shall have general supervision over all hatcheries in the state, and shall appoint and employ a superintendent or director of state hatcheries, who shall be a competent person and a skilled fish culturist, and who shall act under the direction of the state fish and game commission. The output of all state hatcheries shall be used to stock the lakes and streams of the state, and shall be for free and impartial distribution within the state, and stocking the waters thereof under the direction of the commission, and said superintendent; provided, however, that the superintendent shall have the power to exchange fish fry with other states or persons for distribution in this state. Before entering upon his official duties, the superintendent so appointed and employed by said commission shall execute and file a bond with the secretary of state, in the sum of two thousand dollars, with sureties thereon approved by the state treasurer, to the state of Montana, conditioned for the faithful performance of his official duties, and that he will account for and pay over, pursuant to law, all moneys received by him. He shall be reimbursed for the premium on said bond from the fish and game fund of the state, upon presentation of a proper voucher therefor.

History: En. Sec. 15, Ch. 193, L. 1921.

3665. Superintendent of state fisheries—Salary. The superintendent of state fisheries, appointed and employed by the commission, shall receive for his services a salary not to exceed three thousand dollars per year, and his actual and necessary traveling expenses while absent from his place of residence and upon official business connected with his office; provided, however, that in no instance shall he be allowed as expenses a sum in excess of one thousand dollars in any one year, which shall be paid from the state fish and game fund on proper vouchers.

History: En. Sec. 16, Ch. 193, L. 1921.

3666. Superintendent of state fisheries—Duties and powers. The superintendent of state fisheries shall have charge of the work of taking and collecting all spawn, the hatching of all spawn and eggs, rearing, propagating and distribution of fry, fingerlings and fish, and, with the consent of the state fish and game commission, he shall have power and authority to employ such assistance and help as may be necessary in the operation of fish hatcheries of the state, the gatherings of eggs, or the performance of any other work in connection with the protection, propagation and distribution of fish and fry. He shall have authority, with the consent of the commission, to purchase so many eyed eggs from time to time as may be necessary in order to keep the hatcheries of the state supplied with eggs and in full operation, the quality and kind or species of eggs to be determined by the superintendent or commission; provided, however, that the said superintendent shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply said hatcheries, and for that purpose shall have the right and authority to build, equip, and use fish traps and nets at any and all seasons of the year in all the public waters of the state. Said superintendent shall also have authority, when authorized by the commission, to purchase the eyed eggs of fish not propagated in this state, for the purpose of stocking the waters in this state.

History: En. Sec. 17, Ch. 193, L. 1921.

3667. State fish and game commission to control state waters for propagation of fish. From and after the passage of this act, the state fish and game commission is hereby given the right and authority to control the waters of any lake, pond, or stream, which may lie wholly within the limits of the land owned by the state of Montana, so far as the use of said lake, pond or stream for the breeding and propagation of game fish is concerned. Before such right to control any of such lake, pond or stream shall inure to the state fish and game commission, it shall be necessary for the chairman of said commission to notify the state land agent that any such lake, pond or stream is wanted for the purpose herein mentioned, giving a description of the land by legal subdivision when surveyed, or a sufficient general description when not so surveyed, whereupon it shall be the duty of the state land agent to make such entry upon his books and maps as may serve as notice to any lessor or purchaser of the right claimed by the state, in any such lake, pond or stream, and said state land agent shall notify any lessor or purchaser or applicant to lease or purchase of the fact that a right to the use of such lake, pond or stream is so claimed;

provided, however, that no such right as is hereby given shall continue for more than one year after such land is sold by the state, and further provided, that should it be found that the right to the control of any such lake, pond or stream heretofore granted lessens the value of said land or prevents the ready sale thereof, that then and in that event the right hereby granted to the state fish and game commission may be terminated upon giving sixty days' notice of such termination to the chairman of the state fish and game commission.

History: En. Sec. 18, Ch. 193, L. 1921.

3668. State fish and game commission shall procure plans for buildings. It shall be the duty of the state fish and game commission of the state of Montana to procure suitable plans and specifications for any buildings erected by their authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than one thousand dollars, and said commission shall cause said buildings to be built, erected and completed in accordance with such plans and specifications, by contract, said contract to be let after publishing said notice stating the time and place of letting the same, and where plans and specifications may be seen. Said notice shall be published not less than once a week for two weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said building is to be erected, and elsewhere if deemed best by said commission, and said commission, if not satisfied with the bids received, or for any other reason, may reject any and all bids received and re-advertise as often as may be necessary. The contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by the commission, or some member of the commission.

History: En. Sec. 19, Ch. 193, L. 1921.

3669. Transfer of funds. All funds, appropriations and moneys provided for the purpose of administering or enforcing the present fish and game laws of this state, and all funds, appropriations and moneys belonging to the fish and game fund of this state, and now under the control or in the possession of any officer, person or department of this state, shall be and hereby are placed under the control of the commission hereby created, and shall be collected and disbursed by said commission, pursuant to existing laws and provisions of this act.

History: En. Sec. 20, Ch. 193, L. 1921.

3670. State fish and game fund—Appropriated for what. All sums collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the commission from any other source, shall be turned over to the state treasurer, and placed by him in a special fund known and designated as the "state fish and game fund"; provided, that

out of any fines imposed by a court for the violation of this act, the costs of prosecution shall be paid to the county where the trial was held, in any case where the fine is not imposed in addition to the costs of prosecution. Said fund is hereby exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses and expenditures of every source and kind whatsover, authorized to be made by the state fish and game commission under the terms of this act, and said funds shall be expended for any and all of such purposes, by said commission, subject to the proper audit and allowance by the state board of examiners.

History: En. Sec. 21, Ch. 193, L. 1921.

3671. State fish and game warden—Clerk and stenographer. The state fish and game warden appointed and employed by the state fish and game commission of this state, shall have the right, subject to the approval of the commission, to employ such clerical and stenographic assistance as may be necessary for him to properly maintain his office and perform his official duties in his office, and the person or persons performing the same shall be paid monthly out of the fish and game funds of the state upon proper voucher.

History: En. Sec. 22, Ch. 193, L. 1921.

3672. Salaries, per diem and expenses, how paid. All salaries, per diem, expenses and claims incurred by the state fish and game commission, or any person appointed or employed by them, shall be allowed by the state board of examiners, upon the presentation of proper vouchers therefor, and shall be paid out of the state fish and game funds, upon warrants properly drawn thereon; provided, however, that the aggregate of all salaries, per diem, expenses and claims presented for payment shall not exceed at any time the total amount in said state fish and game fund. The state fish and game commission shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all deputy state fish and game wardens shall be approved by the state fish and game warden, before they are paid, and the salary, per diem or expenses of any employee employed in the propagation or distribution of fish shall be approved by the superintendent of state fisheries, before they are paid. All items of expense, amounting to more than one and one-half dollars incurred by any one employed in the state fish and game department, shall be evidenced by a proper voucher or receipt, before they shall be approved, allowed, or paid.

History: En. Sec. 23, Ch. 193, L. 1921.

3673. Reports of state fish and game warden, superintendent of state fisheries and commission. The state fish and game warden, and the superintendent of state fisheries, shall, on or before the first day of June of each year, make a written report to the state fish and game commission of the operation of their departments during the preceding year, and the state fish and game commission shall thereafter, and on or before the first day of November of each year, transmit such report, together with a detailed report to the governor, of its work and of moneys collected or received,

with the sources thereof, and all disbursements and expenditures, with the details connected therewith, the result of investigations made by it during the preceding year ending April 30th, with recommendations as to measures to be taken or enacted to conserve and propagate the fish, game, game birds and game, and fur-bearing animals of the state, and if such recommendation embody legislation, drafts of bills to accomplish the purposes desired.

The governor is authorized to have such reports printed.

History: En. Sec. 24, Ch. 193, L. 1921.

3674. Publication of laws. As soon as practicable after the adjournment of each session of the legislature, the state fish and game warden, in co-operation with the attorney-general, shall make a compilation of the laws relating to fish, game, game birds and animals, as amended and in force at the date of such compilation, and properly index the same. Copies of said compilation sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. It shall be the duty of the state fish and game warden to distribute to justices of the peace, deputy fish and game wardens, and other officers and persons empowered to issue licenses for hunting, fishing and trapping, a supply of such compilation sufficient to permit one copy thereof to be given any one desiring the same. The expense incurred by printing said laws shall be paid out of the state fish and game fund.

History: En. Sec. 25, Ch. 193, L. 1921.

3675. Duty of attorney-general to advise commissioners—Prosecuting attorneys to prosecute complaints. The attorney-general of the state is the legal adviser of the commission, and shall, together with the several county attorneys, enforce the provisions of this act.

History: En. Sec. 26, Ch. 193, L. 1921.

3676. Creating of fish and game district—Refuges—Penalty. Any fish and game district, closed district, refuges, preserves, sanctuaries, rest grounds, made or created by said commission, and any lakes or streams, or portions of lakes or streams closed by said commission, shall be conspicuously posted for a period of fifteen days, with posters setting forth their purposes and the penalties for violating the orders, rules and regulations of the state fish and game commission applicable to them. Not less than fifteen days before any fish and game district, closed district, preserve, refuge, sanctuary, rest ground, so created by said commission, or closure of waters becomes effective, publication shall be made as provided in the next section of the boundaries of such fish and game district, closed district, preserve, refuge, sanctuary, or rest ground, so created by said commission, and closed waters, such boundaries to be accurately designated by definite topographic or public land survey. The hunting, pursuing, wounding, capturing, killing or taking of any fish or game or game-birds or animals in violation of the rules, regulations or orders of the state fish and game commission governing any closed season, fish and game district, refuge, sanctuary, preserve, rest-ground or closed water, promulgated by said commis-

sion, shall be punished with the same penalties as provided for the violation of the state fish and game laws of this state regarding closed seasons. All game preserves heretofore created by the laws of this state are continued in force and effect until such time as the same are changed by the commission in the manner herein designated; provided, that no game preserve that has existed for more than two years shall be changed by said commission.

History: En. Sec. 27, Ch. 193, L. 1921.

3677. Publications. The orders, rules and regulations of the state fish and game commission shall be published and posted in the following manner:

1. Those having general application throughout the state shall be published once in some newspaper published in each county having a general circulation.

2. Those of general or special character having local application only shall be published once in some newspaper having general circulation in the locality or district wherein such rules, regulations or orders are applicable, and shall be posted in three conspicuous places in the locality or district in which they are applicable.

History: En. Sec. 28, Ch. 193, L. 1921.

3678. Effect of orders, rules and regulations. All orders, rules and regulations for the enforcement of the powers granted to the state fish and game commission shall take effect and be in force, after publication and posting as in this chapter prescribed, and when so published or posted shall constitute legal notice.

History: En. Sec. 29, Ch. 193, L. 1921.

3679. Violations of orders, rules and regulations. Any person, firm or corporation violating any rule, regulation or order by the state fish and game commission made pursuant to its powers enumerated in this chapter, or any officer who fails to perform any duty imposed by any of the provisions of this act, shall be guilty of a misdemeanor, and where the punishment is not otherwise prescribed by law, shall be punished, upon conviction thereof, by a fine of not to exceed the sum of three hundred dollars, or imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court, and in addition thereto shall forfeit his fish and game license for a period of not less than one year.

History: En. Sec. 30, Ch. 193, L. 1921.

3680. Effect partial invalidity of act. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional or inoperative, such decision shall not affect the validity of the remaining portions of this act.

History: En. Sec. 32, Ch. 193, L. 1921.

CHAPTER 256.

FISH AND GAME LAWS—LICENSES—PROTECTION AND PROPAGATION OF FISH AND GAME.

Section 3681. Definitions.
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3778. Penalties for Violation of Act.

3681. Definitions. For the purposes of this act, the following shall be construed, respectively, to mean:

Commission. The state fish and game commission.

Person. The plural or singular, as the case demands, including individuals, associations, partnerships and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game or fur-bearing animals may be taken.

Closed season. The time during which fish, birds, game and fur-bearing animals may not be taken.

Angling or fishing. The taking of game fish by hook and line in hand or rod in hand.

Game animals. Deer, elk, moose, antelope, bison, or buffalo, caribou, mountain sheep and mountain goat.

Fur-bearing animals. Marten, otter, fox, sable, muskrat and fisher.

Predatory animals. Coyote, wolf, wolverine, mountain lion, lynx and bobcat, bears.

Game fish. Mountain trout (Salmo Clarkii), rainbow trout (Salmo Irrideus), eastern brook trout (Salvelinus Fontinalis), grayling (Thymallus Montanus), Rocky Mountain whitefish (Coregonus Williamsoni), steelhead trout (Salmo Rivularia), black bass (Micropterus Salmoides), Dolly Varden trout (Salvelinus Malma), Loch Levin trout.

History: En. Sec. 1, Ch. 238, L. 1921.

For text treatment of fish and game laws, see 11 R. C. L. 1014; 12 R. C. L. 683.

3682. License required. It shall be unlawful for any person to take, hunt, shoot, pursue, or kill any game, game-birds or animals, or take with traps or other devices any fur-bearing animals, or take, capture, or fish for any fish, or engage in hunting, trapping or fishing within this state except as herein provided, without first having procured a license so to do, and then only during the respective periods of the year when it shall be lawful.

Any person who shall take, fish, hunt, kill or trap any fish, game birds, game or fur-bearing animals within this state without securing the necessary license therefor, as in this act provided, shall be guilty as herein specified. The provisions of this act with reference to licenses shall not take effect until after April 30, 1921, when present hunting and fishing licenses expire.

History: En. Sec. 2, Ch. 238, L. 1921.

Police power of state to regulate and protect game, see note in 42 A. S. R. 138.

Validity of statute requiring license to hunt, see notes in Ann. Cas. 1916C, 134; Ann. Cas. 1918A, 145.

Licensing right to fish, see note in 60 L. R. A. 505.

State ownership of fish and game, see notes in Ann. Cas. 1917B, 949, 978, 980.

Fishery, rights of owners in streams and ponds, see note in 3 Ann Cas. 860.

Public right of fishery, see note in 60 L. R. A. 481.

Right to free fishing in great ponds, see note in 31 L. R. A. (N. S.) 434.

Fishery rights in navigable waters, see notes in 15 Ann Cas. 708; Ann. Cas. 1915C, 1152; 14 L. R. A. 386.

3683. Classes of licenses. Licenses shall be divided into the following classes:

Class A, resident, general license.
Class B, non-resident general license.
Class C, non-resident limited license.
Class D, non-resident, fishing license.
Class E, alien, general license.
Class F, alien, fishing license.
Class G, trappers' license.

History: En. Sec. 3, Ch. 238, L. 1921.

Denial of license for certain occupations to alien as lawful exercise of state's police power, see note in 11 Ann. Cas. 516.

Discrimination against non-residents in granting license to take fish and game, see note in 40 L. R. A. (N. S.) 285.

Constitutionality of game law discriminating between persons or classes as to right to hunt game, see notes in 19 Ann. Cas. 239; 26 L. R. A. (N. S.) 794.

3684. Application for license. Such license shall be procured from the state fish and game warden, or any salaried or special deputy state fish and game warden, any justice of the peace, or any person authorized by the state fish and game warden. Before giving any person other than

a salaried deputy state fish and game warden, or any justice of the peace, the authority to sell or issue licenses, the state fish and game warden may exact from such person a bond not to exceed the sum of one thousand dollars, to be approved by the state fish and game warden, conditioned that such person will turn over to the state fish and game warden all sums received by him for such licenses, which said bond shall run to the state of Montana. The applicant shall fill out a blank application furnished by the commission, stating the name, age, occupation, place of residence and postoffice address of the applicant, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts or descriptions as may be required by the commission. Said application shall be subscribed and sworn to by the applicant before any officer authorized to administer oaths in this state, and the persons or officers hereby authorized to issue licenses are also hereby authorized to administer oaths to applicants for such licenses.

History: En. Sec. 4, Ch. 238, L. 1921.

3685. Fees and powers under licenses. Said applicant, if a resident of the state of Montana and a citizen of the United States, shall pay to the officer or person countersigning and issuing the license the sum of two dollars as a license fee, and shall obtain a license of class A, which shall entitle the holder to hunt, kill, capture, take and possess game, game birds and animals and to fish with hook and line as authorized by this act.

All citizens of the United States who have lived in this state for at least six months, or officers and soldiers of the United States army, or students at any institution of learning within the state, shall be deemed resident citizens for the purposes of this section, as well as all officers of the forest service and of the biological survey of the United States department of agriculture.

Said applicant, if a non-resident of the state, or a resident for less than six months, and a citizen of the United States, shall pay to the officer countersigning and issuing the license, the sum of thirty dollars, as a license fee, and shall obtain a license of class B, which shall entitle him to hunt, kill, capture, take and possess game, game birds and animals, and to fish with hook and line as authorized by this act; and such non-resident, on like application and on the payment of the sum of ten dollars as a license fee, shall obtain a class C license, which shall entitle him to hunt and kill game birds and small game and to fish with hook and line as authorized by this act; and such non-resident on like application and on the payment of the sum of three dollars and fifty cents as a license fee, shall obtain a class D license, which shall entitle the holder to fish with hook and line as authorized by this act.

Said applicant, if an alien, resident or non-resident, shall pay the officer countersigning and issuing the license the sum of fifty dollars as a license fee, and shall obtain a class E license, which shall authorize him to hunt, capture, kill, take and possess game, game birds and game animals, and to fish with hook and line as authorized by this act; such alien, on the payment of the sum of ten dollars as a license fee, shall obtain a class F license, which shall entitle him to fish with hook and line as authorized by

this act; provided, however, that any person in possession of first citizenship papers shall be considered a resident of the state of Montana, for the purposes of this act.

No license issued under this section shall be, or be deemed to authorize hunting or fishing in national parks or national game or bird preserves, now designated or which may be hereafter designated by the state fish and game commission, and all hunting and fishing thereon is hereby prohibited except in accordance with rules and regulations duly adopted by the proper federal authorities. Twenty-five cents out of every license fee collected shall be set aside as a fund to be used in co-operation with the United States biological survey for the destruction of predatory animals.

History: En. Sec. 5, Ch. 238, L. 1921.

3686. Temporary receipt in lieu of license. In case a person applies to a proper officer or person for a license, and it is impossible, at the time, for such officer or person to issue and deliver a license to the applicant, such officer or person shall require the applicant to fill out, sign and swear to a proper form of application for a license, as prescribed by this section, and if it shall appear that the applicant is entitled to license, such officer or person shall issue and deliver to the applicant, on the payment of the proper fee, an official receipt, forms which, numbered consecutively, shall be furnished by the state fish and game warden to all persons authorized to issue licenses; any receipt issued by any such officer or persons shall contain a description of the applicant sufficient for identification, and such applicant shall write his name across the face of the receipt and shall carry the same on his person in lieu of a license while he is hunting or fishing; the officer or person issuing such temporary receipt, within ten days thereafter, shall mail to the state fish and game warden the stub of such official receipt, together with the application, and remit the amount of the fee collected therefor, and the state fish and game warden shall immediately issue the proper license, and mail the same to the applicant, at the address given in his application; and it shall be the duty of the applicant immediately upon receipt of such license to mail his temporary receipt to the state fish and game warden; forms of temporary receipts furnished to an officer or person authorized to issue licenses shall be returned not later than the thirtieth day of April of each year to the state fish and game warden to be credited to the account of the person to whom they were charged.

History: En. Sec. 6, Ch. 238, L. 1921.

3687. Disposition of fees. The license fees provided to be paid in this section, shall be remitted by the officers or persons issuing said licenses on the tenth and twenty-fifth days of each month to the state fish and game warden, with a schedule setting forth the name and residence of each licensee, and the serial number and class of, and the amount paid for, each license issued. The fee provided to be paid to the officer or person issuing a license shall be retained by him for his compensation. The license fees received by the state fish and game warden shall be remitted on the tenth and twenty-fifth days of each month with a schedule setting forth the name and residence of each licensee, the serial number and class of, and

the amount paid for, each license, to the state treasurer, and placed by him in a special fund known and designated as the state fish and game fund. Said fund is hereby exclusively set apart and made available for the payment of salaries, per diem, fees, expenses and expenditures of every sort and kind whatsover authorized to be made by the state fish and game commission, and said funds shall be expended for any and all such purposes by said commission, subject to the proper audit and allowance by the state board of examiners.

History: En. Sec. 7, Ch. 238, L. 1921.

3688. Form and contents of licenses. The form of the license shall be determined and the license blanks prepared by the commission and by it furnished to the officers and persons authorized to issue the same. Said licenses shall be issued in the name of the commission, and be countersigned by the officer or person issuing the same. Each license issued shall be signed by the licensee in ink or indelible pencil on the face thereof.

History: En. Sec. 8, Ch. 238, L. 1921.

3689. Carrying and exhibiting license. No person to whom a license has been issued shall be entitled to take fish, birds or animals in this state unless at the time of such taking he shall have such license in his possession, and shall exhibit the same for inspection to any warden or other officer or person requesting to see the same.

History: En. Sec. 9, Ch. 238, L. 1921.

3690. Termination of license. Such licenses shall be void after the thirtieth day of April next succeeding their issuance.

History: En. Sec. 10, Ch. 238, L. 1921.

3691. Exception. The provisions of this act shall not apply to persons hunting, killing or trapping predatory animals, prairie dogs, ground squirrels, skunk, weasel, jackrabbit, pocket gophers, hawks, crows or magpies, which may be killed, taken, trapped, possessed, bought, sold or transported in any manner, at any time, or to persons under fifteen years of age, who may hunt, kill and capture game animals, fur-bearing animals, game birds and fish during the open season without a license.

History: En. Sec. 11, Ch. 238, L. 1921.

3692. Alteration or transfer of license. No person shall at any time alter or change in any material manner, or loan or transfer to another, any license issued in pursuance to the provisions of this act, nor shall any person other than the person to whom it is issued use the same. Any person who shall swear or affirm to any false statement in application for a hunting, fishing or trapping license, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished accordingly. Any false statement contained in any application for such license shall render the license null and void.

History: En. Sec. 12, Ch. 238, L. 1921.

3693. Report. On the thirtieth day of April of each year, each deputy or special deputy fish and game warden and each other officer or person authorized to issue licenses, shall detach the stubs of licenses issued by him, and forward the same, together with all unused licenses, securely attached to a report of the number issued and the amount of license money received, to the state fish and game warden, whose duty it shall be to see that the proper returns are made to him by all such wardens, other officers or persons; and the state fish and game warden shall recapitulate and tabulate the total number of licenses of all kinds issued in the state and the fees received therefor, and he shall include such data in his report remitting the fees to the treasurer.

History: En. Sec. 13, Ch. 238, L. 1921.

3694. Manner of taking fish and game. No person shall take, capture, shoot, kill, or attempt to take, capture, shoot, or kill any game animals or game birds from any automobile, or within the bounds of any public highway, or by the aid or with the use of any set-gun, jack-light, or other artificial light, trap, snare, or salt-lick, nor shall any such set-gun, jack-light, or other artificial light, trap, snare, salt-lick or other device to entrap or entice game animals or game birds, be used, made or set; provided, however, this does not prohibit the shooting of wild water fowl from blinds or over decoys; nor shall game-birds or game animals be killed or hunted from an aeroplane, power-boat, sail-boat, any boat under sail, or any floating device towed by power-boat or sail-boat. No person shall take into a field or forest, or have in his possession, while out hunting, any device or mechanism designed to silence or muffle or minimize the report of any firearm, whether such device or mechanism be separated from or attached to any firearm. A person may take game-birds and small wild animals during the open season therefor with the aid of a dog, unless specifically prohibited by this law. An association organized for the protection of game, may run field trails for dogs at any time upon obtaining written permission from the state fish and game warden.

It shall hereafter be unlawful for any one person to catch from the public waters of this state more than fifty fish gross with a gross weight of more than tweny-five pounds of any of the variety of fish designated herein, as game fish, or more than ten of any such game fish which are less than six inches in length, in any one day. It is hereby declared to be the intention of this act to provide that fifty fish with a gross weight of not more than twenty-five pounds of any or all of the game fish shall constitute the limit for a day's fishing. It shall be unlawful for any person to be in possession of more than fifty fish or more than twenty-five pounds gross weight of any kind of game fish at any one time.

Game fish shall be taken only by angling; that is, by hook and line in hand or rod in hand. It shall be unlawful to catch any game fish through ice. In case any game is unintentionally taken contrary to the prohibitions or restrictions contained in this act, such fish shall be immediately liberated and returned to the water without unnecessary injury. Any person who shall take, capture, shoot, hunt, or kill any fish, game, game birds, or fur-bearing animals of this state in any manner contrary to the provisions

of this act shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished accordingly; provided, that nothing herein shall be construed to prevent the taking of bull or Dolly Varden trout by line and hook held in hand, and whitefish.

History: En. Sec. 14, Ch. 238, L. 1921.

Use of appliance within meaning of prohibition in fish or game law, see note in Ann. Cas. 1912A, 312.

Validity and construction of statute regulating method of taking fish, see notes in Ann. Cas. 1917D, 814; 39 L. R. A. 585.

3695. Regulations for use artificial fish ponds. Any person who owns or lawfully controls an artificial lake or pond may stock the same with fry procured from the federal or from the state government at the prevailing market price, providing there is a surplus of said fry, or from any other lawful source, and shall thereafter have the right and privilege to take from said lake or pond in any manner, except by the use of poisons or explosives, the fish contained therein, and to sell or dispose of said fish and of eggs and fry taken therefrom. The words "artificial lake or pond" as herein used shall not be construed to include any natural pond or body of water created by natural agencies, but shall be limited only to such bodies of water as are created by the artificial diversion or storage of water, and shall not exceed one hundred acres of surface area.

That any person who has or owns a lake or pond, or who owns or controls the land entirely surrounding such lake or pond, may take fish for spawning purposes therefrom to be used in stocking the same, and any person who has heretofore, or who shall hereafter cause the said lake or pond to be stocked, or who shall hereafter cause the said lake or pond to be stocked from year to year, and every year for not less than three years, with not less than two thousand fry for every acre of the superficial area of such lake or pond, shall have the right and privilege, under the terms and restrictions of law, to take from said lake or pond in any manner, except by the use of poisons or explosives, the fish contained therein, and to sell and dispose of the same, as well as the eggs and fry so taken. Any such owner or holder of a lake or pond shall sell or offer to sell, at the going market price, to the state of Montana, any eggs or fry, over and above the amount required to re-stock such lake or pond, to the extent required by this section.

Provided, further, that such owner shall procure a license in the manner provided by the laws of the state of Montana, and shall furnish a good and sufficient bond to the state of Montana in the sum of two hundred dollars, conditioned to the effect that he will not sell fish caught in any of the public waters of this state, and also conditioned to the effect that such owner or holder will report to the state game warden the quantity of fish, fish eggs and spawn taken from said lake or pond, and sold from and planted in, said lake or pond during any calendar year. Said report to be made under oath annually in the month of January of each year.

History: En. Sec. 14A, Ch. 238, L. 1921.

3696. Open season for elk. Any person who between the fifteenth day of November of any year and the fifteenth day of October of the following year wilfully shoots, kills, hunts or captures, or causes to be shot,

killed or captured, any elk, or who, in the open season shall hunt, shoot, kill or capture, or cause to be shot, killed or captured, more than one elk, or who wilfully leaves that portion of an elk suitable for food, after removing the head or teeth thereof, shall be guilty of a felony, and shall be punished accordingly; provided, however, that it shall be unlawful to hunt for, shoot, kill or capture, or cause to be shot, killed or captured, any elk within the limits of the counties and the territories hereinafter described and which are designated hereby as "Preserves for Elk," the same to remain closed until thrown open by authority of law, or order of the state fish and game commission.

The following named counties, as a whole:

Jefferson,	Sanders,	Carbon,
Deer Lodge,	Silver Bow,	Cascade,
Fergus,	Broadwater,	Meagher,
Chouteau,	Musselshell,	Blaine,
Valley,	Hill,	Yellowstone,
Golden Valley,	Sheridan,	Liberty,
Daniel,	Judith Basin,	Carter,
Roosevelt,	McCone,	Custer,
Fallon,	Big Horn,	Prairie,
Wibaux,	Lincoln,	Dawson,
Richland,	Rosebud,	Toole,
Granite,	Mineral,	Ravalli,
Phillips,	Beaverhead,	Treasure,
Stillwater,	Powder River,	Wheatland,
	Garfield,	

All of Lewis and Clark, except that portion drained by the south fork of Flathead; that portion of Lewis and Clark county, lying north of the north fork of the Dearborn river, not included within a game preserve, in which closed season shall end November 5th. Also all of Missoula and Powell counties, except so much of said counties described as being those portions of said counties, lying west of the North Fork of the Big Blackfoot river and north of the Main Blackfoot river west of the confluence of the two streams; and also that portion of said counties drained by the waters of the South Fork of the Flathead river; and also those portions of Missoula county lying east of Belmont creek from its source, north of the Big Blackfoot river and east of the confluence of said Belmont creek with the Big Blackfoot river at the west end of Nine Mile prairie; and also that portion of Missoula county drained by the streams flowing into Swan river; also so much of Gallatin county north of the North Fork of Sixteen Mile creek.

History: En. Sec. 15, Ch. 238, L. 1921.

Statute providing closed season as applicable to private fishing or hunting grounds, see note in Ann. Cas. 1915A, 1158.

Government regulation of close time for fisheries, see note in 39 L. R. A. 585.

3697. Open season for deer. Any person who shall, between the first day of December of any year and the first day of November of the following year, hunt, shoot, kill, take or capture, or cause to be shot, taken, killed or captured, any deer, or who, in the open season of any calendar year,

shoots, kills or captures, or causes to be shot, killed or captured, any female deer, or more than one male deer with visible horns, is guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly; provided, however, that it shall be unlawful for any person to hunt, shoot, kill, take or capture, or cause to be shot, killed, taken or captured, any deer within the counties of Yellowstone, Rosebud, Custer, Powder River, Carter, Richland, Roosevelt, McCone, Dawson, Stillwater, Gallatin, Teton, Phillips, Garfield and Valley, and within all that part of Fergus county lying north of the township line between townships eighteen and nineteen and east of the range line between ranges twenty-four and twenty-five in said county, before October 1, 1924.

History: En. Sec. 16, Ch. 238, L. 1921.

3698. Destroying evidence of sex a misdemeanor. Any person killing deer permitted to be killed by the preceding sections who shall destroy evidence of the sex of the deer so killed, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

History: En. Sec. 16A, Ch. 238, L. 1921.

3699. Closed season for mountain sheep and goat. That it shall be unlawful to hunt, shoot, kill or capture at any place within the state of Montana, any Rocky Mountain sheep or goat before the first day of October, 1926. Any person who violates the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

History: En. Sec. 17, Ch. 238, L. 1921.

3700. Closed season for game-birds. Any person who hunts, shoots, kills or captures, or causes to be shot, killed or captured, any quail, Chinese pheasant, Hungarian pheasant or partridge, wood duck, curlew, swan, loon, or turtle dove, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

History: En. Sec. 18, Ch. 238, L. 1921.

3701. Open season for grouse, etc. Any person who between the fifteenth day of October of any year and the first day of October of the following year, hunts, shoots, kills or captures, or causes to be shot, killed or captured, any grouse, prairie chicken, sage hen, sage grouse, fool hen, pheasant, partridge, or who, during the open season in any portion of the state of Montana, shoots, kills or captures, or causes to be shot, killed or captured, more than five grouse, or prairie chickens, sage hen, sage grouse, fool hens, or pheasants, or partridges, in any one day, or who shall have in their possession more than a total of five birds of any kind, at any one time, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

It shall be unlawful for any person to hunt, shoot, kill or capture, or cause to be shot, killed or captured, any grouse, prairie chicken, fool hen, pheasant or partridge, within the state of Montana, except in the counties of Flathead, Missoula, Lincoln, Sanders, before September 15, 1923.

History: En. Sec. 19, Ch. 238, L. 1921.

3702. Power to open and close game districts. Provided that the fish and game commission shall have the power to open or close any county or portion thereof when upon proper showing by residents of said district it shall appear to the fish and game commission that it is to the best interest of fish and game and the people shall be served by opening or closing of such district.

History: En. Sec. 19A, Ch. 238, L. 1921.

3703. Open season for waterfowl. Any person who between the first day of January of any year and the sixteenth day of September of the same year, hunts, shoots, kills or captures, or causes to be shot, killed or captured, any wild geese, wild ducks or brant, or who shall during the open season shoot, kill or capture, or cause to be shot, killed or captured, more than twenty wild ducks in any one day, or more than eight wild geese or brant of any variety, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

History: En. Sec. 20, Ch. 238, L. 1921.

3704. Open season for fur-bearing animals. Any person who between the first day of April of any year, and the first day of November of the same year, traps, kills or captures, or causes to be shot, killed, trapped or captured, any marten, otter, fox, sable, muskrat or fisher, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly. The furs and hides of such animals, legally taken during the open season, may be possessed, bought and sold at any time.

History: En. Sec. 21, Ch. 238, L. 1921.

3705. Costs. In any case where costs have been incurred by a county in a prosecution for the violations of any of the provisions of this act, or of any other laws of the state of Montana, with reference to fish and game, a cost bill, including the cost of board of a prisoner, shall be prepared and presented to the state board of examiners, and, if approved by it, the state treasurer shall thereupon pay the same out of the fish and game fund of the state, to the county treasurer of the county incurring such costs and expenses.

History: En. Sec. 22, Ch. 238, L. 1921.

3706. Penalties. Any person found guilty of a violation of any of the terms of this act, if the same is defined as a misdemeanor, under the terms hereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail of not less than ten days nor more than one hundred eighty days, or by both such fine and imprisonment, and in addition thereto shall forfeit his game and fish or trapping license for a period of not less than one year.

Any person found guilty of the commission of a felony, as defined under the terms hereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the penitentiary of not less than six months nor more than one year, or by both such fine and imprisonment, and in addition thereto shall forfeit his game and fish or trapping license for a period of not less than one year.

History: En. Sec. 23, Ch. 238, L. 1921.

3707. Compensation of persons issuing license. Any person hereby authorized to issue licenses of any kind, except duly appointed game and deputy game wardens, shall receive as compensation for issuing such licenses a sum of fifteen cents for each license so issued. Said compensation to be by such person retained out of each license fee as reported in the manner herein provided for reports of persons authorized to issue licenses.

History: En. Sec. 24, Ch. 238, L. 1921.

3708. Alien gun license. There is hereby created a gun license for aliens. No person not a bona fide citizen of the United States shall own or have in his possession, in the state of Montana, any gun, pistol or other firearm, without first having obtained from the game and fish warden a license therefor, which said license shall cost the owner of said firearm the sum of twenty-five dollars, and shall expire one year from date of issuance thereof; provided, however, that this section shall not apply to one who has obtained the twenty-five dollar hunting license required by the laws of Montana; provided, further, that the provisions of this section shall not apply to any alien who is a bona fide resident of the state of Montana, and the owner of not less than one hundred and sixty acres of land therein, nor shall it apply to any settler on the public lands of the state of Montana who shall have begun to acquire land under the laws of the United States by filing thereon, nor shall it apply to persons engaged in tending or herding sheep or other animals held in herd.

History: En. Sec. 1, Ch. 38, L. 1913.

3709. Failure to procure alien gun license a misdemeanor. Any alien of the United States who shall have in his possession or under his control, any gun, pistol or other firearm, without having taken out and being at the time in possession of a license as provided in the preceding section, shall be guilty of a misdemeanor, and be punished by a fine of not less than twenty-five dollars.

History: En. Sec. 2, Ch. 38, L. 1913.

3710. Confiscation of firearms illegally in possession of alien. It shall be the duty of the game and fish warden and his duly authorized deputies, and of all peace officers in the state of Montana, to search for and take into their possession any gun, pistol, or other firearm found in the possession of any alien not entitled to hold or possess same, and to sell the same, and all of the provisions of section 1959 of the Revised Codes of Montana shall apply to the enforcement of this act.

History: En. Sec. 3, Ch. 38, L. 1913.
Note.—The sections referred to above was repealed by chapter 193, laws of 1921.

3711. Disposition of fines. All fines and other moneys collected under the provisions of this act, when arrest has been made by the game and fish warden and his deputies, shall be paid into the fund known as the "fish and game fund," and all fines and other moneys collected under the provisions of this act, where the arrest has been made by peace officers, shall be paid into the school fund of the county where said action is tried or arrest made.

History: En. Sec. 4, Ch. 38, L. 1913.

3712. Federal government may conduct fish-hatching operations in state. The government of the United States, the United States commissioner of fisheries, and its or his duly authorized agent or agents, be and they are hereby authorized, empowered and granted the right to conduct fish-hatching and all operations connected therewith, in any manner and at any time that may by them, or any of them, be considered necessary and proper, at any United States fish cultural station that may hereafter be established by the United States government in the state of Montana.

History: En. Sec. 1, Ch. 9, L. 1913.

3713. Sale of fish or spawn prohibited—Exceptions. Every person who in any way catches any of the fish which in this act are classified as "game fish," or who shall remove or cause to be removed the eggs or spawn of any of such fish for speculative purposes, for market, or for sale, or who shall sell or offer for sale any of the game fish of this state as in this act defined, or the eggs or spawn therefrom, shall be deemed guilty of a misdemeanor and shall be punished accordingly; provided, however, that this section shall not apply to fish caught in private ponds by the owner thereof, nor to the taking of fish by the state authorities for the purpose of obtaining the eggs for propagation in state fish hatcheries, or by any person who receives a permit from the state fish commission to take eggs for said purposes.

History: En. Sec. 21, Ch. 173, L. 1917.

3714. Catching fish except with pole, line, and hook—Use of seines—License to use net—Penalty. Every person who takes or catches fish in any of the streams, lakes, or ponds of this state, except with a pole, line, and hooks, or any person who takes or catches fish with a hook baited with any poisonous substance, or by means of dams, or by the use of fish-traps and grab-hooks, seines, or similar means for catching fish, is guilty of a misdemeanor. It shall be, however, lawful to use a seine in the Missouri river, and also in the Yellowstone river, except in that portion of said river above its confluence with the Big Horn river; provided, said seine has a mesh not less than one and one-half inches square.

It shall be unlawful, however, to use a seine of less than two and a half inch mesh, in the following waters: Lake Francis in Teton county, and Lake Boudoin in Phillips county, and in the Pend d'Oreille river and Clark's Fork of the Columbia. All fish so taken by seine, except suckers, German carp, Lake Superior whitefish and squaw-fish, shall be returned to the waters from which they are taken, uninjured. Any person desiring to use a net or seines for the purpose of catching fish, not herein designated as "game-fish," in any of the lakes, ponds, rivers, or streams above mentioned, shall make application to the state game warden for a license so to do, stating therein the lake, river, pond, or stream in which applicant wishes to catch fish by use of said net or seine; whereupon the said state game warden may, in his discretion, and upon the payment of a license fee of five dollars, issue to the applicant a license authorizing said applicant to use one seine in any of the rivers, streams, ponds, or lakes above mentioned, as applied for. And the state game warden shall issue with each license a metal tag, having a number thereon, corresponding

with the number of the license issued to said applicant, which shall be, by the licensee, attached to the seine so used, and shall remain on said seine during the time of use, and it shall be unlawful to use any net or seine unless such tag is attached as herein provided, and parties thus engaged must have the necessary license. Said license shall authorize the person to whom issued to use the same for the purpose of catching and selling, within the limits of the state of Montana, for consumption therein, any fish not herein named as "game-fish." And the licensee shall make monthly reports of fish caught to the state game warden. The license herein provided for may be issued and remain in force for the term of one year from and after the date of issue, and shall authorize the holder to ship fish to any point within the state, and may, for cause, be revoked at any time by the state game warden.

Said license shall be in substantially the following form:

License to Net Fish, No.....

Office of State Game Warden, Helena, Montana.

This will certify that I hereby license..... of....., County of....., state of Montana, to take by means of a net, fish from the waters of that certain lake, river, stream or pond known as and called....., in..... county, Montana, for a period of one year; and that when said fish are so taken, that the said.....may ship the same to any point within this state.

This license allows the taking of fish by means of a net having not less than two and one-half inch mesh, barring gill and hemmel nets in the waters above named; and that all fish defined by the law of Montana as "game-fish" shall be returned to the waters from which taken without injury.

Witness my hand this.....day of .....

.....,

State Game Warden.

The provisions of this section shall be construed to apply to and amend section 2, chapter 79, Laws of 1913. Any person violating the provisions of this section, upon conviction, shall be guilty of a misdemeanor, and punished accordingly.

History: En. Sec. 22, Ch. 173, L. 1917.

Complaint charging offense of unlawfully taking fish from stream held sufficient. State v. Russell, 52 Mont. 583, 584, 160 Pac. 655.

3715. Record of seining licenses—Refusal of license. It shall be the duty of the state game warden to keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and when revoked (should same be so revoked), and to pay all fees received for such licenses into the state treasury to the credit of the fish and game fund. Should an application be made for a license by any person who has theretofore had a license revoked for cause, it shall be the duty of the state game warden to refuse the same, and no license shall be issued to any person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917.

3716. Possession of seines, nets, or other devices for capturing fish. It is unlawful for any person or persons to have in their possession or under their control any seine, net, or other similar device for capturing fish. A seine or net found in any vehicle, at the camp, or on the premises of any person shall be prima facie evidence that the said seine, net, or similar device belongs to the person or persons in possession of such vehicle, or the person or persons occupying said camp or premises; provided, that nothing herein contained shall apply to the owners of private fish ponds as defined under the statute, nor to a person or persons having unexpired seine or net license, as provided for in the statutes of Montana; provided, further, that nothing herein contained shall apply to the use, by any person, of a landing net used in connection or in addition to pole, line, and hooks, in fishing for game-fish.

Any person or persons convicted for a violation of this section shall be deemed guilty of a misdemeanor and punished accordingly.

History: En. Sec. 25, Ch. 173, L. 1917.

3717. Use of explosives or deleterious substances in taking fish a felony. If any person or persons shall use any giant powder or other explosive compounds, or any corrosive or narcotic poison, or other deleterious substance for the purpose of catching, stunning, or killing fish, he shall be deemed guilty of a felony, and upon conviction thereof shall be punished accordingly.

History: En. Sec. 26, Ch. 173, L. 1917.

3718. Dumping refuse from sawmill into streams. No person or corporation operating a sawmill on or near any stream, pond, lake, or river shall hereafter dump, drop, cart, or deposit, or cause to be dumped, dropped, carted, or deposited, sawdust, bark, shavings, oil, ashes, cinders, or debris in or near any such stream, pond, lake, or river, in such manner or place as will likely result or cause the same to be carried into the waters of any such stream, pond, lake, or river; and any person so doing shall be deemed guilty of a misdemeanor, and, upon conviction, punished accordingly.

History: En. Sec. 28, Ch. 173, L. 1917.

Statutory prohibition of pollution of water to protect fishery, see notes in 1 L. R. A. (N. S.) 752; 34 L. R. A. (N. S.) 286.

3719. Killing of moose, bison, buffalo, caribou, or antelope a misdemeanor. Any person who wilfully shoots or kills or captures, or causes to be shot or killed or captured, any moose, bison, buffalo, caribou, or antelope (and it is hereby made unlawful to kill any of said animals except as hereinafter stated), is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 34, Ch. 173, L. 1917.

3720. Chasing big game with dogs a misdemeanor. Any person who hunts, chases, or runs with dogs any deer, elk, moose, buffalo, caribou, antelope, mountain-sheep, or mountain-goat shall be guilty of a misdemeanor.

History: En. Sec. 36, Ch. 173, L. 1917; amd. Sec. 3, Ch. 210, L. 1919.

3721. Catching, trapping, or otherwise restraining big game a misdemeanor. Any person who shall wilfully catch, trap, or otherwise restrain, for the purpose of sale or domestication, or any other purpose, any buffalo, elk, moose, or mountain-sheep or goats within the state, shall be deemed guilty of a misdemeanor and be punished accordingly.

History: En. Sec. 37, Ch. 173, L. 1917.

3722. Killing of beaver and marten—Special license—Killing game from automobile. Before any person shall be allowed to so hunt for, trap, shoot, or kill beaver, he shall apply for and receive from the state game warden a special license.

In the application for a license the applicant shall state his name, place of residence, and the county and locality therein where such hunting ior, trapping, shooting, or killing is to be done, which facts must be stated in the license issued.

It shall hereafter be unlawful to kill beaver within this state except as hereinafter provided:

Provided that any taxpayer or bona fide owner of real estate in this state may, upon his own premises, or upon the right of way of his own ditches and trees, at any time kill or cause to be killed beaver, when necessary for the protection of his dams, irrigating ditches, and trees, and to prevent the overflowing of water upon his premises.

It is further provided, that it shall be the duty of the owner of the premises, or his duly authorized agent in charge of such premises, when any beaver have been caught or killed, as provided in this act, to make written report to the state game and fish warden or his duly authorized deputies, within thirty days after such beaver were caught or killed, stating the number of beaver so caught or killed, and the location of the property where said beaver were caught or killed.

Provided, further, that when it is shown to the state game and fish warden by said report, as provided in this act, that he is the owner of, or duly authorized agent in charge of said property, that the state game and fish warden shall issue a permit to the owner of the premises upon which the beaver were caught or killed, to ship or sell the number of beaver skins as shown in his report.

It is further provided, that it shall be the duty of each and every person, after he or she has sold the skins of such beaver, to make written report to the state game and fish warden, giving the number of skins sold and the name of the party sold to.

It is further provided, that the state game and fish warden shall have the power to authorize the killing of beaver at any time upon open lands and game preserves, when he shall deem it necessary to prevent the building of dams which would interfere or prevent fish from traveling up or down such streams where such dams shall be built; and further that the state game warden shall have authority to authorize the killing of beaver when they are causing damage upon the right of way of county roads.

Provided, further, that all skins of beaver so taken by the state game and fish warden shall be sold, and the proceeds paid into the fish and game fund.

It shall be lawful to take or kill marten at any time between the fifteenth day of September and the first day of the following May in any year, upon procuring from the state game warden a license to do so, and paying therefor a fee of one dollar, which amount shall be paid into the state game and fish fund; provided, further, however, that no person shall hereafter shoot, kill or in any way take or capture any game of whatsoever kind or character from any automobile, nor by the aid or use of any device, or a light or lights carried upon said automobile or attached thereto.

Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor.

History: En. Sec. 38, Ch. 173, L. 1917; amd. Sec. 1, Ch. 197, L. 1919.

3723. Killing of song-birds prohibited. Every person who wilfully shoots, or otherwise kills or causes to be killed, any meadow-lark, blue-bird, thrush, oriole, woodpecker, mocking-bird, goldfinch, snowbird, cedar-bird, stork, or any other of the small birds known as singing birds, is guilty of a misdemeanor, and shall be punished accordingly.

History: En. Sec. 41, Ch. 173, L. 1917.

3724. Destruction of nests or eggs of birds or wild fowl. Any person who shall wilfully destroy the nests, or carry away the eggs from the nests of any of the birds or wild fowls mentioned in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

History: En. Sec. 42, Ch. 173, L. 1917.

3725. Possession of bodies prima facie evidence of guilt. The possession of the dead bodies, or any part thereof, or any of the birds or animals mentioned in this act, shall be prima facie evidence that such person or persons is or are guilty of killing the same.

History: En. Sec. 43, Ch. 173, L. 1917.

3726. Sale of confiscated birds and animals. All birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer as herein provided, shall be sold, under the direction of the state game warden or his deputies, at a time, place, and manner so as to receive the highest price therefor. Such sales shall be made at public auction to the highest and best bidder, and the game warden or his deputies shall give notice of the time and place of such sale, together with a description of the bird, or birds, fish, animal or animals, or parts or portions of animals to be so sold by one publication, at least, in a newspaper of general circulation published in the county where such sale is noticed to be held, and the date of sale shall not be less than five nor more than thirty days after the last date of such publication; provided, that in cases where the property seized is perishable, the same may be sold by such officers without publishing a notice thereof, upon such public notice, and under such terms and conditions as, in the discretion of the officers, may seem conducive to secure the full value thereof.

History: En. Sec. 47, Ch. 173, L. 1917.

3727. Certificate to be issued upon sale. Upon the sale of such property, the officer shall issue a certificate to the party purchasing the same,

certifying that the purchaser has the legal right to be in possession of the same, and any one so acquiring said property with the state shall have the right to deal therewith without further question with respect to violation of the law, anything herein contrary notwithstanding.

History: En. Sec. 48, Ch. 173, L. 1917.

3728. Disposition of proceeds of sale. The money obtained upon the sale of such property shall be paid over to the court before whom the person having the same in possession at the time of seizure is prosecuted, or in which prosecution is pending, and if the person charged with violation of the law is found guilty before said court of violation of the fish and game laws of the state, the money received for the sale of said property shall be paid over to the state treasurer, and be deposited by him to the credit of the fish and game fund; but should it be found that the party from whom the same was taken was not guilty of any violation of the fish and game laws of this state, said money shall be paid to the party from whom said birds, animals, fish, or parts or portions thereof were taken. No officer shall be liable for any damage on account of any search, examination, seizure, or sale as herein provided. Where wild animals, game-birds, or fish are seized as in this act provided, and the person or persons who killed or captured the same cannot be ascertained, then the money so received from the sale of such animals, game-birds, or fish shall be paid direct to the state treasurer. The cost of advertising notice of sale, as herein required, shall be paid from the fish and game fund.

History: En. Sec. 49, Ch. 173, L. 1917.

3729. Record of confiscated property. It shall be and is hereby made the duty of the state game warden, and of every deputy game warden, to make a full and complete record of all property by them, or either of them, confiscated because of a violation of the game and fish laws of this state, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The state game warden shall keep in his office a permanent record showing all property confiscated by him or any of his deputies, and the disposition made thereof under the provisions of this act.

History: En. Sec. 50, Ch. 173, L. 1917.

3730. Shipment of game out of state unlawful, when. It is hereby declared to be unlawful and it is prohibited for any person or persons to ship or take out of the state any of the birds or game animals, or any part thereof, which are mentioned in this act, except the same be done in the manner provided for herein, and in conformity to the law with reference thereto.

History: En. Sec. 51, Ch. 173, L. 1917.

3731. Permit to resident to ship game. Any resident of this state who desires to ship out of the state any of the animals, or parts thereof, mentioned in said act, during the open season for the killing of the same, the same having been killed lawfully, shall first procure a permit from

the state game and fish warden, said permit stating the name of the consignee and consignor, destination, and number and kind of game that is to be shipped, and said permit shall be presented to the transportation company with the consignment of game.

History: En. Sec. 52, Ch. 173, L. 1917.

3732. Permit to non-resident to ship game. Any non-resident of this state who has procured a hunter's license, and who desires to ship out of the state any of the animals, or any part thereof, mentioned in this act, during the open season for killing the same, the same having been killed lawfully, shall present to the transportation company his license, with the consignment of game to be shipped; provided, that no person shall ship in one year more game than it is lawful for one person to kill in a single open season.

History: En. Sec. 53, Ch. 173, L. 1917.

3733. Labeling of packages containing fish or game. It is required that all packages containing fish or game shall be labeled in plain letters on the address side of the package, so as to disclose the contents thereof.

History: En. Sec. 54, Ch. 173, L. 1917.

3734. Violation of act by common carrier—Confiscation of game. Any person or persons, transportation or common carrier company, agent, servant, or employee of any transportation or common carrier company, who shall violate any of the provisions or any part thereof contained in this act, shall be guilty of a misdemeanor, and punished as such. All game shipped or had in possession in violation of any of the provisions of this act may be seized, confiscated, and disposed of, as provided by law.

History: En. Sec. 55, Ch. 173, L. 1917.

3735. Receiving for shipment fish unlawfully taken a misdemeanor. Any person or persons, or the agent of any stage, express, or railway company, or association or persons who shall receive for transportation or carriage, or shall sell or offer for sale any of the game-fish that have been taken or killed contrary to the provisions of this act, knowing or having reason to know or believe that such fish were so illegally caught, taken, or killed, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly; provided, however, that any person having in his possession a fishing license for the current year may ship not to exceed twenty-five pounds of game-fish by express, stage, or freight, upon showing said license to the agent of any carrying company.

History: En. Sec. 56, Ch. 173, L. 1917.

3736. Fees for shipping permits. The state game and fish warden shall hereafter make a charge of fifty cents for each and every shipping permit issued by him for the shipment of game or parts thereof out of the state. All money so received shall be turned over by him to the state treasurer at the time and in the manner prescribed by law, and the state treasurer shall place such money to the credit of the fish and game fund.

History: En. Sec. 57, Ch. 173, L. 1917.

3737. Unlawful for merchants, hotel, or restaurant keepers to sell game killed in state. It shall be lawful for any merchant, hotel, or

restaurant keeper to have in his possession, and to offer for sale, and to sell game and game-birds; provided, that said game and game-birds are not and have not been killed within the state of Montana.

History: En. Sec. 58, Ch. 173, L. 1917.

Possession during closed season of game taken during open season as unlawful, see note in 2 Ann. Cas. 230.

Validity of statute prohibiting importation or possession of game during closed season, see notes in 128 A. S. R. 534; 2 Ann. Cas. 229; 6 Ann. Cas. 356, 935.

3738. Evidence of lawful possession of game must be produced, when. It shall be the duty of every merchant, hotel, and restaurant keeper, having in his possession and offering for sale any game or game-birds, to produce upon demand, for the inspection of any game warden or deputy game warden or sheriff, the receipt or record and shipping and transportation receipts required hereby to be kept by him, and a failure or refusal to produce the same upon demand, coupled with the possession and offering for sale of game or game-birds, shall constitute prima facie evidence of the violation of this act.

Hitsory: En. Sec. 59, Ch. 173, L. 1917.

3739. Record to be kept by persons having in possession or offering game for sale. It shall be the duty of every person having in his possession and offering for sale any game or game-birds to keep a record showing the amount and kind of game and game-birds received by him, together with shipping and transportation receipts showing the true time and place of shipment of said game and game-birds, and the name of the person shipping same; provided, however, that any merchant in Montana selling game or game-birds to any hotel or restaurant keeper or other person shall, in addition to the record and receipts heretofore required to be kept by him, keep a record of the date of sale, kind, and amount of game or game-birds, and the name of the purchaser; and provided, further, that in the case of hotel and restaurant keepers, or other persons buying game or game-birds from a merchant within the state of Montana, a receipt from the said merchant showing the date, amount, and kind of game or game-birds purchased shall be sufficient evidence of compliance with the provisions of this act by such hotel or restaurant keeper or other person.

History: En. Sec. 60, Ch. 173, L. 1917.

3740. Non-compliance with law a misdemeanor. Any person who shall have in his possession and offer for sale or sell any game or game-birds, without having complied with the provisions of this act relating to the keeping of a record and shipping and transportation receipts, shall be guilty of a misdemeanor and punished accordingly.

History: En. Sec. 61, Ch. 173, L. 1917.

3741. Meaning of words employed in act. In the construction of this act, the words "game" and "game-birds," or parts of the same, the killing of which is restricted or forbidden by the laws of Montana; and the words "merchant," "hotel and restaurant keeper" shall include each and every manager, servant, agent, and employee of any such person.

History: En. Sec. 62, Ch. 173, L. 1917.

3742. Sale of game-birds or animals a misdemeanor—"Game specimens" defined. It is hereby made unlawful for any person to sell or offer to sell any of the birds or animals, or any part thereof, mentioned in this act, and any person so offering to sell or selling the same shall be guilty of a misdemeanor and punished accordingly; provided, that nothing herein shall be so construed as to prohibit the sale of game specimens from game lawfully taken or killed; provided, however, that a permit shall first be obtained from the state game warden. "Game specimens," within the meaning hereof, shall include any hide, scalp, or head, whether mounted or unmounted, or any full life-sized mount of any of the game animals or birds of this state.

History : En. Sec. 63, Ch. 173, L. 1917; amd. Sec. 1, Ch. 142, L. 1919.

3743. Meaning of word "sale" in game and fish laws. The word "sale," as used in the statute laws of this state touching the sale of game and fish, the sale of which is prohibited by law, does and shall be considered to mean:

1. A contract by which, for a pecuniary consideration called a price, one transfers an interest in either game or fish.

2. A contract by which, for an article or thing of value, one transfers, barters, or exchanges an interest either in game or fish.

History: En. Sec. 64, Ch. 173, L. 1917.

3744. Common carriers prohibited from receiving fish or game for transportation, or offering same for sale. Any person or persons, agent, or employees of any stage or express company, or railroad company or association of persons, who shall receive for transportation or carriage, or shall sell or offer for sale, fish or game that has been taken or killed contrary to the provisions of this act, knowing or having reason to believe that such fish or game were so illegally caught, taken, or killed, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished accordingly.

History: En. Sec. 65, Ch. 173, L. 1917.

3745. License to act as guide—Guides to be deputy state game wardens. No person shall engage in the business of guiding, as the term is commonly understood, without first having procured from the state game and fish warden a guide's license. Any competent person, who is a bona fide citizen of the state of Montana, shall, upon the presentation of an affidavit, stating that the applicant is of good moral character and responsible, and signed by three taxpayers of the county in which the applicant lives, and by the applicant signing the oath of office of a deputy state game warden, and making the payment of ten dollars to the state game warden, receive from him a guide's license, which shall be good for one year only; provided, that upon payment of ten dollars annually said license may be renewed. Such license shall state the name, age, and place of residence of the holder, and shall further recite that the holder of such license is a person of good moral character. Every person acting as a guide in this state shall be a deputy state game warden, and shall file with the state game warden his oath of office as such deputy game

warden, but shall receive no compensation from the state in any way for such services, other than the consideration above mentioned.

History: En. Sec. 66, Ch. 173, L. 1917.

3746. Penalty for acting as guide without license. Any person violating any of the provisions of this act, who shall act as a guide without the necessary qualifications and without the proper compliance with the terms hereof, shall be guilty of a misdemeanor, and be punished accordingly; and in all cases where a conviction is had the license theretofore issued shall be revoked.

History: En. Sec. 67, Ch. 173, L. 1917.

3747. Who deemed a guide. Any person who shall, for pay, aid or assist any person or party in locating, pursuing, hunting, or killing any of the game-birds or animals mentioned in this act, shall be deemed a guide within the meaning of this section.

History: En. Sec. 68, Ch. 173, L. 1917.

3748. Same. Any person who shall engage in the business of packing for hunting parties, as the term is commonly understood, or who shall, for pay, accompany such parties as guide, packer, or cook, shall be considered a guide and shall come within the requirements of this act; provided, however, that it shall be necessary only for one of the persons above named with each and every hunting party to have fulfilled the requirements of this section.

History: En. Sec. 69, Ch. 173, L. 1917.

3749. Statements to game warden by guides. Whenever a guide is employed by any person or party, such guide shall, at the expiration of the period of the time for which he was employed, make a written statement to the state game warden, stating the number of days he was employed, the number of persons guided, their names, residences, and the number of each kind of game killed, and, if non-residents, the number of their license.

History: En. Sec. 70, Ch. 173, L. 1917.

3750. Guides equally responsible with others for violations of law—Must report violations. Any person acting as a guide for any person or party shall be equally responsible with such person or party for any violation of the law; any such guide who shall wilfully fail or refuse to report any violation of the law, by the said person or party employing him, shall be liable to the penalties as hereinafter provided.

History: En. Sec. 71, Ch. 173, L. 1917.

3751. Taxidermists to procure license. Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving, or preparing any of the dead bodies of any of the birds or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state game and fish warden a taxidermist's license, such license to be taken out annually. Such person shall, on the first day of each month, make a

written report to the state game and fish warden of all the articles of game, the kind and number of each, by whom owned, and residence of owner, received during the past month, also of all the articles of game shipped, and to whom and where shipped during the last month; also the amount and kind of each on hand on the last day of the month, and by whom owned, and owner's address.

History: En. Sec. 72, Ch. 173, L. 1917.

3752. Failure to procure license or make report a misdemeanor. Any person failing to secure the herein-mentioned license, or who shall fail, neglect, or refuse to make the above-mentioned report, shall be deemed guilty of a misdemeanor, and shall be punished accordingly, and in all cases of conviction their license shall be revoked.

History: En. Sec. 73, Ch. 173, L. 1917.

3753. Collection and disposition of fines, bonds, and penalties. All fines, bonds, and penalties mentioned in any section of this act may be collected by a civil action in the name of the state of Montana in any court of competent jurisdiction, upon proper complaint being filed; and the amount of all fines and bonds collected under the provisions of this act shall be paid to the state treasurer, and by him placed to the credit of a fund to be known as the fish and game fund. All such fines, bonds, and costs shall be collected without stay of execution, and the defendant or defendants may, by order of the court, be confined in the county jail of the county until such fine and costs are paid.

History: En. Sec. 74, Ch. 173, L. 1917.

3754. Payment of cost bill to county wherein costs were incurred. In all cases where there is a prosecution for the violation of fish and game laws, and costs have been incurred therein, a cost bill shall be prepared, including the cost of board of prisoners, and presented to the state board of examiners, and if by them allowed, the state treasurer shall thereupon pay the same out of the state game and fish fund to the county treasurer of the county wherein such costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917.

3755. Transportation of persons or property in furtherance of fish and game interests of state. Nothing in the provisions of sections 3779 to 3817 or of 6572 to 6574 of these codes, or in any of the other provisions of the laws of Montana, shall be construed to prevent, or shall prevent, the carriage or storage or handling of property, by railroads or other common carriers, free or at reduced rates, for the government of the United States or of the state of Montana, or for the owner or owners of any fish hatchery within this state, or any anglers' association, or sportsmen's club organized and existing therein, or of the state fish and game warden, whenever such property is being used for the exclusive purpose of stocking or planting with fish or fish eggs the waters within the state of Montana, or restocking the ranges and forests of the state of Montana with elk, deer, mountain-sheep, mountain-goats, grouse, ducks, or any of the so-called game animals or birds; and nothing therein shall be construed to prevent, or shall prevent, the issuing of free transportation to, or the free carriage of, or the selling of tickets at reduced rates to

any and all persons while actually engaged in transporting fish or fish eggs, or stocking or planting the waters of this state with such fish or fish eggs, or to any and all persons while actually engaged in transporting and caring for any of the game animals or birds herein mentioned for restocking the ranges, forests, and public parks of this state.

History: En. Sec. 76, L. 173, L. 1917.

3756. Duty of grand juries, district judges, sheriffs, etc., respecting infractions of law. It shall be the duty of all grand juries to investigate all infractions of any provisions of this act, except such cases and violations as may have been tried by a court of competent jurisdiction, and upon due proof of violation of any of the said provisions, they shall proceed to indict such party or parties according to law, and it is hereby made the duty of the judge of the district court to call the attention of the grand jury to the provisions of this act. The district court shall have concurrent jurisdiction with justices of the peace of all offenses committed under the provisions of this act. And it is further provided that in construing this act, the provisions and penalties hereinbefore made and prescribed shall be deemed and held to include all Indians and half-breed Indians when outside the Indian reservation. It is further provided and declared to be the duty of any sheriff or peace officer of any county of this state, and the county attorneys of the respective counties, when it shall come to their knowledge, or they shall have reason to believe that any person has violated any of the sections of this act, to commence criminal proceedings against them either in the justice or district court, as in their judgment shall be proper, and any failure on the part of any county attorney, sheriff, or other peace officer, or game warden, who has knowledge of the violation of any of the provisions of this act, to commence such proceedings, shall be deemed a misdemeanor, and he shall be punished accordingly.

History: En. Sec. 77, Ch. 173, L. 1917.

3757. Duty of court and prosecuting officials with respect to violations of laws of another state. Whenever it shall appear under any prosecution under any section of this act making it a felony for the violation thereof, that the crime was committed, or that the game was killed, or the fish caught in violation of law in any state other than Montana, it shall be the duty of the magistrate or the court before whom the trial was had to hold said defendant for at least ten days, and for such further time as may be necessary to allow the authorities of said state wherein the law has been violated to take the necessary steps to secure the arrest and extradition of the accused, if they so desire; and on the holding of the accused under the provisions of this section, it shall be the duty of the county attorney or attorney prosecuting to immediately notify the proper officers of the state and county in which it appears the law has been violated of all the facts and circumstances connected with said proceedings.

History: En. Sec. 78, Ch. 173, L. 1917.

3758. Act not applicable to cases of extreme hunger. When it is shown that any violation of the provisions of this act was for the purpose of preventing great suffering by hunger of any person or persons, which

could not otherwise have been avoided, the provisions of this act shall not apply to said case.

History: En. Sec. 79, Ch. 173, L. 1917.

3759. Use of silencers or mufflers on firearms. It shall be unlawful for any person to take into the fields or forests, or to have in his possession while out for the purpose of hunting any wild animals or birds, any device or mechanism designed to silence or muffle, or minimize the report of any firearm, whether such device or mechanism be separated from or attached to any firearm.

History: En. Sec. 80, Ch. 173, L. 1917.

3760. Permit for taking fish or game for scientific purposes. It shall hereafter be lawful for the duly accredited representative of any school, college, university, or other institution of learning, who may be investigating a scientific subject making the same necessary, to take, kill, capture, and have in his possession for such purpose, any of the birds, fish, or animals found in this state, and to take, kill, and capture the same in any way, except by the explosion of dynamite; provided, that no more of any such birds, fish, or animals shall be taken than are necessary for such investigation; and provided, also, that any person who shall desire to engage in such scientific investigation shall apply to the state game warden for a license so to do. If the state game warden is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall place a time limit upon such investigation, and shall place a restriction upon the number of birds, fish, or animals, to be taken thereunder; and the person to whom such license is issued shall pay therefor the sum of five dollars, and shall have no right or authority to take, have, or capture any other or greater number of the birds, fish, or animals than are mentioned in said license. Any person violating the provisions of this section shall be guilty of a misdemeanor and punished accordingly.

History: En. Sec. 81, Ch. 173, L. 1917.

3761. Creations of game-preserves—Boundaries—Provisions applicable to. There are hereby created, for the better protection of all of the game animals and birds within the limits thereof, game-preserves within the state of Montana, and more particularly hereinafter described as to the exterior limits, and it is hereby declared to be unlawful to hunt for, trap, or kill, or cause to be hunted for or killed, any of the animals herein mentioned, or to trap, capture, or molest any birds or animals of any kind whatever within the limits of the game-preserves hereby created, or to carry or discharge any firearms, or to create any unusual disturbances tending to frighten or drive away any game animals or birds, or to chase the same with dogs or hounds within said preserves; provided, however, that permits to capture animals or birds, for the purpose of propagation, or to destroy mountain-lions, wolves, foxes, coyotes, wildcats, minks, or other predatory animals or birds, may be issued by the state game warden, upon the payment of such license fee and in accordance with such regulations as may be established for the administration of said preserves by the state game and fish commission. Said game-preserves hereby created are more particularly described as follows:

Snow creek preserve. Beginning at a point on the north bank of the Missouri river, directly across and opposite the point where the dividing line between Hell creek and Crooked creek intersect the south bank of the Missouri river; thence southerly across the Missouri river, and continuing on top of a divide and forward to the top of the main divide between Big Dry creek and the Missouri river; thence westerly and on the top of the said last-mentioned divide to the top of the divide between Billy creek and Seven Blackfoot creek; thence north on said last-named divide to a point on the northern bank of the Missouri river directly opposite and across where said last-mentioned divide intersects the said bank; thence westerly along the north bank of the Missouri river, following the meanderings thereof to the point of beginning.

History: En. Sec. 83, Ch. 173, L. 1917.

3762. Pryor mountain preserve. Beginning at the northwest corner of section twenty-seven, township seven south of range twenty-five east; thence south to the southwest corner of section three, township eight south of range twenty-five east; thence east to the southeast corner of section three, township eight south of range twenty-five east; thence south to the southwest corner of section eleven, township eight south of range twenty-five east; thence east to the southeast corner of section eleven, township eight south of range twenty-five east; thence south to the southwest corner of section twenty-four, township eight south of range twenty-five east; thence east to the southeast corner of section twenty-four, township eight south of range twenty-five east; thence south to the southeast corner of section twenty-five, township eight south of range twenty-five east; thence east to that point which when surveyed will be the southeast corner of section thirty, township eight south of range twenty-six east; thence south to a point which when surveyed will be the southwest corner of section thirty-two, township eight south of range twenty-six east; thence east to that point which when surveyed will be the southeast corner of section thirty-six, township eight south of range twenty-seven east; thence north to that point which when surveyed will be the southwest corner of section thirty-one, township seven south of range twenty-eight east; thence east to that point which when surveyed will be the southeast corner of section thirty-one, township seven south of range twenty-eight east; thence north to that point which when surveyed will be the northeast corner of section nineteen, township seven south of range twenty-eight east; thence west to the northeast corner of section twenty-four, township seven south of range twenty-five east; thence south to the southeast corner of section twenty-four, township seven south of range twenty-five east; thence west to the northwest corner of section twenty-seven, township seven south of range twenty-five east, to the place of beginning.

History: En. Sec. 83, Ch. 173, L. 1917.

3763. Sun river preserve. Beginning at a point on the continental divide of the Rocky mountains, due south of the head or source of the south fork of the north fork of Sun river, in what will be section eight, township eighteen north of range ten west, Montana meridian, when surveyed; thence due north from the crest of the continental divide to the

head of the south fork of the north fork of Sun river; thence northerly along and down the course of the south fork of the north fork of Sun river, as it winds and turns to its confluence with the north fork of the north fork of Sun river; thence northerly along the course of the north fork of the north fork of Sun river, as it winds and turns to its head or source; thence due north to the crest of the continental divide of the Rocky mountains; thence along the crest of the continental divide of the Rocky mountains southwesterly and southerly to the place of beginning, intending hereby to include in said game-preserve all that territory lying between the said south fork of the north fork and the said north fork of the north fork of Sun river on the east, and the continental divide of the Rocky Mountains on the west.

History: En. Sec. 1, Ch. 34, L. 1913; re-en. Sec. 83, Ch. 173, L. 1917.

3764. Gallatin preserve. Beginning at a point in the center of the Yellowstone river where the Yellowstone river is intersected by the north boundary line of the Yellowstone national park; thence down the Yellowstone river in a northerly direction a distance of eight miles, more or less, to a point in the center of the Yellowstone river directly opposite the mouth of Mol Heron creek; thence due west in a straight line until this projected line intersects the watershed between Mol Heron creek and Tom Miner creek, a distance of six miles, more or less; thence in a general westerly direction following the watershed between Mol Heron creek and Tom Miner creek, Specimen creek, and Sheep creek, Tepee creek and Buffalo Horn creek, to a point in the northwest quarter of section twelve, township nine south, range four east, where the county road crosses the Gallatin river, a distance of fifteen miles, more or less; thence in a southeasterly direction along the northeasterly side-line of the county road, to a point where said county road, after running in a southeasterly direction from the point last mentioned, enters the Yellowstone national park, being a distance of five and one-half miles, more or less; thence north along the west boundary line of the Yellowstone national park to a point where the west boundary line of said Yellowstone national park intersects the north boundary line of said Yellowstone national park, to-wit; the northwest corner of said Yellowstone national park; thence east along the north boundary of said Yellowstone national park to the point of beginning.

History: En. Sec. 1, Ch. 87, L. 1911, 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 138, amd. Sec. 1, Ch. 124, L. 1915; re-en. Sec. L. 1919.

3765. Snowy mountain preserve. All of that portion embraced within the exterior limits of that portion of the Jefferson forest reserve in the Big Snowy mountains embraced within ranges seventeen, eighteen, and nineteen, and the west half of range twenty, east of the Montana meridian, is hereby designated as the "Snowy Mountain Game-Preserve."

History: En. Sec. 83, Ch. 173, L. 1917.

3766. Highwood national forest. All of that territory embraced within the exterior limits of that portion of the state of Montana which has heretofore been embraced, and which is included within the exterior limits of that territory known as the Highwood national forest, it being the

intent and purpose of this description to include within the said game-preserve all of the land which is now embraced within the limits of said national forest reserve, except those portions of the same held in private ownership.

History: En. Sec. 83, Ch. 173, L. 1917.

3767. Powder river game-preserve. Beginning at the southeast corner of Custer county at the Montana-Wyoming state line, thence north and along the north and south line between Custer and Fallon counties to a point where same dissects the east fork of the Little Powder river; thence following down the center of said stream to the west bank of Little Powder river; thence down the west bank thereof to its confluence with Powder river; thence up the east bank of said Powder river to the junction of Cache creek therewith; thence up the channel of said Cache creek and the north fork thereof to the divide or watershed between Powder river and Tongue river; and thence south along said watershed to the Montana-Wyoming state line; and thence due east and along said state line to the place of beginning.

History: En. Sec. 83, Ch. 173, L. 1917.

3768. Flathead lake bird-preserve. That certain islands, two in number, including lot one of block one, containing two and fifty-seven hundredths acres; lot two of block one, containing two and sixty hundredths acres; lot one of block two, containing one and sixty-five hundredths acres, all being in the villa site of islands, situated in Flathead lake, in the county of Flathead, Montana, according to the official plat and survey of said land returned to the general land office by the surveyor-general, be and the same are hereby made a perpetual place of refuge for birds of all kinds, the same to be called and known as "Flathead Lake Bird-Preserve," which said lands shall be specially reserved for the breeding, propagating, and protection of all species of birds.

It shall be unlawful for any person to kill, shoot, capture, or destroy, or in any way injure any bird on said islands, or to interfere with their eggs or nests, or to shoot at, wound, or kill any bird within a distance of four hundred yards from the shore-line of said islands.

It shall be unlawful for any person to kill, shoot, capture, or destroy, or in any way injure any bird or animal on the university of Montana biological reserve located on the east shore of Flathead lake, or to interfere with their eggs or their young, or their nests, or to shoot at, wound, or kill any bird or any animal within four hundred yards of said university of Montana biological reserve, or to discharge any firearms on said reserve, or within four hundred yards thereof.

History: En. Sec. 83, Ch. 173, L. 1917.

3769. Twin Buttes game-preserve. For the better protection of game animals and birds, the following area in the Lewis and Clark national forest, in the Rocky mountains, state of Montana, is hereby set aside and established as a state game-preserve, to be known as the "Twin Buttes Game-Preserve," to-wit:

Beginning at the junction of Dearborn river with Falls creek in what will be township eighteen north of range seven west, Montana meridian,

when surveyed, and running thence southerly along the course of said Fall creek to its junction with the tributary of said Fall creek known as the "East Fork," thence due south to the crest of the continental divide, thence northwesterly along the continental divide to the head of Blacktail creek, thence northerly along said Blacktail creek to its junction with said Dearborn river, thence down the said Dearborn river to the place of beginning.

It shall be unlawful for any person at any time to hunt, trap, kill, capture, chase, or molest any birds or animals of any kind whatever within the limits of said game-preserve, or to discharge any firearms or to create any unusual disturbances tending to frighten or drive away any game animals or any birds within said preserve; provided, however, that permits to capture animals and birds for scientific purposes, or for purposes of propagation, and to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink and other predatory animals or birds may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days or more than six months, or by both such fine and imprisonment.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than three hundred dollars, or imprisonment in the county jail not less than one nor more than sixty days, or both such fine and imprisonment.

Provided, however, that nothing in this act shall prevent any authorized official from the university of Montana from taking, capturing, or killing any birds in said preserves for scientific purposes only.

Subdivision 1. It shall be unlawful for any person or persons at any time to hunt, trap, kill, capture, or chase any game-birds or animals of any kind whatever, within the limits of the said state game-preserve; provided, however, that permits to capture game animals and birds for scientific purposes or for purposes of propagation may be issued by the state game warden on the payment of the fee of five dollars and in accordance with such regulations as may be established for said preserve, and it shall be lawful to destroy mountain-lions, wolves, foxes, coyotes, and wildcats on said preserve.

Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or shall be imprisoned in the county jail for a term of not less than thirty days nor more than six months, or by both fine and imprisonment.

History: En. Sec. 83, Ch. 173, L. 1917.

3770. Penalty for violation of act. Any person found guilty of a violation of any of the provisions of the foregoing sections relating to

game-preserves shall be guilty of a misdemeanor, and upon conviction thereof punished as herein provided.

History: En. Sec. 83, Ch. 173, L. 1917.

3771. South Moccasin mountain game-preserve. Beginning at the northeast corner of section thirty, township seventeen north, range eighteen east; running thence in a due westerly course a distance of five miles to the northwest corner of section twenty-eight, township seventeen north, range seventeen east; thence south two miles; thence west one-half mile to the northwest corner of section four, township sixteen north, range seventeen east; thence due south a distance of four miles to the southwest corner of section one, township sixteen north, range seventeen east; thence due east a distance of five miles to the southeast corner of section nineteen, township sixteen north, range eighteen east; thence due north a distance of four miles to the northeast corner of section six, township sixteen north, range eighteen east; thence due east one-half mile to the southeast corner of section thirty-one, township seventeen north, range eighteen east; thence due north two miles to the northeast corner of section thirty, township seventeen north, range eighteen east, Montana principal meridian, the place of beginning.

History: En. Sec. 1, Ch. 109, L. 1917; re-en. Sec. 83, Ch. 173, L. 1917.

3772. Penalties for killing game in South Moccasin mountain game-preserve—Permits. It shall be unlawful for any person at any time to hunt, trap, kill, capture, chase, or molest any game animals or game-birds whatever within the limits of said game-preserve, or to discharge any firearms or to create any unusual disturbance tending to frighten or drive away any game animals or any game-birds within said preserve; provided, however, that permits to capture and destroy mountain lions, wolves, foxes, coyotes, cats, wildcats, mink, and any other predatory animals may be issued by the state game warden upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not to exceed ninety days, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 109, L. 1917.

Note.—Section 3772 is a portion of chapter 109, Laws of the fifteenth session, approved February 28, 1917, and is applicable only to the South Moccasin game-preserve.

3773. Blackleaf game and bird-preserve. Township twenty-six north of range eight west of the Montana meridian, in Montana, be, and the same is, hereby created a game and bird-preserve, to be known as the "Blackleaf Preserve," within the county of Teton, state of Montana, and it is hereby declared to be unlawful to hunt for, trap, or kill, or cause to be hunted for, trapped, or killed, or to trap, capture or molest any of the game animals or birds of any kind whatever within the limits of said game and bird-preserve hereby created, or to interfere with nests or eggs of such birds, or to carry or discharge any firearms, or to create

any unusual disturbances tending to frighten or drive away any game animals or birds, or to chase the same with dogs or hounds within said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink, or other predatory animals or birds, may be issued by the state game warden, upon the payment of such license fee and in accordance with such regulations as now are or may be established for the administration of game and bird-preserves by the state game and fish commission.

History: En. Sec. 1, Ch. 114, L. 1921.

3774. Violation of act, misdemeanor. Any violation of any of the provisions of this act shall be a misdemeanor, and upon conviction shall be punishable by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail of not less than ten days nor more than one hundred days, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 114, L. 1921.

3775. Beaverhead fish and game-preserve. For the better protection of fish and game animals and birds, the following described area in the Beaverhead national forest, in Beaverhead county, state of Montana, is hereby set aside and established as a state fish and game-preserve, to be known as the Beaverhead fish and game-preserve.

Beginning at a point on the base line at the southwest corner of section thirty-six, township one north, range twelve west; thence north one mile to the northwest corner of said section thirty-six; thence west two miles to a point which, when surveyed, will be the southwest corner of section twenty-seven, township one north, range twelve west; thence north four miles to the southwest corner of section four, township one north, range twelve west; thence west one mile, more or less, to the southwest corner of said section four; thence north one mile, more or less, to the northeast corner of section five, township one north, range twelve west; thence west two miles, more or less, to the northwest corner of section six, township one north, range twelve west; thence south one mile, more or less, along the township line dividing ranges twelve and thirteen west to the southeast corner of section one, township one north, range thirteen west; thence west one mile to the southwest corner of said section one; thence south one mile to the southeast corner of section eleven, township one north, range thirteen west; thence west one mile to the southwest corner of said section eleven; thence south four miles to the southwest corner of section thirty-five, township one north, range thirteen west; thence west along the base line to a point which, when surveyed, will be the northwest corner of section three, township one south, range thirteen west; thence south four miles, more or less, to a point which, when surveyed, will be the southwest corner of section twenty-two, township one south, range thirteen west; thence east seven miles, more or less, to a point which, when surveyed, will be the southeast corner of section twenty-two, township one south, range twelve west; thence north one mile, more or less, to a point which, when surveyed, will be the northeast

corner of section twenty-two, township one south, range twelve west; thence east two miles, more or less, to the southwest corner of section eighteen, township one south, range eleven west, surveyed; thence north two miles, more or less to the northwest corner of section seven, township one south, range eleven west, surveyed; thence west one mile, more or less, to a point which, when surveyed, will be the southwest corner of section one, township one south, range twelve west, unsurveyed; thence north one mile, more or less, to a point on the base line which, when surveyed, will be the northwest corner of section one, township one south, range twelve west; thence west one-quarter mile, more or less, along the base line to the southwest corner of section thirty-six, township one north, range twelve west, the place of beginning.

History: En. Sec. 1, Ch. 224, L. 1921.

3776. Same—Penalty for hunting. It shall be unlawful for any person at any time to hunt, trap, kill, capture, molest, catch, or take any fish or game animals or birds of any kind whatever, within the limits of said fish and game preserve, or to discharge any firearms or create any unusual disturbances tending to frighten or drive away any game animals or birds within said preserve; provided, however, that permits to capture animals, birds, or fish for scientific purposes, or for purposes of propagation, and to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink and other predatory animals or birds may be issued by the state game warden, upon the payment of such fee and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 224, L. 1921.

3777. License for breeding and propagating game-birds and animals. It shall hereafter be lawful for any person, company, or association to engage in the business or occupation of propagating, owning, and controlling wild game-birds and game animals of the state of Montana, upon premises wholly owned, leased, or controlled by such person, persons, company, or association in said state of Montana, under such regulations as may be prescribed by the fish and game commission, under the supervision of said state game and fish warden. Upon payment of an annual license fee of five dollars, any applicant shall file with the commission a statement of the place where he will conduct such business and game proposed to be raised on said premises, and may for this purpose obtain a permit from the game and fish commission to capture alive such game-birds, or game quadrupeds as may be necessary for foundation stock for such game farm; such permit, however, shall limit the number of game-birds or game quadrupeds that may be so captured; said game-breeder shall not sell any quadruped or the product of such game farm for a period of three years, from the game taken by virtue of said permit, and

shall make an annual report of his said game business to the game and fish commission. After such game farm is in successful operation, said game-breeder may sell, transfer, or dispose of the game so bred and raised by him, as he might do with domestic live stock, and without restriction so to do.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919.

Property right in wild animals, see note in Ann. Cas. 1917B, 949.

3778. Penalties for violation of act. Any person found guilty of a violation of any of the terms of this act, if the same is defined as a misdemeanor under the terms hereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail of not less than ten days nor more than one hundred eighty days, or by both such fine and imprisonment.

Any person found guilty of the commission of a felony, as defined under the terms hereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail of not less than six months nor more than one year.

History: En. Sec. 85, Ch. 173, L. 1917.

CHAPTER 257.

REGULATION OF RAILROADS—BOARD OF RAILROAD COMMISSIONERS.

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3847. Regulation of Business of Railroads.

3779. Creation of commission. There is hereby created and established a board of railroad commissioners of the state of Montana, to be known as the "Board of Railroad Commissioners of the State of Montana," said board to consist of three members who shall be qualified electors of the state. The first board of railroad commissioners shall be composed of the followng persons, namely: B. T. Stanton of Gallatin county, Nathan Godfrey of Lewis and Clark county, and E. A. Morley of Silver Bow county. The persons named herein as commissioners shall serve until the first Monday of January, 1909, or until their successors are elected and qualified. At the general election to be held in November, 1908, there shall be elected three commissioners for said board, one for a term of two years, one for a term of four years, and one for a term of six years, and until their successors are elected and qualified. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each of said members of said board so elected shall serve until his successor is elected and qualified. Biennially thereafter, at the general election, one member shall be elected for a period of six years, and until his successor is elected and qualified, to succeed the member of such board whose term shall expire on the first day of January following. Any vacancy occurring in the board shall be filled by appointment by the governor, and such appointee shall

hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the board, there shall be elected one member to fill out the unexpired term for which such vacancy exists. No person in the employ of, or holding any official relations to any railroad, or owning any stocks, bonds, or other securities of any railroad, or who is or shall become in any manner pecuniarily interested in any railroad, or in any stocks, bonds, or other securities thereof, shall be a member of said board. Any member of said board who, after his election or appointment to office, or after his induction into office, shall become an employee of or holder of any official relation to any railroad, or who shall become an owner or holder of any stocks, bonds, or other securities of any railroad, or have or acquire any pecuniary interest in any stocks, bonds, or other securities of any railroad, shall forfeit his office, and the governor shall appoint a successor thereto as herein provided in case of a vacancy in said board. No commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest.

History: En. Sec. 1, Ch. 37, L. 1907; Sec. 4363, Rev. C. 1907.

Cited or applied as section 4363, Revised Codes, in State ex rel. Board of Railroad Commrs. v. District Court, 53 Mont. 229, 231, 163 Pac. 115; State ex rel. Boyle v. Hall, 53 Mont. 595, 165 Pac. 757.

3780. Oath and bond. Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in section 1, article XIX, of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state. The members of said board and secretary thereof shall each give at the same time a bond to the state in the sum of twenty-five thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of their respective offices.

History: En. Sec. 2, Ch. 37, L. 1907; Sec. 4364, Rev. C. 1907.

3781. Meetings of board—Quorum—Powers. The office of the board shall be in the city of Helena, and said office shall always be open during business hours, legal holidays and non-judicial days excepted. The board shall hold sessions at least once each month in the city of Helena, and at such other times and such other places within this state as may be expedient. The sessions of the board shall be public. A majority of the board shall constitute a quorum for the transaction of all business. The members of the board of railroad commissioners shall have the authority to administer oath and affirmations. The board shall have power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907.

Cited or applied as section 4365, Revised Codes, in State ex rel. Boyle v. Hall, 53 Mont. 595, 602, 165 Pac. 757.

3782. Seal. The board shall have a seal, and such seal shall have the following words engraved thereon: "Board of Railroad Commis-

sioners of the State of Montana," and said seal shall be affixed only to: First, writs; second, authentications of a record or other proceedings, or to a copy of a document on file in the office of the said board. The courts of this state shall take judicial notice of such seal.

History: En. Sec. 4, Ch. 37, L. 1907; Sec. 4366, Rev. C. 1907.

3783. Officers of board. The board shall, immediately after its members have qualified, organize by electing one of its members as chairman, and shall appoint a secretary, who shall possess the same qualifications as members of said board, to serve during the pleasure of the board. Said board shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said board to the proper performance of its duties.

History: En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907.

The chairmanship of the board of state railroad commissioners is not a public office, and the writ of quo warranto does not lie to determine the right of one of its members to act as chairman. State ex rel. Boyle v. Hall, 53 Mont. 595, 601, 165 Pac. 757.

3784. Salaries. The salary of each commissioner shall be four thousand dollars per annum; the salary of the secretary shall be three thousand dollars per annum; and the salary of the stenographer employed by the board shall be fifteen hundred dollars per annum. The salaries of the persons so employed shall be paid as other expenses of the board are paid. The salaries of the commissioners and secretary shall be paid from the state treasury in equal quarterly payments, payable April 1st, July 1st, October 1st, and January 1st.

History: En. Sec. 6, Ch. 37, L. 1907; Sec. 4368, Rev. C. 1907.

Note.—Salary of stenographer changed to conform to later enactments. See also section 3896.

3785. Expenses of board and employees. Said commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to free transportation, and to have their actual and necessary traveling expenses paid, the amounts to be passed on by the state board of examiners and paid as other expense of the board. The state shall furnish said board with suitable offices in the state capitol building at Helena, Montana, and provide it with all necessary furniture, stationery, and printing, upon requisitions signed by the chairman of said board.

History: En. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907.

Members and employees of the railroad commission should be allowed to ride free only when traveling on official business. John v. Northern Pacific Ry. Co., 42 Mont. 18, 61, 111 Pac. 632, 32 L. R. A. (N. S.) 85.

Cited or applied as section 4369, Revised Codes, in State ex rel. Boyle v. Hall, 53 Mont. 595, 602, 165 Pac. 757.

3786. Salary of rate clerk. The annual salary of the rate clerk of the railroad commission shall be three thousand dollars per annum.

History: En. Sec. 1, Ch. 109, L. 1919.

3787. Salary of safety appliance inspectors. The annual salary of the safety appliance inspectors shall be twenty-one hundred dollars each per annum.

History: En. Sec. 2, Ch. 109, L. 1919.

3788. Salary of stenographer. The annual salary of the stenographer shall be fifteen hundred dollars per annum.

History: En. Sec. 3, Ch. 109, L. 1919.

3789. Allowance for postage, expressage, and other incidental expenses. Said board shall also be allowed the sum of one thousand dollars per annum for postage, expressage, and other incidental expenses. The accounts for payments authorized by this section shall be paid only when audited by the state board of examiners, and the board shall file, with its vouchers for such payments, a statement, verified by a member of the board, showing the names of all persons employed and the purpose for which they were employed, and the work performed by them.

History: En. Sec. 8, Ch. 37, L. 1907; Sec. 4370, Rev. C. 1907.

Cited or applied as section 4370, Revised Codes, in State ex rel Boyle v. Hall, 53 Mont. 595, 602, 165 Pac. 757.

3790. Duties of secretary. The secretary shall keep a full and complete record of all proceedings of the board, and be the custodian of its records, and file and preserve at the office of the board all books, maps, documents, and papers intrusted to his care, and be responsible to the board for the same. He shall perform such other duties as the board may prescribe.

History: En. Sec. 9, Ch. 37, L. 1907; Sec. 4371, Rev. C. 1907.

3791. Process to compel attendance and examination of witnesses. The process issued by said board shall be under seal and extend to all parts of the state. Said board shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record, or by any person appointed by the board for such purpose. In the event the process issued by the board is a subpoena for the attendance of a witness, and he shall have failed, neglected, or refused to obey the same, the board is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having such witness appear in such trial, and the court shall thereupon summarily direct that a subpoena be issued out of the court requiring the attendance of any person or persons as a witness before the court; and the board shall thereupon have the power and authority to examine such witness before said court, under oath, respecting any inquiry or investigation being made by said board, under and pursuant to the provisions of this act. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corporation, for examination in said court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by said board.

History: En. Sec. 10, Ch. 37, L. 1907; Sec. 4372, Rev. C. 1907.

3792. Definitions and terms. The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing, and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and to any shipments of property made from any point within this state to any other point within

this state, whether the transportation of the same shall be wholly within this state, or partly within this state and partly within an adjoining state or states. The term "transportation" shall include all instrumentalities of shipment or carriage. The term "railroad" shall be taken to mean any corporation, company, or individual owning or operating any railroad, in whole or in part, in this state. It shall also include express companies and sleeping-car companies. The term "board" in this act shall be taken to mean the board of railroad commissioners of the state of Montana. The provisions of this act shall apply to all persons, firms, or companies, incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907.

3793. "Railroad" defined. The word "railroad," whenever used in this act shall be held to mean and include railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and all common carriers.

History: En. Sec. 12, Ch. 37, L. 1907; Sec. 4374, Rev. C. 1907.

3794. Power of board to fix rates, schedules, and classifications. The power and authority is hereby vested in the said board, and it is hereby made its duty to adopt, as soon as practicable after the organization of the board, all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and to make the same effective by enforcing the penalties prescribed in this act. The said board shall have the power, and it shall be its duty, to fairly and justly classify and subdivide all freight and merchandise of whatsoever character that may be transported over railroads of this state, into such general and special classes or subdivisions as may be deemed necessary or expedient. The said board may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. Said board shall also have the power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads. The rates, tolls, or charges on any property, which shall for any reason remain unclassified by the board, shall not in any event exceed the highest rates fixed for any classification by said board. And it shall be within the province of the board to entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana, or any point therein, in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa; and in proper cases, where it appears that the United States interstate commerce commission law has been violated, it is hereby made the duty of said board to make complaint to the interstate commerce commission of the United States, and to aid such commission

in any investigation it may make concerning violations of the United States law, by furnishing evidence, and in any other manner which may seem best suited to enforce both the United States and state law, and to protect the interests of the people.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907.

Evolution and diminution of doctrine of state regulation of rates announced in Munn v. Illinois, see note in 62 A. S. R. 289.

Validity of statute conferring on commission power to fix rates for public service corporation, see notes in 14 Ann. Cas. 614; Ann. Cas. 1917C, 57.

Power of legislature to delegate to commissions power to fix railroad rates, see notes in 18 L. R. A. (N. S.) 713; 32 L. R. A. (N. S.) 649.

Matters to be considered in determining reasonableness of freight rates, see notes in Ann. Cas. 1916A, 8; Ann. Cas. 1918E, 1216.

Regulation of switching charges by public service commission, see note in Ann. Cas. 1914B, 366.

Validity of order of commission regulating commutation rates, see notes in Ann. Cas. 1917B, 1153; L. R. A. 1918C, 480.

Validity of order of railroad commission regulating manner of using mileage tickets, see notes in Ann. Cas. 1915E, 1031; L. R. A. 1915E, 902.

Power of public service commission to increase franchise rates, see notes in 3 A. L. R. 730; 9 A. L. R. 1165; L. R. A. 1915C, 287.

3795. Making schedules effective. When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office, and passenger depot upon its lines; provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classification; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation, or common carrier who may desire it, an opportunity to make an explanation or showing, or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classification. All classifications and rates fixed and established by the board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said board. Each railroad affected by the provisions of this act shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type, showing all classifications and rates fixed and established by the said board. Any failure or refusal on the part of any railroad to comply with the provisions of this section shall subject such railroad to a penalty of not less than one hundred dollars nor more than five hundred dollars for each day that such failure or neglect is continued.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907.

3796. Power to alter classification or rate—Hearing complaint. The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed neces-

sary, and such amended, altered, or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said board shall not make or establish any increase or raise in the rate of charge for the transportation of freight by any railroad within the state of Montana, unless ten days' notice be published in two daily papers, one of which shall be published in the city of Helena, setting forth in said notice that at a certain time and place the board will proceed to make and establish such increase or raise in the rate of charge for the transportation of freight; and the board shall at such time and place hold a public hearing thereon, at which time and place the public generally, or any person, firm, or corporation, shall be given an opportunity to present such facts, information, or statistics as shall be pertinent to the hearing then being held. The said board must, within forty days after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921.

3797. General powers of board. The board shall have the general supervision of all railroads, express companies, car companies, sleeping-car companies, freight and freight-line companies, and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said board and within its power and authority under the provisions of this act; and shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein, or by the officers, agents, or employees thereof. The board shall also have the power and authority, and it shall be its duty, to examine and inspect, or cause to be examined and inspected, under its authority, all books, records, files, and papers of the persons and companies specified above, in so far as the same may be pertinent to any matter under investigation before said board, and to hear and take testimony in the progress of any inquiry or investigation authorized by this act.

History: En. Sec. 16, Ch. 37, L. 1907; Sec. 4378, Rev. C. 1907.

Validity of order of commission requiring erection of station at specified place, see notes in Ann. Cas. 1914C, 1171; Ann. Cas. 1918B, 830.

Power of commission to prescribe character of materials for depots, see note in L. R. A. 1918C, 495.

Right of commission to regulate naming of railroad stations, see note in Ann. Cas. 1914A, 831.

Regulation of Pullman and sleeping-car service by public service commissions, see note in 11 A. L. R. 996.

Power of railroad commission to require sleeping-car service on branch line, see note in Ann. Cas. 1917E, 992.

Power of railroad commission to compel production of papers and records for inspection, see note in L. R. A. 1917F, 1202.

3798. Investigation into accidents. The said board, or some members thereof to be deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any railroad in this state, resulting

in death, or injury to any person of such gravity as to require the attention of a physician or surgeon, or in the destruction of property greater in value than two thousand dollars. The testimony taken on any such hearing shall be transcribed and filed in the office of the board.

History: En. Sec. 16a, Ch. 37, L. 1907; Sec. 4379, Rev. C. 1907.

3799. Duty of railroad company to report accidents. It is hereby made the duty of every railroad company operating any line of railroad within this state, promptly upon the occurrence or in connection with the operation of its line within the state, of any accident such as is mentioned in the next preceding section, to report the same to the board of railroad commissioners, in which report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed.

History: En. Sec. 17, Ch. 37, L. 1907; Sec. 4380, Rev. C. 1907.

3800. Witnesses—Compensation; immunity. The said board, in making any examination or investigation provided for in this act, shall have the power to issue subpoenas for the attendance of witnesses, by such rules as it may prescribe. Each witness shall receive the sum of three dollars per day, together with the sum of five cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of said commission. And no witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation. No person shall be excused from attending or testifying, or producing any books, papers, documents, or any thing or things, before any court or magistrate, or commissioner or board, upon any investigation, proceeding or trial under the provisions of this act, or for any violation of any of them, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to convict him of a crime, or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify, or produce evidence; and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

History: En. Sec. 18, Ch. 37, L. 1907; Sec. 4381, Rev. C. 1907.

3801. Power to compel railroad companies to provide adequate accommodations and service. The board shall have the power, and it shall be its duty, to compel any and all railroads subject hereto, to provide, maintain, and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public, and to provide and maintain suitable waiting-rooms for passengers, and suitable rooms for freight and baggage at all stations.

History: En. Sec. 19, Ch. 37, L. 1907; Sec. 4382, Rev. C. 1907.

Validity of regulation by commission of extent of train service, see note in Ann. Cas. 1917B, 1217.

Power of commission to regulate running time of trains, see note in Ann. Cas. 1916D, 1034.

Validity of order of railroad commission requiring running of Sunday train, see note in Ann. Cas. 1917B, 1205.

Power of railroad commission to compel carrier to furnish particular class of service, see note in Ann. Cas. 1917B, 1160.

Power of commission to compel railroad to build sidetracks, see notes in Ann. Cas.

1915D, 210; Ann. Cas. 1918E, 339; 28 L. R. A. (N. S.) 1013; L. R. A. 1915E, 682; L. R. A. 1918B, 795.

Power of commission to compel railroad to extend its line or build new line to new territory, see note in 2 A. L. R. 983.

Power of commission to compel railroad to make train connections with other roads, see note in 11 Ann. Cas. 406.

3802. Attorney-general as attorney for board. The attorney-general is hereby constituted the attorney and counselor of said board, and the county attorney of every county in the state shall, on the request and at the direction of the attorney-general, assist in all cases, proceedings, and investigations undertaken by said board under this law, in his own county; provided, that said board shall have power and authority to employ special counsel, with the consent and approval of the attorney-general, to assist in any case, matter, proceeding, or investigation instituted under this law. It is hereby made the duty of the attorney-general, upon direction of said board, and of the county attorney of each county in this state, upon direction of the attorney-general, to institute and prosecute, and to appear and defend, any action or proceeding arising under the provisions of this law. All suits and proceedings filed in any court of this state, under the provisions of this law, shall have precedence over all other business in such court, save and except criminal business and original proceedings in the supreme court. The fees and expenses of additional counsel shall be fixed and determined by the state board of examiners, and allowed and paid as items of expense the same as other items of expense of said board of railroad commissioners.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907.

Cited or applied as section 4383, Revised Codes, in State ex rel. Board of Railroad Commrs. v. District Court, 53 Mont. 229, 232, 163 Pac. 115.

3803. Court review of action of board—Pleadings. Actions to review the determination of the board fixing any classification, rate, toll, charge, regulation, or order, or the refusal of said board to make, fix, or establish any classification, rate, toll, charge, regulation, or order, shall be commenced in the district court of the county having jurisdiction thereof by the filing of a complaint, duly verified as provided for the verification of pleadings in civil actions, and notice may be served upon the party defendant, either by summons issued and served as provided for in the Code of Civil Procedure in civil actions, or the court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; provided, however, that such time shall not be less than five days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions. If, upon the hearing, the court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said board to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the court, or by the judge thereof at chambers.

History: En. Sec. 21, Ch. 37, L. 1907; Sec. 4384, Rev. C. 1907.

Cited or applied as section 4384, Revised Codes, in State ex rel. Board of Railroad Commrs. v. District Court, 53 Mont. 229, 232, 163 Pac. 115.

3804. Prohibition against rebates and discrimination. If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, shall charge, demand, or receive from any person, firm, or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said board of railroad commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana not less than five hundred dollars nor more than two thousand dollars for each offense; provided, that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.

History: En. Sec. 22, Ch. 37, L. 1907; Sec. 4385, Rev. C. 1907.

3805. Discrimination in rates and charges. If any railroad subject to this act, or its agents or officers, shall hereafter collect, charge, demand, or receive from any person, company, firm, or corporation, a greater rate, charge, or compensation than that fixed and established by the said board of railroad commissioners for the transportation of freight, passenger, or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight-car, or for any other service performed, or to be performed by it, such railroad and its agents and officers shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana a sum not less than five hundred dollars nor more than two thousand dollars.

History: En. Sec. 23, Ch. 37, L. 1907; Sec. 4386, Rev. C. 1907.

Is shipper's common-law right of action for discrimination by carrier taken away by statute on the subject, see note in 45 L. R. A. (N. S.) 612.

3806. Jurisdiction to enforce orders of board. The district court shall have jurisdiction to enforce, by proper decree, injunction or order, the rates, classifications, rulings, orders, and regulations made or established by the commission. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney-general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order, rate, classification, or regulation made by the commission and applicable to such railroad. Such proceedings shall have the precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, order, rate, or classification is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall

render the defendant and officer, agent, servant or servants, or employee of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, order, rate, or classification shall be modified or vacated by the board; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 24, Ch. 37, L. 1907; Sec. 4387, Rev. C. 1907.

Cited or applied as section 4387, Revised Codes, in State ex rel. Board of Railroad Commrs. v. District Court, 53 Mont. 229, 232, 163 Pac. 115.

3807. Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 25, Ch. 37, L. 1907; Sec. 4388, Rev. C. 1907.

3808. Actions to recover excess charges. Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the board for such service, may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made, provided such action shall be brought within twelve months from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and the said railroad, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be, or held to be, a waiver on the part of such person or shipper of the right to sue and recover for such excess or overcharge, as provided for in this section. If, upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was wilfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 26, Ch. 37, L. 1907; Sec. 4389, Rev. C. 1907.

3809. Action to determine reasonableness of rates or classification. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such classification, rate, toll, charge, regulation, or order of

the board is applicable, against the said board as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order made, fixed, or established by the board under the provisions of this act is just and reasonable; provided, that until the final decision in any such action the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the classification, rate, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, tral, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 27, Ch. 37, L. 1907; Sec. 4390, Rev. C. 1907.

The district court has no power of control over any order of the railroad commission relating to rates and charges, except by final judgment; and this necessarily deprives a railroad company, as well as the shipper, of the right to invoke, and prohibits the court from issuing a preliminary injunction in this behalf. It has, however, jurisdiction to use the provisional remedy of injunction in limine to suspend an order made by the commission, requiring a railroad company to operate a local passenger-train each way daily between designated stations, pending a final determination of an action brought by the company to have the order reviewed as unjust and unreasonable. State ex rel. Board of Railroad Commrs. v. District Court, 53 Mont. 229, 233, 163 Pac. 115.

3810. Action by shippers. Any shipper, or other person interested, may bring an action in the district court of the county where the principal office or place of business of such railroad is situated, or in any county where any classification, rate, toll, charge, regulation, or order of the board is applicable, against the said board of railroad commissioners as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order, made, fixed, or established by the board under the provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive, except as herein otherwise provided; and provided further, that in any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. Costs shall be awarded in all actions brought under the provisions of this section as in other civil causes.

History: En. Sec. 28, Ch. 37, L. 1907; Sec. 4391, Rev. C. 1907.

Cited or applied as section 4391, Revised Codes, in State ex rel. Board of Railroad Commrs. v. District Court, 53 Mont. 229, 232, 163 Pac. 115.

3811. Penalty for violation of law by railroad. If any railroad shall wilfully violate any provision of this act, or shall do any other act herein prohibited, or shall refuse to perform any and all lawful orders emanating from said railroad commission relating to rates and charges, or any other duty enjoined upon it, for which a penalty has not herein been provided, for every such act of violation it shall pay to the state of Montana a penalty of not more than five hundred dollars.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907.

3812. Recovery of penalties and forfeitures. All penalties and forfeitures incurred, levied, and made under the provisions of this act, shall be collected by said board of railroad commissioners and paid over to the state treasurer and credited to the general fund; provided, however, that should the said board fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein, for the space of sixty days after notice of the cause of complaint by such person or shipper aggrieved, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the said board.

History: En. Sec. 30, Ch. 37, L. 1907; Sec. 4393, Rev. C. 1907.

3813. Acceptance of favors and gratuities from railroads prohibited. No railroad commissioner nor the said secretary shall, directly or indirectly, solicit or request from or recommend to any railroad corporation, or any officer, attorney, or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney, or agent, offer any place, appointment, or position or other consideration to such commissioners, or either of them, nor to any clerks or employees of the commission or of the board; neither shall the commissioners, or either of them, nor their secretary, clerks, agents, employees, or experts, accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation; and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts, or other gratuity, shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employee or employees, expert or experts, requesting or accepting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not more than five hundred dollars, or imprisonment not more than six months, or by both such fine and imprisonment.

History: En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907.

When members and employees of the railroad commission are traveling on private business they should pay fare. John v. Northern Pacific Ry. Co., 42 Mont. 18, 61, 111 Pac. 632, 32 L. R. A. (N. S.) 85.

3814. Annual reports from railroads. The board shall require verified annual reports from each and every railroad owning, operating, or having any line of railroad in this state, prescribe the manner in which such reports shall be made, and may require specific answers to all questions upon which the board may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the board. The board may, at such other times as it may deem necessary, require such other information, statements, or reports as may be deemed necessary, and fix the time for filing of the same. Any railroad failing or refusing to make or file such annual report, or failing or refusing to furnish such additional information, statements, or reports, as may be demanded by the board, shall forfeit the

sum of five hundred dollars for each day that such refusal or neglect shall be continued.

History: En. Sec. 32, Ch. 37, L. 1907; Sec. 4395, Rev. C. 1907.

3815. Annual report of the board. Said board shall make and submit to the governor annual reports containing a full and complete account of the transactions of its office, together with such facts, suggestions, and recommendations as may be by it deemed necessary, which report shall be published as the reports of other departments of the state. The said report shall contain a statement as to the number of accidents investigated by the board, as herein provided, and the number of persons killed or injured in them, and generally the causes of such accidents.

History: En. Sec. 33, Ch. 37, L. 1907; Sec. 4396, Rev. C. 1907.

3816. Duties of board—Suspension of commission. It is hereby made the duty of such board to see that the provisions of this act and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. And said board shall report all such violations, with the facts in its possession, to the attorney-general or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the state and any railroad shall have precedence in all courts over all civil causes, original proceedings in the supreme court excepted. If any commissioner shall fail to perform his duties as provided for in this act, he may be removed from office as provided for by sections 11687 to 11702 of the Penal Code, and upon complaint made and good cause shown, the governor is authorized to suspend any commissioner or commissioners, and if, in his judgment, the exigencies of the case require, the governor is authorized to appoint temporarily some competent person or persons to perform the duties of such suspended commissioner or commissioners during the period of such suspension.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907.

3817. Existing rights of actions not affected by law. This act shall not have the effect to release or waive any right of action by the state or any person for any right, penalty, or forfeiture which may have arisen, or may hereafter arise, under any law of this state, and all penalties accruing under this act shall be cumulative to each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty.

History: En. Sec. 35, Ch. 37, L. 1907; Sec. 4398, Rev. C. 1907.

3818. Jurisdiction of railroad commission over docks and wharves. The supervision of docks and wharves by the board of railroad commissioners is provided for by section 1609 of this code.

Note.—New section recommended by code commissioner.

3819. Railroad commission to inquire into observance of laws for safety of employees. It is hereby made the duty of the board of railroad commissioners to make inquiry into the observance by all railroads within this state of the laws of the United States and of the state of Montana intended to safeguard the lives of the employees of persons or corpora-

tions engaged in operating the same, and to lay complaint before the proper officer, state or federal, of any infraction of any of such laws, and to prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

History: En. Sec. 1, Ch. 115, L. 1913.

3820. Results to be stated in annual report. Said board shall, in its annual report, set out what effort it has made to carry out the provisions of this act, with the result thereof, and in detail what steps it has taken to procure to be prosecuted any violations of any such acts of which it has secured information.

History: En. Sec. 2, Ch. 115, L. 1913.

3821. Schedule of rates for transporting prisoners. The board of railroad commissioners of the state of Montana is hereby authorized and directed to promulgate the schedule of passenger rates, fixing the fare to be charged at the rate of one cent per mile, for transporting prisoners regularly sentenced to the state prison in the state of Montana, and the necessary guards to insure the safekeeping of such prisoners, to and from said state prison to any point within the state of Montana, for the purpose of conveying such prisoners to such point, or from such point to be employed on public roads or other public work.

History: En. Sec. 1, Ch. 2, L. 1917.

3822. Maintenance of loading platform by railroad. Every railroad company doing business in this state shall, within sixty days after notice from the board of railroad commissioners of the state of Montana, erect one or more platforms for the transfer of livestock, grain, and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice; such platforms to be erected so as not to endanger life and property. If any railroad company, after receiving notice as provided for in this section, shall fail, refuse, or neglect to erect platforms, as required by this and the following section, within the required sixty days, the said board of railroad commissioners is authorized and empowered, and it is made its duty, to notify such railroad company to appear before it at a certain time and place and show cause, if any there is, why such board of railroad commissioners should not issue an order requiring such railroad company to comply with the requirements of this section. The said board of railroad commissioners shall have power, after such hearing, to issue an order upon said railroad company commanding it to erect such platform, if the said board of railroad commissioners shall, upon such examination and hearing, deem such platform necessary. Any notice required to be served upon any railroad company to carry out any of the provisions of this section, or similar provisions relating to the enlarging of such platforms, may be served upon any agent of said company within the state of Montana.

History: En. Sec. 1, Ch. 26, L. 1913.

3823. Dimensions and other requirements of platform. Each platform shall be not less than twelve feet wide and thirty-two feet long, extending four feet and six inches, or such height as shall be determined by the said

board of railroad commissioners, above the rails of the track, with suitable approaches to and from such platform to admit of the driving of loaded teams thereon.

History: En. Sec. 2, Ch. 26, L. 1913.

3824. Enlargement of platform. The board of railroad commissioners shall have power to order an enlargement of such platforms whenever petitioned to that effect, and whenever the capacity of such platform is, in its judgment, clearly insufficient for the accommodation of the public.

History: En. Sec. 3, Ch. 26, L. 1913.

3825. Erection of scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes.

History: En. Sec. 4, Ch. 26, L. 1913.

3826. Violation of law a misdemeanor—Penalty. Every railroad company neglecting or refusing to comply with the requirements of this act shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five hundred dollars for every thirty days such failure shall continue after notice as aforesaid.

History: En. Sec. 5, Ch. 26, L. 1913.

3827. Rules for equipment of cars, trains, and engines. The railroad commission of the state of Montana shall have full authority, after notice and hearing, to make and enforce rules and regulations providing for the installation on and equipment of trains, cars, or engines, with safety appliances, and shall have authority to inspect the same and enforce regulations with regard thereto, such inspection rules and regulations to be from time to time co-extensive with the requirements of, and in conformity to, the provisions of the acts of congress, and rules and regulations of the interstate commerce commission as then effective.

History: En. Sec. 1, Ch. 136, L. 1909.

State regulation as to safety appliances on railroads as interference with interstate commerce, see note in Ann. Cas. 1917A, 975.

3828. Brake equipments. The railroad commission of the state of Montana shall have the power and authority to examine and inspect all brakes and brake equipment and, after notice and hearing, to make and enforce reasonable rules and regulations with respect to the examination, inspection, and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules and regulations to be from time to time co-extensive with the requirements of and in conformity to the provisions of the acts of congress, and rules and regulations of the interstate commerce commission as then effective.

History: En. Sec. 2, Ch. 136, L. 1909.

3829. Industrial and commercial spurs—Provisos. The railroad commission of the state of Montana shall have full power and authority, after notice and hearing, to compel railroad companies operating in the state of Montana to construct industrial or commercial spurs to industries when

there is or will be sufficient traffic to require such facilities; provided, however, that any such industrial or commercial spur will not exceed one mile in length from headblock to end of track, and shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs; and provided further, that such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards, or at sidings, unless such station, yards, sidings, or spurs are more than seven miles apart, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main-line operation.

History: En. Sec. 4, Ch. 136, L. 1909.

Note.—See also section 3834, which apparently repeals by implication a part of the above section.

Power of commission to compel railroad to build spur or sidetracks, see note in Ann. Cas. 1915D, 210; Ann. Cas. 1918E, 339; 28 L. R. A. (N. S.) 1013; L. R. A. 1915E, 682; L. R. A. 1918B, 795.

3830. Proceedings in district court. The district court shall have jurisdiction to enforce, by proper decree, injunction, or order, the rulings, orders, and regulations made or established by the commission under the provisions of this act. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney-general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad. Such proceedings shall have the precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, or regulation involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, or order is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, or order, by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants, or employees of the defendant, who are in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, or order shall be modified or vacated by the board; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 5, Ch. 136, L. 1909.

3831. Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 6, Ch. 136, L. 1909.

3832. Action to determine reasonableness of rule. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or, in any county where any such rule, regulation, or order of the board is applicable, against the said board as defendant, to determine whether or not any such rule, regulation, or order, made, fixed or established by the board under provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the rule, regulation, or order of the board affecting any railroad shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the rules, regulations, and orders, made, fixed, and established by said board, shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 7, Ch. 136, L. 1909.

3833. Power of railroad commission to compel construction of commercial spurs. The board of railroad commissioners of the state of Montana shall have power and authority, after such investigation as they may deem necessary, and under such rules and regulations as they may establish with reference thereto, to compel railroads or railways or other companies or corporations operating and holding themselves out to be common carriers in the state of Montana, to extend or construct commercial or industrial spurs from constructed lines or tracks at stations or from within station limits; provided, the length of such commercial or industrial spurs or tracks shall be not to exceed two miles from the headblock to end of track.

History: En. Sec. 1, Ch. 135, L. 1917. Related section: 3829.

3834. Powers of railroad commission as to stations and crossings. The board of railroad commissioners of the state of Montana shall have power and authority, in addition to all other powers hereafter vested in said board, whenever the line of one railroad or railway shall cross, intersect, or parallel (overhead, at grade, or otherwise) the railroad or railway of another company or corporation, after notice and hearing, to order and compel the installation of suitable platforms and station-houses for the convenience of passengers desiring to transfer from one road to the other, and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the board of railroad commissioners. And such company or corporation shall, when so ordered by the board of railroad commissioners, keep such passenger station warmed, lighted, and opened to the ingress and egress of all passengers a reasonable time before the

arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. And said railroad or railway companies crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall stop such trains at said station-house so located for the transfer of baggage, passengers, and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the board of railroad commissioners, and the expense of construction and maintenance of such station-house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the board of railroad commissioners. Such corporation connecting by crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall also, when so ordered, after notice and hearing by the board of railroad commissioners, unite and connect the tracks of said several corporations so as to permit the transfer from the tracks of said several corporations to the tracks of each other, of loaded and unloaded cars designed for transportation on both roads; provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public. The expense of construction and maintenance shall be apportioned, and the material to be used and the route to be followed shall be determined by such corporations as they may agree, and in the event that they fail to agree, as may be fixed by order of the board of railroad commissioners, and the expense thus incurred by the board of railroad commissioners shall be paid by the railroad or railway companies jointly interested, on such basis as the commission may order.

History: En. Sec. 1, Ch. 105, L. 1913.

Note.—This section repealed by implication section 3, chapter 136, Laws of 1909.

3835. "Paralleling" defined. "Paralleling," as referred to in this act, shall be held to mean where the main tracks of parallel lines of railroad or railway are not more than two thousand feet apart, when measured from center to center.

History: En. Sec. 1, Ch. 105, L. 1913.

3836. Joint rates—Division among carriers. Whenever the board of railroad commissioners of the state of Montana shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by such joint rate may, by agreement, provide for the distribution thereof between themselves, and in the event that the railroads, railways, or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of sixty days after the order fixing and determining such joint rate shall have been made by the board of railroad commissioners, then the said board of railroad commissioners shall have power, and it is hereby made its duty, to call a hearing, of which hearing the railroads, railways, or common carriers affected by such joint rate shall have at least twenty days' notice, and upon such hearing the board of railroad commissioners shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

History: En. Sec. 2, Ch. 105, L. 1913.

3837. Power of railroad commission as to side-tracks, stock-yards and chutes. The board of railroad commissioners of the state of Montana shall have full power and authority, after notice and hearing, to compel railroads, railways, or common carriers operating within the state of Montana, to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stock-yards, stock-chutes, or stock-pens, whenever the necessity therefor has been established to the satisfaction of the commission.

History: En. Sec. 3, Ch. 105, L. 1913.

3838. Enforcement of regulation in district court. The district court shall have jurisdiction to enforce, by proper decree, injunction, or order, the rulings, orders, and reguations made or established by the commission under the provisions of this act. The proceedings therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney-general or county attorney, whenever advised by the board that any railroad, railway, or common carrier is violating or refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, or regulation involved is unreasonable and unjust as to him. If, in such action, it be the decision of the court that the rule, regulation, or order is not unreasonable or unjust, and that in refusing to comply therewith the railway, railroad, or common carrier is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation, or order by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant, officer, agent, servant, or servants or employees of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punished by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt, until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, or order shall be modified or vacated by the board of railroad commissioners; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. Any appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 4, Ch. 105, L. 1913.

3839. Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all

other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 5, Ch. 105, L. 1913.

3840. Action by carrier against railroad commissioners. Any railroad, railway, or common carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such rule, regulation, or order of the board of railroad commissioners is applicable, against the said board as defendant, to determine whether or not any such rule, regulation, or order made, fixed or established by said board under provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the rule, regulation, or order of said board affecting any railroad, railway or common carrier shall be deemed final and conclusive; and provided, further, that in any action, hearing or proceeding in any court, the rules, regulations, and orders made, fixed, and established by said board, shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 6, Ch. 105, L. 1913.

3841. Penalty for failure of railroad to comply with regulations. Any railroad or railway company, or common carrier, its officers or agents, subject to the provisions of this act, who shall refuse or fail to comply with the provisions of this act, or any order, rule, or regulation relative thereto, made by the board of railroad commissioners, shall be subject to a fine of not less than twenty-five dollars, nor more than fifty dollars, and each day of such refusal or failure shall be deemed a separate offense and be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the board of railroad commissioners in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913.

3842. Railroad commission may order electric signal bells installed. Authority is hereby given to the board of railroad commissioners of the state of Montana, upon petition in writing made to it by any board of county commissioners of the state of Montana, to order railroad companies to install and maintain an electrically operated bell or other signaling device at all points in the state of Montana where the main lines, spurs, or switches of any railroad in continuous operation and use, owned or operated by them, cross any public highway now lawfully established or hereafter laid out within the state of Montana, and where the contour of the country adjacent to said crossing is such that a person approaching same along said highway cannot, at a distance of twenty-five feet of said crossing, obtain an unobstructed view of said railroad track for a distance of one-half mile on either side of said crossing; provided, however, all persons driving motor vehicles upon the public highways of this state, outside of corporate limits of incorporated cities or towns, where the view is obscure, or when a moving train is within sight or hearing, shall bring said vehicle to a full stop not less than ten nor more than one hundred feet from

where said highway intersects railroad tracks within this state, before crossing the same, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

History: En. Sec. 1, Ch. 151, L. 1919.

Validity of statute requiring railroad to equip locomotives with automatic device for ringing bell, see note in Ann. Cas. 1914D, 1289.

3843. Petition for installation—Hearing and order. It shall be the duty of the board of railroad commissioners of the state of Montana, upon the presentation of any petition by a board of county commissioners, requesting the installation of the signaling device provided for in this act, to hold a hearing, if same be demanded by the railway company or companies affected, upon due notice to all interested parties in such manner as the commission shall direct. Upon said hearing, if a hearing be demanded, or without a hearing if same has not been demanded, the commission shall make such order as it sees fit, and shall, in its discretion, order or refuse to order the installation of the signaling devices as petitioned for by said board of county commissioners.

History: En. Sec. 2, Ch. 151, L. 1919.

3844. Construction and requirements of signal devices. All electric bells or other signaling devices required by this act to be installed, upon direction of the board of railroad commissioners of the state of Montana, shall be so constructed that they will operate automatically upon the approach of a train, and will commence sounding when any approaching train is at such distance from said crossing as the board of railroad commissioners may determine and order, and shall continue to sound until the train has reached said crossing.

History: En. Sec. 3, Ch. 151, L. 1919.

3845. Time within which signaling device must be installed—Limitation upon power of railroad commission. It shall be the duty of every person, firm, or corporation, owning or operating any line of railroad within the state of Montana, to equip its crossing with the signaling device herein described, within three months after being ordered by the board of railroad commissioners of the state of Montana so to do. Nothing herein contained shall be so construed as to authorize the board of railroad commissioners to order the installation of signaling devices, except upon petition of a board of county commissioners, and after a hearing as hereinbefore provided for.

History: En. Sec. 4, Ch. 151, L. 1919.

3846. Penalty for non-compliance with order of railroad commission. Any railroad company, person, firm, or corporation failing to comply with the terms of this act, or failing to equip its lines with its signaling device herein described, when ordered by the board of railroad commissioners of the state of Montana so to do, within the time specified by said order, shall forfeit to the state of Montana the sum of fifty dollars for each and every failure to equip each crossing under its control with the signaling device required by this act, and each day's failure to com-

ply with the terms of this act shall constitute a separate offense and shall give rise to a like liability.

History: En. Sec. 5, Ch. 151, L. 1919.

3847. Regulation of business of railroads. The general regulation of the business of railroads and railroad companies is provided for in sections 6503 to 6644 of the Civil Code.

Note.—New section recommended by code commissioner.

CHAPTER 258.

REGULATION OF COMMON CARRIERS OF OIL.

Section 3848. Common Carriers of Oil Defined.
3849. Pipe Lines Public Utilities—Jurisdiction.
3850. Regulation of Construction Pipe Lines—Eminent Domain.
3851. Establishment of Rates—Hearing—Complaints.
3852. Railroad Commissioners May Require Connections—Facilities—Rules.
3853. Tariffs and Reports.
3854. Discrimination Prohibited—Establishment of Rates.
3855. Rules for Prevention of Waste.
3856. Penalty for Violation of Act—Recovery of Damages.
3857. Duty to Transport Without Discrimination.
3858. Effect of Partial Invalidity Act.

3848. Common carriers of oil defined. Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the state of Montana for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier; or

(d) Owning, operating, or managing, or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil field or place of production within the state of Montana to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, bought of others; or

(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier

as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921.

3849. Pipe lines public utilities—Jurisdiction. It is declared that the operation of these pipe lines, to which this act applies, for the transportation of crude petroleum, in connection with the purchase or purchase and sale of such crude petroleum, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this act to transport the crude petroleum so bought or sold shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the board of railroad commissioners of Montana. It shall be the duty of the attorney-general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921. Pipe line companies as public utilities, see note in L. R. A. 1918C, 855.

3850. Regulation of construction pipe lines—Eminent domain. The right to lay, maintain, and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such lines along, across, or under any public stream or highway in this state, is hereby conferred upon all persons, firms, limited partnerships, joint-stock associations, or corporations coming within any of the definitions of common carrier pipe lines as hereinbefore made. Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipe lines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state, by filing with the board of railroad commissioners of Montana an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the rights so acquired it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed in this act. This right to run along, across or over any public road or highway, as before provided for, can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof be subject also to the supervision of the county commissioners of the county in which said highway is situated. And, provided that in the exercise of the privileges herein conferred, such pipe lines shall compensate the county for any damage done to such public road, in the laying of pipe lines, telegraph or telephone lines, along or across the same; and nothing herein shall be construed to grant any pipe line company the right to use any public street or alley in any incorporated city or town, except by express permission from the city or governing authority thereof.

Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this act, which shall have

filed with the board of railroad commissioners of Montana its acceptance of the provisions of this act, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights of way, easements, and property of any person or corporation necessary for the construction, maintenance or authorization of his, its, or their common carrier pipe line, the manner and method of such condemnation and the assessment and payment of the damages therefor to be the same as is provided by law in the case of railroads.

History: En. Sec. 3, Ch. 8, L. 1921.

Taking of land for pipe line as public purpose, see note in 22 L. R. A. (N. S.) 136.

3851. Establishment of rates—Hearing—Complaints. The board of railroad commissioners of Montana shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten days' and not more than thirty days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921.

3852. Railroad commissioners may require connections—Facilities—rules. Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier, and the board of railroad commissioners of Montana shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the board of railroad commissioners of Montana; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the board of railroad commissioners of Montana which they are hereby empowered and required to prescribe. The board of railroad commissioners of Montana is also empowered and required to make rules for the ascertainment of the amount of water and other foreign

matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage, and evaporation. It is provided, however, that the recital herein of particular powers on the part of said board of railroad commissioners of Montana shall not be construed to limit the general powers conferred by this act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the board of railroad commissioners of Montana as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921.

Power of public service commission to compel connections between public utilities, see note in Ann. Cas. 1915C, 850.

3853. Tariffs and reports. Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as may be prescribed by said board of railroad commissioners of Montana, the board of railroad commissioners of Montana shall require them to make reports and may investigate their books and records kept in connection with such business. The board of railroad commissioners of Montana shall require of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the board of railroad commissioners of Montana to the reports as to stock of crude petroleum on hand of any particular pipe line; but the board of railroad commissioners of Montana in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The board of railroad commissioners of Montana shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921.

3854. Discrimination prohibited—Establishment of rates. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the board of railroad commissioners of Montana to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the board of railroad commissioners of Montana. When there shall be offered for transportation more crude petro-

leum than can be immediately transported, the same shall be equitably apportioned. The board of railroad commissioners of Montana may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation, or association of persons, exceeding three thousand barrels of petroleum in any one day.

History: En. Sec. 7, Ch. 8, Ex. L. 1921.

3855. Rules for prevention of waste. The board of railroad commissioners of Montana, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

History: En. Sec. 8, Ch. 8, Ex. L. 1921.

Constitutionality of legislation to prevent waste of petroleum by private owner, see notes in 4 Ann. Cas. 213; 16 Ann. Cas. 1001; Ann. Cas.

3856. Penalty for violation of act—Recovery of damages. Any common carrier as herein defined who shall violate any provisions of this act or who shall fail to perform any duty herein imposed or any valid order of the board of railroad commissioners of Montana, when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense, such penalty to be recoverable at suit of the attorney-general of the state of Montana in the name of the state and for its use. Actual damages may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of party aggrieved, and may be maintained in any court of proper jurisdiction having due regard to the ordinary statutes of venue. For the wilful violation of any of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents, or employees of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor; each violation of any of such provisions shall be deemed a separate and distinct offense and upon conviction thereof the party violating same shall be fined in a sum of not less than fifty dollars nor more than one thousand dollars, and may be further punished by confinement in the county jail for not less than ten days nor more than six months.

History: En. Sec. 9, Ch. 8, Ex. L. 1921.

3857. Duty to transport without discrimination. Subject to the provisions of this act and the rules and regulations which may be prescribed by the board of railroad commissioners of Montana, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

History: En. Sec. 10, Ch. 8, Ex. L. 1921.

3858. Effect of partial invalidity act. If any of the provisions of this act shall be held unconstitutional, or for any reason shall be held void, such holding shall not have the effect to nullify the remaining parts or

provisions of this act, but the parts not so held to be void shall nevertheless remain in full force and effect.

History: En. Sec. 11, Ch. 8, Ex. L. 1921.

CHAPTER 259.

REGULATION OF NAVIGATION—INSPECTION OF BOATS AND VESSELS BY RAILROAD COMMISSION.

Section 3859. Appointment of Inspector of Water Crafts.
3860. Inspection and Examination—Determination of Capacity of Boat.
3861. Failure of Owner of Boat to Comply with Requirements.
3862. Licenses to Boats, Captains, and Pilots—Regulations.
3863. Number of Passengers Limited to Number Specified in Certificate.
3864. Fire Protection in Boats.
3865. Rules of Navigation.
3866. Lights to Be Carried by Boats.
3867. Force Pumps to Be Carried.
3868. Life and Other Boats to Be Carried—Practice Drills.
3869. Life-Preservers.
3870. Inspection by State Boiler Inspector.
3871. Printing of Name on Boat.
3872. Loss of Services of Licensed Officer—Duty of Railroad Commissioners.
3873. Inspection Fees.
3874. License Fees.
3875. Compensation of Inspector—Inspection and License Fees.
3876. Powers and Duties of Railroad Commissioners.
3877. Operation of Boats Without Complying with Law.
3878. Penalty for Violation of Act.

3859. Appointment of inspector of water crafts. The board of railroad commissioners of the state of Montana shall appoint some suitable person inspector of steam vessels, other boats propelled by machinery, sailing crafts, ferry-boats, and barges, other than private pleasure boats, on any of the navigable waters of the state of Montana. Said inspector shall have a practicable knowledge of such boats and vessels and ferry-boats as ply the navigable waters of the state of Montana, and shall be experienced in the construction and familiar with the safety appliances of all such boats and their appurtenances.

History: Sec. 1, Ch. 63, L. 1913.

Note.—The first navigation laws were enacted as sections 2580 to 2589, inclusive, Political Code 1895; re-enacted as sections 1327 to 1336, inclusive, Revised Codes 1907. These provisions were superseded by chapter 63, Laws of 1913.

3860. Inspection and examination—Determination of capacity of boat. The inspector shall annually, or as often as the board of railroad commissioners may order, inspect every steamboat or other barge propelled by machinery, or sailing boat, ferry-boat or barge, other than private pleasure boats, and shall examine carefully the hull of such boats and their equipment, and require such changes, repairs, and improvements to be adopted and used as he may deem expedient for the safety of all such boats. He shall also fix the number of passengers that may be transported upon any boat; he shall likewise fix the number of tons of freight that may be carried upon any such boat, barge, or ferry-boat. He shall, whenever he deems it expedient to do so, visit any such boat and examine into its condition or their condition, for the purpose of ascertaining whether such boat or boats have a certificate from the board of railroad commissioners, and whether such boats are conformable to and obeying the conditions imposed by this act and by the board of railroad

commissioners. The owner, master, pilot, and captain or engineer of such vessel or boat shall answer all reasonable questions, and give all the information in his or her possession in regard to such boat or boats, or any of them, concerning their machinery and the manner of managing said boat. The said inspector shall examine all life-saving appliances and lifeboats carried on any such vessels, steamboats, or other boats propelled by machinery, as well as all ferry-boats. The inspector shall report the condition of all such boats, life-saving appliances, and lifeboats to the board of railroad commissioners.

History: En. Sec. 2, Ch. 63, L. 1913.

3861. Failure of owner of boat to comply with requirements. The inspector shall at all times have free access to any and all of such boats and parts thereof, and shall have free transportation thereon for the purpose of making such inspection; and he is hereby authorized, whenever in his judgment the master, owner, captain, or pilot of any of the boats mentioned in this act has failed to comply with the provisions of this act, or when he deems such boat unsafe, to cause the same to be tied up until such owner, master, captain, or pilot shall have complied with the provisions of this act, or until such boat shall have been made safe and seaworthy, as the case may be; and if any such master, owner, captain, or pilot, or any other persons shall release or cause to be released any such boat, he shall be deemed guilty of a misdemeanor.

History: En. Sec. 3, Ch. 63, L. 1913.

3862. Licenses to boats, captains, and pilots—Regulations. The inspector shall report all of his findings to the board of railroad commissioners of the state of Montana, which said commission shall thereupon, if in its opinion said boat shall be seaworthy and safe for the carrying of passengers and freight, issue to such boat a certificate or permit to engage in the business of navigation on any of the navigable waters of the state of Montana, and shall likewise issue licenses to any captain or pilot of said boat, if its judgment said captain or pilot is qualified for the duties imposed upon him by the provisions of this act; and said commission shall issue all rules and regulations that may be in its judgment necessary for the safe navigation of all steamboats, all boats propelled by machinery, sailboats, ferry-boats and barges, including pleasure crafts propelled by machinery navigating on any of the navigable waters of this state.

History: En. Sec. 4, Ch. 63, L. 1913. Regulations for licensing of pilots, see note in 39 L. R. A. 183.

3863. Number of passengers limited to number specified in certificate. No greater number of passengers shall be transported upon licensed boat, steamboat, or other boat propelled by machinery, or sailing-boat, or ferry-boat or barge, than the number allowed in the certificate to such boat, vessel, steamboat, or other boat propelled by machinery, or sailing-boat, ferry-boat or barge, and any captain, pilot, owner, or engineer of such boat, who shall violate any of the provisions of this section, shall be guilty of a misdemeanor and shall be punished accordingly, and shall have (at the discretion of the board of railroad commissioners) his license revoked.

History: En. Sec. 5, Ch. 63, L. 1913.

3864. Fire protection in boats. All steamboats to which this act shall apply shall be so constructed that all woodwork about the boiler, smoke-stack, fire-boxes, chimneys, cook-houses, stoves, and stove pipes exposed to ignition shall be so shielded by some incombustible material that the air shall circulate freely between such material and woodwork or other ignitable substance, and before granting the certificate of inspection the board of railroad commissioners shall require that all necessary provisions be made as it may deem expedient to guard against loss or damage by fire.

History: En. Sec. 6, Ch. 63, L. 1913.

3865. Rules of navigation. The following rules shall be observed in navigating steam vessels, steamboats, and all other boats propelled by machinery, and sailing crafts on any of the navigable waters of the state of Montana affected by the provisions of this act.

Rule 1. All steamboats or other boats propelled by machinery shall be equipped with either steam or compressed-air whistles.

Rule 2. When two boats are meeting, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

Rule 3. When two boats are crossing so as to involve risk of collision, the boat which has the other on her starboard shall keep out of the way of the other.

Rule 4. When a steamboat or boat propelled by machinery and sailing boat are proceeding in the same direction, so as to involve risk of collision, the boat propelled by machinery shall keep out of the way of the sailing craft.

Rule 5. When, by any of these rules one of the two of the vessels is to keep out of the way, the other shall keep her course and speed.

Rule 6. Every boat propelled by machinery under way and approaching another boat or vessel of any kind so as to involve a risk of collision, shall slacken her speed, or, if necessary, shall stop and reverse her engine, and every boat propelled by machinery shall, when in a fog, go at a moderate speed.

Rule 7. Any boat propelled by machinery overtaking another boat propelled by machinery shall keep out of the way of the last-named boat.

Rule 8. When two boats propelled by machinery are going in the same direction, and the stern boat wishes to pass the other, she shall signal the forward boat of her intention to pass on the port side, by two distinct whistles, and to pass on her starboard side by one distinct whistle, which shall be answered by the forward boat by the same number of whistles, and the forward boat shall keep on her course as if no signal had been given.

Rule 9. When two steamboats or other boats propelled by machinery are approaching each other, and if the course of such boats is so far on the starboard side of each other as not to be considered by the pilot as meeting end on or nearly so, or, if such boats are approaching each other in such a manner that passing is not as in rule 2, being deemed unsafe, the pilot of one boat shall give two short and distinct blasts of his whistle, which the pilot of the other boat shall answer by two blasts of his whistle, and they shall pass to the left (on the starboard side) of each other.

Rule 10. Steamboats or other boats propelled by machinery approach-

ing each other at not less than three hundred yards distance from each other shall give a signal with one loud distinct whistle.

Rule 11. When two steamboats or other boats propelled by machinery are approaching each other, and the pilot of either boat fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short blasts of his whistle, and if the boats shall have approached within five hundred yards of each other, both shall immediately slow up to a speed barely sufficient for steerage, or until the proper signals are given, answered, and understood, or until the boats have passed each other.

Rule 12. When a steamboat or other boat propelled by machinery is in a fog or is in thick weather, it shall be the duty of the pilot to cause a long blast of the whistle to be sounded at intervals of not to exceed one minute.

Rule 13. Signals of distress shall be four blasts of the whistle, and shall be recognized by the master of any steamboat or other boat propelled by machinery hearing the same, and he shall render such assistance as in his power.

Rule 14. Any steamboat or other boat propelled by machinery landing at a wharf or dock shall have the right to such wharf or dock for a period of five minutes. If detained at the wharf or dock for a longer period than five minutes, the steamboat or other boat propelled by machinery already at the wharf shall allow another steamboat or other boat propelled by machinery to land alongside and discharge her passengers and freight over her deck for at least ten minutes, and thereafter until the first steamboat or other boat propelled by machinery shall leave said wharf or dock.

Rule 15. In the construing of these provisions, due regard must be had for all of the dangers of navigation, and to any special circumstances, which may render a departure therefrom necessary in order to avoid immediate danger.

Rule 16. Every steamboat or other boat propelled by machinery which is under sail and not under steam is to be considered a sailing vessel, and any or every vessel under steam or propelled by machinery, whether under sail or not, is to be considered a steam vessel.

Rule 17. All steamboats or other boats propelled by machinery licensed under the provisions of this act or article shall conform to and obey such other rules and regulations, not inconsistent herewith, as the board of railroad commissioners may direct.

Rule 18. Every steamboat or other boat propelled by machinery on the navigable waters within the jurisdiction of this state shall have two copies of this section framed; one to be posted in the pilot-house, and the other to be hung in a conspicuous place on the vessel for the inspection of passengers.

History: En. Sec. 7, Ch. 63, L. 1913.

3866. Lights to be carried by boats. The master or pilot in charge of the steamboat, or other boat propelled by machinery, or sailing craft, when navigating any of the water of this state, shall between sunset and sunrise cause said boats to carry the following lights: First, at the fore-

most head, a bright white light of such a character as to be visible on a dark night, in a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an area of the horizon to twenty points of the compass, and to be fixed as to show the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side; second, on the starboard side, a green light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and be so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side; third, on the port side, a red light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft to the beam on the port side. The red and green lights shall be fixed with screens so as to prevent them from being seen from the rear.

History: En. Sec. 9, Ch. 63, L. 1913.

3867. Force pumps to be carried. Every steamboat or other boat propelled by machinery, other than private pleasure boats, shall be provided with a force pump or an equivalent apparatus for throwing water, and the same shall be at all times, during the navigation of such boat, kept ready for use. Such pump shall be of suitable size and construction to use either in extinguishing fires or pumping water out of the boat, and shall be approved by the board of railroad commissioners.

History: En. Sec. 10, Ch. 63, L. 1913.

3868. Life and other boats to be carried—Practice drills. Every steamboat or other boat propelled by machinery, and sailing craft or ferry-boat affected by the provisions of this act, shall carry on its deck, hung from davits, such life-boats or other boats as shall be ordered by the board of railroad commissioners. And every captain shall order and hold a practice drill for the lowering of life-boats, and fire-drill at least once every month, and shall keep a record of all such drills, which record shall be kept in a convenient place on such boat, and shall at all times be subject to inspection by the public.

History: En. Sec. 11, Ch. 63, L. 1913.

3869. Life-preservers. Every steamboat or other boat affected by this act shall have a life-preserver for each passenger, and she shall also carry one for each of her crew. Such life-preserver shall be made of good, sound cork blocks, easily adjusted to the body with belts and straps, properly attached, and so constructed as to pass the cork under the shoulders and around the body of the person wearing the same. Each life-preserver shall contain at least six pounds of good cork, having a buoyancy of at least four pounds to each pound of cork. It shall be the duty of the inspector to satisfactorily ascertain that every life-preserver is as herein required. All such life-preservers shall be kept in a convenient place, accessible in case of accident, in readiness for immediate use, and the place where same are kept shall be designated in the certificate issued by the board of railroad com-

missioners, and pointed out by printed notices posted in such places as the board of railroad commissioners may direct.

History: En. Sec. 12, Ch. 63, L. 1913.

3870. Inspection by state boiler inspector. The state boiler inspector shall inspect all steam-boilers in each of the steamboats within the state.

History: En. Sec. 13, Ch. 63, L. 1913.

3871. Printing of name on boat. Every steamboat or other boat propelled by machinery or sailing craft, subject to the provisions of this act, shall have her name printed on her stern, in either black, yellow, or red letters, of not less than three inches in length.

History: En. Sec. 14, Ch. 63, L. 1913.

3872. Loss of services of licensed officer—Duty of railroad commissioners. If any boat subject to the provisions of this act shall be deprived of the services of any licensed officer without the consent, fault, or collusion of the master, owner, or person interested in such boats, the board of railroad commissioners shall be notified and the deficiency may be temporarily supplied until the services of a licensed officer can be obtained.

History: En. Sec. 15, Ch. 63, L. 1913.

3873. Inspection fees. The owner of every steamboat or other boat propelled by machinery, sailing-boat, ferry-boat or barge, subject to the provisions of this act, shall pay the board of railroad commissioners, for the use and benefit of the state, an inspection fee on such boats, as follows, to-wit: For each boat under ten tons burden, ten dollars; for each boat over ten tons burden and under twenty tons burden, fifteen dollars; for each boat over twenty tons and under fifty tons burden, twenty dollars; for each boat over fifty tons and under one hundred tons burden, twenty-five dollars; and all over a hundred tons burden, thirty dollars. For each ferry-boat, ten dollars; and for each barge, ten dollars.

History: En. Sec. 16, Ch. 63, L. 1913.

3874. License fees. For every license granted under the provisions of this act, there shall be charged and collected from the person receiving such license, for the use and benefit of the state, the sum of five dollars, which said license shall remain in full force for one year from the date thereof.

History: En. Sec. 17, Ch. 63, L. 1913.

3875. Compensation of inspector—Inspection and license fees. The inspector shall receive for all services by him, under the supervision of the board of railroad commissioners, in full for such services as inspector, the sum of twelve hundred dollars per annum, and no other or further fee or compensation. The fees for the inspection shall be paid at the time of the inspection. All fees for licenses shall accompany the application for such license, and in case such license is not issued, the fees shall be returned to the applicant; all fees to be accounted for and paid over to the state treasurer monthly.

History: En. Sec. 18, Ch. 63, L. 1913.

3876. Powers and duties of railroad commissioners. It is hereby made the duty of the board of railroad commissioners to enforce the provisions of this act, and said board of railroad commissioners shall have the juris-

diction to make all needful rules providing for the safety of all passengers, crews, and freight traveling or being transported upon the navigable waters of this state, provided that such rules are within the provisions of this act.

History: En. Sec. 19, Ch. 63, L. 1913.

3877. Operation of boats without complying with law. It shall be unlawful for any person or persons to operate any steamboat or other boat propelled by machinery, sailing craft, or ferry-boat, or engage in the business of the navigation of boats, without first complying with the provisions of this act.

History: En. Sec. 20, Ch. 63, L. 1913.

3878. Penalty for violation of act. Any persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in any sum not less than twenty-five dollars, nor more than three hundred dollars, or imprisoned in the county jail not exceeding six months; and in addition thereto the board of railroad commissioners may revoke or suspend the license of any captain or pilot of any boat navigated in violation of the provisions of this act.

History: En. Sec. 21, Ch. 63, L. 1913.

CHAPTER 260.

REGULATION OF PUBLIC UTILITIES—PUBLIC SERVICE COMMISSION.

Section 3879. Creation of Public Service Commission.
3880. Railroad Commissioners as Ex-Officio Commission.
3881. "Public Utility" Defined.
3882. Power to Prescribe Rules of Procedure—Judicial Power.
3883. Public Utilities to Furnish Service for Reasonable Charges.
3884. Power of Commission to Ascertain Property Values.
3885. Books, Accounts, and Records of Public Utilities.
3886. Annual Report to Public Service Commission.
3887. Right to Examine Books, Records, etc.
3888. Failure of Public Utility to Make Reports or Permit Examinations.
3889. Records and Reports of Commission.
3890. Commercial Units of Product or Service—Standard of Measurement—Examination and Testing.
3891. Schedules of Rates, Tolls, and Charges.
3892. Greater or Less Charges Than Those Prescribed—Rebates and Privileges.
3893. Classification of Service.
3894. Rules as to Inspections—Public Hearings.
3895. Inquiry into and Investigation of Management of All Public Utilities.
3896. Employment of Engineer and Other Help—Salary of Secretary.
3897. Complaints Against Public Utility—Hearing.
3898. Subpoena to Witnesses.
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3912. Traveling Expenses of Commission.
3913. Effect of Invalidity of Part of Law.

3879. Creation of public service commission. A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act.

History: En. Sec. 1, Ch. 52, L. 1913.

Sections 3879 et seq., creating a public service commission and defining its powers, are constitutional. Public Service Commission v. City of Helena, 52 Mont. 527, 159 Pac. 24.

Regulations made by the public service commission must be reasonable in order to be valid, and any regulation which imposes upon a city an obligation which is invalid is not reasonable. Public Service Commission v. City of Helena, 52 Mont. 527, 540, 159 Pac. 24.

The act conferring authority upon the public service commission must be construed in harmony with the theory of self-government in cities, and the retention of police power by the state. Public Service Commission v. City of Helena, 52 Mont. 527, 541, 159 Pac. 24.

Inasmuch as a franchise contract made in 1912 between a city and a gas company must be presumed to have been entered into with knowledge that the state could thereafter enact legislation toward exercising the power of rate regulation reposed in it, and thus change the rates fixed by the contract, this act is not open to attack on the ground that it impairs the obligation of the contract made the year before. State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 111, 173 Pac. 799.

In the enactment of this law the legislature intended to provide a comprehensive and uniform system of regulation and control of public utilities, by a specially created tribunal, through which the state itself exercises its sovereign power. State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 112, 173 Pac. 799.

3880. Railroad commissioners as ex-officio commission. The board of railroad commissioners of the state of Montana shall be ex-officio the public service commission hereby created, and for the purposes of this act shall be known and styled "Public Service Commission of Montana." It shall provide itself with a seal bearing these words, by which its official acts shall be authenticated in all cases where a seal is required; and in the name as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the public service commission shall be kept entirely separate from that of the railroad commission.

History: En. Sec. 2, Ch. 52, L. 1913.

3881. "Public utility" defined. The term "public utility," within the meaning of this act, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, or any part of a plant or equipment, within the state, for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street-railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns and villages, or elsewhere, telegraph or telephone service; and the public service commission is hereby invested with full power of supervision, regulation, and control of such utilities, subject to the provisions of this act, and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

History: En. Sec. 3, Ch. 52, L. 1913.

It was the intention of the legislature to go no further than to provide that, within the limited sphere of its jurisdiction, the public service commission may make reasonable regulations which the city must heed, and to that extent only is the au-

thority of the city superseded. It was not intended to take from the city the active management of its water plant, or the authority to appoint the proper officers and employees to operate it, or to interfere with such officers in the proper discharge of their duties. Public Service Commission v. City of Helena, 52 Mont. 527, 541, 159 Pac. 24.

Cited or applied as section 3, Laws of 1913, chapter 52, in State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 107, 173 Pac. 799.

For text treatment of specific classes of public utilities, see titles in Ruling Case Law on Canals, Carriers, Electricity, Gas, Railroads, Street Railways, Telegraphs and Telephones, and Waterworks.

Irrigation company as a public utility, see note in 8 A. L. R. 268.

3882. Power to prescribe rules of procedure—Judicial power. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test, in a court of competent jurisdiction, the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

History: En. Sec. 4, Ch. 52, L. 1913.

3883. Public utilities to furnish service for reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, telegraph, or telephone service, produced, transmitted, delivered, or furnished, or for any service to be rendered as or in connection with any public utility, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 5, Ch. 52, L. 1913.

Cited or applied as section 5, Laws of 1913, chapter 52, in State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 107, 173 Pac. 799.

Right of public service corporation to judicial relief from contract rates which have become inadequate, see note in 10 A. L. R. 1335.

Effect of contract with patrons to preclude regulation of rates of public service corporations, see note in L. R. A. 1915C, 282.

3884. Power of commission to ascertain property values. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 6, Ch. 52, L. 1913.

Fundamental principles of valuation of public service property, see note in L. R. A. 1916F, 599.

Treatment of overhead charges in public service property valuations, see note in 48 L. R. A. (N. S.) 1037.

Treatment of accrued depreciation in valuation of public service property, see note in L. R. A. 1916F, 761.

3885. Books, accounts, and records of public utilities. Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

Every public utility engaged directly or indirectly in any other business

than those mentioned in section 3881 of this code shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this act shall apply with like force and effect to the books, accounts, papers, and records of such other business.

The commission shall cause to be prepared suitable blanks for carrying out the purposes of this act, and shall, when necessary, furnish such blanks to each public utility.

No public utility shall keep any other books, accounts, papers, or records of the business transacted, than those prescribed or approved by the commission. Each public utility shall have an office in one of the towns, villages, or cities in this state, in which its property, or some part thereof, is located, and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records, required by the commission to be kept within the state, shall at any time be removed from the state, except upon such conditions as may be prescribed by the commission.

History: En. Sec. 7, Ch. 52, L. 1913.

3886. Annual report to public service commission. The accounts of such public utilities shall be closed annually on the thirty-first day of December, a balance sheet taken promptly therefrom, and full annual reports of the business be made to the commission not later than the fifteenth day of March following the closing of the accounts; provided, however, that the accounts of any municipal utility shall be closed annually on the thirtieth day of April, a balance-sheet taken promptly therefrom, and full annual reports of the business be made to the commission not later than the fifteenth day of July following the closing of the accounts. The reports shall be in such form as prescribed by the commission, and shall contain all the information deemed by the commission necessary for the proper performance of its duties. The commission may at any time call for desired information omitted from such reports, or not provided for therein, whenever, in the judgment of the commission, such information is necessary.

History: En. Sec. 7, Ch. 52, L. 1913; amd. Sec. 1, Ch. 186, L. 1919.

3887. Right to examine books, records, etc. Any commissioner, or any person or persons authorized by the commission, shall have the right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness, and whether they are being kept in accordance with the rules and system prescribed by the commission.

History: En. Sec. 7, Ch. 52, L. 1913.

Power of public service commission to compel production of papers and records of public utility for inspection, see note in L. R. A. 1917F, 1202.

3888. Failure of public utility to make reports or permit examinations. Any officer, agent, or person in charge of the books, accounts, records, and papers, or any of them, of any public utility, who shall refuse or fail, for a period of thirty days, to furnish the commission with any report required by the provisions of this act, and any officer, agent, or person in charge of any particular books, accounts, records, or papers relating to the business of such public utility, who shall refuse to permit any commissioner or other person duly authorized by the commission, to inspect

such books, accounts, records, or papers on behalf of the commission, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars, such fine to be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction; and each day's refusal or failure on the part of such officer, agent, or person in charge, shall be deemed a separate offense, and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913.

3889. Records and reports of commission. The commission shall make and publish annual reports for each calendar year, showing its proceedings, which reports shall, as nearly as may be, conform in a general way to those of the railroad commission of the state, and be made at the same time. All the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission shall be open to the public at all reasonable times, subject to the exception that when the commission deems it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety days after the acquisition of such facts or information.

History: En. Sec. 9, Ch. 52, L. 1913.

3890. Commercial units of product or service—Standard of measurement—Examination and testing. The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These shall be lawful units for the purposes of this act.

The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliances tested upon payment of the fees fixed by the commission. The commission shall establish and declare reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, which fees, however, shall be paid by the public utility and repaid to the complaining party, if the quality or quantity of the product, or the character of the service, be found by the commission defective or insufficient in a degree to justify the demand for testing; or the commission may apportion the fees between the parties as justice may require.

The commission may, in its discretion, purchase such materials, apparatus, and standard measuring instruments for such examinations and tests as it may deem necessary.

The commission, its agents, experts, or examiners, shall have the power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this act, and to set up and use on such premises any apparatus and appliances and occupy

reasonable space therefor. Any public utility refusing to allow such examinations to be made, as herein provided, shall be subject to the penalties prescribed in section 3888 of this code.

History: En. Sec. 10, Ch. 52, L. 1913.

3891. Schedules of rates, tolls, and charges. Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges in force at the time of passage of this act. Every public utility shall file with, and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public, and as can be conveniently inspected.

When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in the first paragraph of this section.

No change shall thereafter be made in any schedule, including schedules of joint rates, except upon twenty days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect; provided, that the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made; provided, however, that no advance or reduction of existing schedules shall be made without the concurrence of the commission. Copies of all new or amended schedules shall be filed and posted in the stations or offices of public utilities as in the case of original schedules. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

History: En. Sec. 11, Ch. 52, L. 1913.

Cited or applied as section 11, Laws of 1913, chapter 52, in State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 107, 173 Pac. 799.

Power of state to increase franchise rates of a public utility, see notes in 3 A. L. R. 730; 9 A. L. R. 1165.

Power of state to change private contract rates for public utilities, see note in 9 A. L. R. 1423.

3892. Greater or less charges than those prescribed—Rebates and privileges. It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate,

toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this act. It shall likewise be unlawful for any public utility to grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in section 3888 of this code. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

History: En. Sec. 12, Ch. 52, L. 1913.

The concluding sentence of this section refers to the sentence immediately preceding, forbidding rebates, concessions, etc., and was not intended to except from the operation of the act rate contracts made between cities and public utilities prior to its passage. State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 112, 173 Pac. 799.

Since this section exempts from the operation of the act all "existing contracts" and does not exclude from the provisions of the exempting clause renewals or extensions of such contracts, the renewal or extension of the contract involved in this case was not unlawful. Helena Light & Ry. Co. v. Northern Pacific Ry. Co., 57 Mont. 93, 186 Pac. 702.

3893. Classification of service. The commission may prescribe classifications of the service of all public utilities, and such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

History: En. Sec. 13, Ch. 52, L. 1907.

3894. Rules as to inspections—Public hearings. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of public utilities, and other parties before it. All hearings shall be open to the public.

History: En. Sec. 14, Ch. 52, L. 1913.

3895. Inquiry into and investigation of management of all public utilities. The commission shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs.

Any person, other than one of said commissioners, who shall make such demand, shall produce his authority to make such inspection.

The commission may require, by order or subpoena, to be served on any public utility, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such

time and place as it may designate, of any books, accounts, papers, or records kept by such public utility in any office or place without the state of Montana, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission, or under its direction.

Any public utility failing or refusing to comply with any such order or subpoena, shall be subject to the liability named in section 3888 of this code.

History: En. Sec. 15, Ch. 52, L. 1913.

3896. Employment of engineer and other help—Salary of secretary. The commission is authorized to employ an engineer at a salary of four thousand dollars per annum, also examiners, experts, clerks, accountants, or other assistants as it may deem necessary, at such rates of compensation as it may determine upon; and it is further provided that the secretary of the public service commission shall receive an annual salary of six hundred dollars, such salary to be in addition to the salary now provided by law to be paid to the secretary of the board of railroad commissioners of the state of Montana.

History: En. Sec. 16, Ch. 52, L. 1913; amd. Sec. 1, Ch. 188, L. 1919.

3897. Complaints against public utility—Hearing. Upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club, or by any body politic or municipal organization, or association or asociations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms, or corporations are directly affected thereby that any of the rates, tolls, charges, or schedule, or any joint rate or rates, are in any way unreasonable or unjustly discriminatory, or that any regulations, measurements, practices, or act whatsoever affecting or relating to the production, transmission, or delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules, regulations, measurements, practice, or act complaint of shall be entered without a formal hearing.

The commission shall give the public utility and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed,

unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913.

Cited or applied as section 17, Laws of 1913, chapter 52, in State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 107, 173 Pac. 799.

3898. Subpoena to witnesses. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission or any member, or the secretary thereof, may apply to the clerk of the nearest district court, for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena, and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court, and punished accordingly.

History: En. Sec. 18, Ch. 52, L. 1913.

3899. Fixing rates and making regulations on hearing—Complaint by public utility. If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential or otherwise in violation of the provisions of this act, the commission shall have the power to fix and order substituted therefor, such rate or rates, tolls, charges, or schedules, as shall be just and reasonable. If it shall in like manner be found that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this act, or if it be found that the service is inadequate, or that any reasonable service cannot be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, service, or acts, and make such order relating thereto, as may be just and reasonable.

When complaint is made of more than one rate, charge, or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of, and at such times and places as it may prescribe. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, regulations, practices, and service, after a full hearing, as above provided, by order make such changes as may be just and reasonable, the same as if a formal complaint had been made.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any mercantile, agricultural, or manufacturing society, body politic, or municipal organization, or person or persons. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

History: En. Sec. 19, Ch. 52, L. 1913.

3900. Depositions of witnesses. The commission, or any party to any proceeding befor it, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

History: En. Sec. 20, Ch. 52, L. 1913.

3901. Records of proceedings—Copies. A full and complete record shall be kept of all proceedings before the commission or its representa-

tives on any formal investigation, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission as hereinafter provided for the bringing of actions against the commission, before the action is reached for trial the commission shall cause a certified copy of all proceedings held and testimony taken upon such investigation to be filed with the clerk of the court in which the action is pending.

History: En. Sec. 21, Ch. 52, L. 1913.

3902. Privilege of witnesses—Perjury. No person shall be excused from testifying, or from producing books and papers, in any proceedings based upon or growing out of any alleged violation of the provisions of this act, on the ground of, or for the reason that, the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History: En. Sec. 22, Ch. 52, L. 1913.

3903. Refusal of public utility to fill blanks or produce evidence. Any officer, agent, or employee of any public utility who shall wilfully fail or refuse to fill out and return any blanks as required by this act, or shall wilfully fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such questions, or shall evade the answer to such questions, where the fact inquired of is within his knowledge, or who shall, upon proper demand, wilfully fail or refuse to exhibit to any commission or any commissioners, or any person also authorized to examine the same, any book, paper, or account of such public utility which is in his possession or under his control, shall be subject to the penalty prescribed in section 3888 of this code.

History: En. Sec. 23, Ch. 52, L. 1913.

3904. Investigation of violation of law—Duty of attorney-general and prosecuting attorneys. The commission shall inquire into any neglect or violation of the laws of this state by any such public utility as hereinbefore defined, doing business therein, or by the officers, agents, or employees thereof, and shall have the power, and it shall be its duty, to enforce the provisions of this act, and report all violations thereof to the attorney-general; upon the request of the commission it shall be the duty of the attorney-general, or the prosecuting attorney of the proper, or any county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

History: En. Sec. 24, Ch. 52, L. 1913.

3905. Enforcement of rates or charges. All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced, and shall be prima facie lawful, from the date of the order until changed or modified by the commission, or in pursuance of the next section. All

regulations, practices, and service, prescribed by the commission, shall be enforced and action shall be brought for that purpose, pursuant to the provisions of the next section, or until changed or modified by the commission itself upon satisfactory showing made.

History: En. Sec. 25, Ch. 52, L. 1913.

3906. Action to set aside rates or charges fixed by commission. Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within ninety days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.

All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to said commission.

No injunction shall issue suspending or staying any order of the commission except upon application to the court or judge thereof, notice to the commission having been first given and hearing having been had thereon; provided, that all rates fixed by the commission shall be deemed reasonable and just, and shall remain in full force and effect until final determination by the courts having jurisdiction.

If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence, the commission shall consider the same, and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

In all actions under this act, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

History: En. Sec. 26, Ch. 52, L. 1913.

Right of individual patron to question reasonableness of rate of public utility if within limits of legislative authority, see note in L. R. A. 1918A, 389.

3907. Investigation of accidents—Report as to accident. The commission or some member thereof, or some person deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state, resulting in death, or injury to any person of such gravity as to require the attention of a physician or surgeon. The testimony taken at such hearing shall be transcribed and filed in the office of the commission.

It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident, such as is mentioned above, to report by telegraph, followed by written report, the same to the commission, in which report shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. The commission shall prescribe forms for the purpose of making such written reports. Reports of accidents as referred to in this section shall be included in the commission's annual report to the governor.

History: En. Sec. 27, Ch. 52, L. 1913.

3908. Public utility violating laws or failing to comply with order. If any public utility shall violate any provision of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any public utility to place in operation any rate or joint rate or do any act herein prohibited, for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such public utility shall be subject to the penalty prescribed by section 3888 of this code.

History: En. Sec. 28, Ch. 52, L. 1913.

3909. Verification of reports and statements—Perjury. Every annual report, record, or statement required by this act to be made to the commission shall be sworn to by the proper officer, agent, or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record or statement shall be deemed perjury, and the person making such false oath shall, upon conviction, be punished as in the case of other perjuries.

History: En. Sec. 29, Ch. 52, L. 1913.

3910. Recovery of forfeitures and penalties. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The attorney-general of Montana shall be the counsel in any proceeding, investigation, hearing, or trial, prosecuted or defended by the commission, as also shall any prosecuting attorney selected by said commission, or other special counsel furnished said commission in any county where such action is pending.

History: En. Sec. 30, Ch. 52, L. 1913.

3911. Mandamus, injunction, and other remedies. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction, or by other civil remedies.

History: En. Sec. 31, Ch. 52, L. 1913.

Cited or applied as section 31, Laws of 1913, chapter 52, in State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 108, 173 Pac. 799.

3912. Traveling expenses of commission. The commission and secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission.

History: En. Sec. 32, Ch. 52, L. 1913.

Meaning of "necessary travel" or "necessarily traveled" as used with respect to mileage allowance of public officers, see note in Ann. Cas. 1918D, 934.

3913. Effect of invalidity of part of law. Each section of this act and every part of each section are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or inoperative for any cause shall not be deemed to affect any other section thereof.

History: En. Sec. 33, Ch. 52, L. 1913.

CHAPTER 261.

REGULATION OF PUBLIC MILLS—MONTANA TRADE COMMISSION.

Section 3914. Creation of Commission.
3915. Duties of Commission.
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3917. "Public Mills" Defined.
3918. Wheat and Other Grains to Be Milled on Basis of Toll Fixed by Commission.
3919. Term "Public Mills" Does Not Include Privately Owned Mills.
3920. "Privately Owned Mill or Mills" Defined.
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3929. Depositions.
3930. Owner or Occupant Accountable for Grain.
3931. Penalty.
3932. Right of Entry Upon Premises.
3933. Schedule of Rates, Tolls, and Charges.
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3938. Employment of Accountant and Other Help.
3939. Investigation of Complaints.
3940. Notice of Hearing—Rights of Parties—Witness Fees and Mileage.
3941. Power of Commission in Disposing of Complaints.
3942. Complaints by Persons or Corporations Concerning Their Own Products—Notice of Hearing—Record of Proceedings.
3943. Proceedings for the Enforcement of Law.
3944. Recovery of Penalties and Forfeitures.
3945. Penalty for Violation of Law or Failure to Comply With Order.
3946. Traveling Expenses of Commission.

3914. Creation of commission. A commission is hereby created and established, to be known as the Montana trade commission (hereinafter referred to as the commission), and the board of railroad commissioners of the state of Montana shall be ex-officio the Montana trade commission.

History: En. Sec. 1, Ch. 223, L. 1919.

3915. Duties of commission. It shall be the duty of the commission hereby created to fix reasonable rules, charges, rates, tolls, maximum profits, and to supervise and regulate the operations of public mills within the state of Montana, such supervision, control and regulation to be in conformity with this act.

History: En. Sec. 2, Ch. 223, L. 1919.

3916. Seal—Secretary of commission. The commission shall provide itself with a seal which shall be judicially noticed, and by which its official acts shall be authenticated in all cases where a seal is required; and in the name of the commission, as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the Montana trade commission shall be kept entirely separate from that of the board of railroad commissioners.

History: En. Sec. 3, Ch. 223, L. 1919.

3917. "Public mills" defined. The term "public mills," within the meaning of this act, shall be construed to mean and embrace all persons, copartnerships, associations, or corporations, their lessees, trustees, or receivers appointed by any court whatsoever, who now or may hereafter own, operate, manage, or control any elevator, mill, factory, or plant or equipment, or any part of a mill or equipment, within the state of Montana, whether operated by steam, electricity, water-power, or any other motive power, or any elevator used in connection therewith, or any kind of equipment used or necessary in the business of milling, manufacturing, or producing flour, bran, mill-feed, or products or commodities of any kind, from wheat, oats, or other grain, and who also is engaged in the business of purchase of wheat and other grain in the open market, and manu-

facturing same into flour, feed, or other grain products, and selling the same in open markets, and manufacturing flour, feed, or other grain products for farmers and other customers for toll or pay. And the commission is hereby invested with full power of supervision, regulation, and control of such public mills, subject to the provisions of this act.

History: En. Sec. 4, Ch. 223, L. 1919.

3918. Wheat and other grains to be milled on basis of toll fixed by commission. Every such public mill shall grind and bolt into flour and its equivalent mill products wheat of milling quality when offered by the owner thereof, on a basis of toll to be fixed by the commission; and every such public mill shall grind and chop grains other than wheat when offered by the owner thereof, on a basis of toll to be fixed by the commission; provided, that such mill shall be permitted to return to the person offering such grain for grinding and bolting, or for grinding and chopping, the equivalent value of such grain in flour or other mill products, less the toll in kind allowed to be taken by the commission.

History: En. Sec. 5, Ch. 223, L. 1919.

3919. Term "public mills" does not include privately owned mills. The term "public mills," as used in this act, shall not be construed to mean and embrace privately owned mills.

History: En. Sec. 6, Ch. 223, L. 1919.

3920. "Privately owned mill or mills" defined. The term "privately owned mill or mills," as used in this act, shall be construed to mean any such mill, owned, operated, or used by any person, persons, corporation, or copartnership, for the purpose of grinding or manufacturing his or its grain for his or its own use or consumption.

History: En. Sec. 7, Ch. 223, L. 1919.

3921. "Corporation" defined. The term "corporation," as used in this act, shall be construed to mean and embrace any company or association, incorporated or unincorporated, which is engaged in this state in the business of milling, manufacturing, and producing flour, bran, mill-feed, or products or commodities of any kind, from wheat, oats, or other grain.

History: En. Sec. 8, Ch. 223, L. 1919.

3922. Commission may prescribe rule of procedure—Want of judicial power. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, or corporation the right to test, in court of competent jurisdiction, the legality or reasonableness of any fixed rule or order, made by the commission in the exercise of its duties or powers.

History: En. Sec. 9, Ch. 223, L. 1919.

3923. Public mills must furnish adequate service and facilities—Reasonableness of tolls. Every such "public mill" which comes within the provisions of this act is required to furnish reasonably adequate serv-

ice and facilities. The charge of toll made by any such public mill for the grinding, chopping, bolting, rolling, preparation, or manufacture of flour, feed, bran, rolled oats, cereals, breakfast foods, or other mill stuffs or grain products of every kind and nature, or for any service to be rendered to or in connection with any such mill, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 10, Ch. 223, L. 1919.

Business of mills as affected with a public interest authorizing regulation of rates and prices, see note in 6 L. R. A. (N. S.) 836.

Legislative regulation of tolls of mills, see note in 33 L. R. A. 182.

3924. Mill may charge a reasonable profit. Every such mill coming within the provisions of this act, the selling or disposing of any of its flour, feed, or other mill stuffs or grain products, shall charge a reasonable profit in addition to the actual cost of its products in the sale thereof to other persons, corporations, or associations.

History: En. Sec. 11, Ch. 223, L. 1919.

3925. Valuation of plants. The commission may, in its discretion, investigate and ascertain the value of the property of every such "public mill" coming within the provisions of this act, actually used and useful in the milling, manufacture, sale, or production of such grain or grain products. In making such investigation the commission may avail itself of all information contained in the assessment-rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 12, Ch. 223, L. 1919.

3926. Uniform accounts to be rendered commission. Every public mill coming within the provisions of this act shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

History: En. Sec. 13, Ch. 223, L. 1919.

3927. "Documentary evidence" defined. The term "documentary evidence," as used in this act, shall be construed to mean all documents, papers, and correspondence in existence at and after the passage of this act.

History: En. Sec. 14, Ch. 223, L. 1919.

3928. Copies of documentary evidence—Subpoena of witnesses—Subpoena duces tecum. For the purpose of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person or corporation, coming under the provisions of this act, being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses, and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

History: En. Sec. 15, Ch. 223, L. 1919.

3929. Depositions. The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission, and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

History: En. Sec. 16, Ch. 223, L. 1919.

3930. Owner or occupant accountable for grain. The owner or occupant of every mill is accountable for the safe-keeping of all grain received in the mill for the purpose of being ground therein, and must deliver the same when ground, or ground and bolted, with the bags or sacks which were delivered in the mill with the grain, to the owner when called for. The bags or sacks must be distinctly marked with the initials or surname of the owner. But the owner or occupant of any mill must not be charged with or made accountable for the loss of any grain, bags, or sacks which may happen by robbery, fire, or other accident, without the fault or neglect of such owner or occupant, or his employee.

History: En. Sec. 2, p. 72, L. 1879; re-en. Sec. 1203, 5th Div. Rev. Stat. 1879; re-en. Sec. 2009, 5th Div. Comp. Stat. 1887; re-en. Sec. 3271, Pol. C. 1895; re-en. Sec. 2093, Rev. C. 1907.

3931. Penalty. If the owner or occupant, or his employee, takes a greater proportionate quantity of toll than authorized, he is guilty of larceny, and is punishable as provided in the Penal Code.

History: En. Sec. 3272, Pol. C. 1895; re-en. Sec. 2094, Rev. C. 1907.

3932. Right of entry upon premises. The commission, its agents, experts, or examiners, shall have the right, authority, and power to enter upon any premises occupied by any public mill coming within the provisions of this act, for the purpose of making the examination, investigation, and tests, from time to time, as the commission may deem necessary, and to set up and use on such premises any appurtenances and appliances, and occupy reasonable space therefor.

History: En. Sec. 17, Ch. 223, L. 1919.

3933. Schedule of rates, tolls, and charges. Every public mill coming within the provisions of this act shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, charges, and prices which are established, and which are in force at the time, for any service performed, or maximum charges or prices for its products.

History: En. Sec. 18, Ch. 223, L. 1919.

3934. Rules and regulations for investigations, etc.—Rules of procedure. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and regulate the mode and manner of all investigations

and hearings of such public mills coming within the provisions of this act. All hearings shall be open to the public.

History: En. Sec. 19, Ch. 223, L. 1919.

3935. Right to inquire into management of business. The commission shall have power and authority to inquire into the management of the business of all public mills coming within the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any such industry all necessary information to enable the commission to perform its duties.

History: En. Sec. 20, Ch. 223, L. 1919.

3936. Power to compel production of documentary evidence. The commission may require, by order or subpoena, to be served on any person or corporation coming within the provisions of this act, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such time and place as it may designate, of any documentary evidence, books, accounts, papers, or records kept by such person or corporation in any office or place within or without the state of Montana, or verified or certified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction.

History: En. Sec. 21, Ch. 223, L. 1919.

3937. Jurisdiction of district court to enforce obedience to process. Any district court of the state of Montana, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

History: En. Sec. 22, Ch. 223, L. 1919.

3938. Employment of accountant and other help. The commission is authorized to employ an accountant, at a salary of not to exceed three thousand dollars per annum, also examiners, experts, clerks, and accountants or other assistants, as it may be deemed necessary, at such rates of compensation as may be determined upon.

History: En. Sec. 23, Ch. 223, L. 1919.

3939. Investigation of complaints. Upon a complaint made against any such person or corporation by any mercantile, labor, or agricultural organization, society, or club, or by any person or persons, firm or firms, corporation or corporations, who are directly affected thereby, that any of the rates, tolls, charges, or schedule of maximum profits are in any way unreasonable or unjustly discriminatory, or that any regulations, measures, practices, or acts whatsoever, affecting or relating to the production, manufacture, or preparation or sale of such mill stuffs or grain products, are in any respect unreasonable or insufficient, or that any service in connection therewith is inadequate, the commission shall proceed, with or

without notice, to make such investigations as it may deem necessary and proper.

History: En. Sec. 24, Ch. 223, L. 1919.

3940. Notice of hearing—Rights of parties—Witness fees and mileage. The commission shall give such persons or corporations and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and such persons or corporations shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of documentary evidence, books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the district courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid, but no fees for mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 25, Ch. 223, L. 1919.

3941. Power of commission in disposing of complaints. If, upon such hearing and due investigations, the rates, tolls, charges, or profits shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential, or otherwise in violation of the provisions of this act, the commission shall have the power to fix an order substituting therefor such maximum rate or rates, tolls, charges, or schedule of profits as shall be just and reasonable.

History: En. Sec. 26, Ch. 223, L. 1919.

3942. Complaints by persons or corporations concerning their own products—Notice of hearing—Record of proceedings. Any person or corporation coming within the provisions of this act may make complaint as to any matter affecting its own product or service, with like effect as though made by any mercantile, agricultural, or labor organization, and the person or persons affected thereby. Notice of the hearing upon any such complaint shall be given to the persons interested in such matter as the commission may by rule prescribe. A full and complete record shall be kept of all proceedings before the commission, or its representatives, on any formal investigation, and all testimony shall be taken down by a stenographer appointed by the commission.

History: En. Sec. 27, Ch. 223, L. 1919.

3943. Proceedings for the enforcement of law. The commission shall inquire into any neglect or violation of the laws of this state, by any such persons or corporation coming within the provisions of this act, and doing business in the state of Montana, or by the officers, agents, or employees thereof, shall have the power and it shall be its duty to enforce the provisions of this act and report all violations thereof to the attorney-general. Upon the request of the commission, it shall be the duty of the attorney-general, or the prosecuting attorney of the proper county, to aid in any investigations, prosecutions, hearing, or trial had under the provi-

sions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

History: En. Sec. 28, Ch. 223, L. 1919.

3944. Recovery of penalties and forfeitures. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The attorney-general of the state of Montana shall be the counsel in any proceeding, investigation, hearing, or trial, prosecuted or defended by the commission, as also shall any county attorney selected by said commission in any county where such action is pending.

History: En. Sec. 29, Ch. 223, L. 1919.

3945. Penalty for violation of law or failure to comply with order. If any person or corporation coming within the provisions of this act shall violate any provisions of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any such person or corporation to place in operation any rate, toll, or profit, or do any act herein prohibited, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such person or corporation shall be subject to a fine of not less than one hundred dollars nor more than five thousand dollars.

History: En. Sec. 30, Ch. 223, L. 1919.

3946. Traveling expenses of commission. The commission and secretary and such clerks and experts as may be employed shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission.

History: En. Sec. 31, Ch. 223, L. 1919.

CHAPTER 262.

REGULATION OF IRRIGATION AND SALE OF WATER RIGHTS—MONTANA IRRIGATION COMMISSION.

Section 3947. Creation of Commission.
3948. Powers to Issue Permits for the Sale of Water or Water Rights, or Contract for the Delivery of Water.
3949. Fee for Issuance of Permit.
3950. Penalty for Sale of Water or Water Rights Without Permit.
3951. Exemptions Under This Act.
3952. Interpretation of Law.

3947. Creation of commission. There is hereby created the Montana irrigation commission to consist of three members whose duties it shall be to assist in the organization and management of irrigation districts in the state of Montana, and to supervise the sale of water and water rights, and the contracting of water for irrigation purposes, as hereinafter provided.

The board of railroad commissioners of the state of Montana shall be ex-officio the Montana irrigation commission hereby created, and for the purposes of this act shall be known and styled "Montana Irrigation Com-

mission." It shall provide itself with a seal bearing the foregoing words, by which its official acts shall be authenticated in all cases where a seal is required. The chairman of the board of railroad commissioners shall be president and the secretary of the board of railroad commissioners shall be secretary of the Montana irrigation commission, but the business of the Montana irrigation commission shall be kept entirely separate from that of the board of railroad commissioners. The attorney-general shall act as legal adviser of the Montana irrigation commission, and the state engineer shall make such preliminary investigation and render such engineering advice as may be required of him by the terms of this act.

No extra compensation shall be paid to any member or employee of the state board of railroad commissioners, or the state engineer or the attorney-general, by virtue of any duties imposed by this act.

History: En. Sec. 1, Ch. 13, Ex. L. 1919.

3948. **Powers to issue permits for the sale of water or water rights, or contract for the delivery of water.** The Montana irrigation commission shall supervise the sale of water and water rights, and contracts to deliver water for irrigation purposes upon which a charge for delivering water is made or reserved by any person, firm, association, or corporation, their lessees, receivers or trustees, that are engaged or propose to engage in the business of selling water or water rights, or of contracting for the furnishing and delivery of water for the irrigation of lands held or owned by others; or who are selling lands, together with a right to the use of water for their irrigation from a source or system of water supply, the control and operation of which is kept and retained by the seller of such lands or by any person, firm, association, or corporation other than the purchaser or purchasers of the said lands. Any person, firm, association, or corporation, their lessees, receivers or trustees, before so selling or offering for sale any water or water rights, or contracting or offering to contract for the delivery of any water for irrigation purposes of such lands, shall first obtain from the commission a permit for such sale or contract to deliver water.

In order to obtain such permit a petition in duplicate shall be filed with the secretary of the Montana irrigation commission, which petition shall set forth the number of acres and a description of the same for which it is desired to sell accompanying water or water rights, or to contract for the delivery of water; a full statement of the amount of water available for such land, full evidence of title to such water and water rights; a copy of the deeds, contracts, or other instruments to be used in the sale of or contract for such water; a full description of the system and its location to be used in the delivery of such water; and all other facts which will enable the commission to determine whether sufficient water is available and the system capable of furnishing the water to be used upon such land.

Upon presentation of such petition, the commission shall submit one copy thereof to the state engineer, who shall furnish an estimate of the expense which will be incurred in making an examination of the water supply and irrigation system of the petitioner.

The petitioner shall thereupon pay to the secretary of the commission

the amount of such expense, together with the cost of publishing the notice of such application hereinafter mentioned.

Upon deposit with the secretary of the commission of the total amount of such preliminary expense and advertising, the state engineer shall proceed with the examination of the water supply and irrigation system in question, and shall submit his report to the commission.

The secretary of the commission shall cause to be published, once a week for two consecutive weeks, in a newspaper of general circulation, printed and published in the county within which said irrigation system, or the larger portion thereof is located, a notice of the filing of such petition, and stating the time within which any protest or objections to the granting of such permit would be received. In case any protests or objections are filed, a hearing may be had by the commission under such rules and regulations as it may prescribe.

Upon receipt of the report of the state engineer, and after a hearing by the commission, in case such hearing is had, if it is found by the commission that sufficient water is available for the land covered by the petition, and if sold or contracted for in sufficient amount, and in a manner so that crops can be profitably raised on the land to be served, and such proposed deeds, contracts, or other instruments to be used in the sale of or contract for such water or water rights are fair and equitable as to all parties concerned, said petition shall be granted and the commission shall make and enter an order to that effect.

If it is found by the commission that water is available for only part of the land covered by the petition, the commission may issue a permit covering a smaller acreage.

If it is found by the commission that the water supply is insufficient, or the system incapable of delivering water to the land covered by the petition, or that the water is to be furnished in insufficient amount, or in a manner so that crops cannot be profitably raised on the land to be served, or that such proposed deeds, contracts, or other instruments to be used in the sale of or contract for such water or water rights are not fair and equitable as to all parties concerned, the commission shall dismiss the petition, and shall make and enter an order to that effect. In passing upon such deeds, contracts, or other instruments, the commission shall consult with the attorney-general.

If the petition is granted, the commission shall issue to the petitioner a permit, which shall be signed by the president and the secretary of the commission, and shall contain a statement of the number of acres and a description of the land for which water or water rights may be sold, or water for irrigation contracted for, together with the minimum amount of water which shall be furnished to each acre thereof.

History: En. Sec. 2, Ch. 13, Ex. L. 1919.

3949. Fee for issuance of permit. There is hereby created the Montana irrigation fund. Upon the issuance of the permit, provided for in the preceding section, the petitioner shall pay to the secretary of the commission a fee of ten cents per acre for each acre covered in said permit. All moneys received for the issuance of such permits, and those deposited to cover the expenses of the state engineer, shall be deposited by the sec-

retary of the commission with the state treasurer, and by him credited to the Montana irrigation fund. All expenses of the Montana irrigation commission, or of the state engineer, in making investigation pertaining to the issuance of such permits, or incurred in making investigations for the purpose of determining whether terms of such permits are being complied with, shall be paid by warrants drawn upon the said Montana irrigation fund.

History: En. Sec. 3, Ch. 13, Ex. L. 1919.

3950. Penalty for sale of water or water rights without permit. Any person, firm, or corporation coming under the provisions of this act, including any officer, agent, or employee of any firm or corporation, their lessees, receivers, or trustees, selling or offering for sale any water or water rights, or contracting or offering to contract to deliver water for irrigation purposes without first obtaining a permit, as provided in this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 13, Ex. L. 1919.

3951. Exemptions under this act. Nothing in this act shall be construed as applying to any irrigation project, system, or lands being reclaimed under the act of congress of the United States known as the Carey act, so long as the federal government or the Carey land act board of the state of Montana shall by law retain supervision over such project, system, or lands. Any corporation or association whose stockholders or members are farmers, and who, after supplying their own needs, shall sell from year to year any surplus water available, shall not be subject to the provisions of this act.

History: En. Sec. 5, Ch. 13, Ex. L. 1919.

3952. Interpretation of law. Nothing contained in the provisions of this act shall be construed as conferring upon the Montana irrigation commission the authority to make any order which would abrogate or change the provisions of any existing contracts made and entered into for the furnishing of water for the purposes of irrigation.

History: En. Sec. 6, Ch. 13, Ex. L. 1919.

CHAPTER 263.

ORGANIZATION AND CONTROL OF IRRIGATION DISTRICTS BY PUBLIC SERVICE COMMISSION.

Section 3953. Public Service Commission to Supervise Irrigation Districts.
3954. Duties of Commission Concerning Organization and Management of Districts.
3955. Duties of Commission re Irrigation of Arid Land.
3956. Procedure for Organizing Irrigation District—Petition—Map—Bond—Examination and Report.
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3958. Hearing of Petition—Adjournment—Amendment—Order of Court.
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3953. Public service commission to supervise irrigation districts. The duties of the public service commission of Montana are hereby enlarged to include the organization and management of irrigation districts hereafter created in the state of Montana, as hereinafter provided. The word "commission," as used in the following sections, shall be understood to refer to and mean the public service commission of Montana.

History: En. Sec. 1, Ch. 153, L. 1921.

Note.—For earlier acts, see chapter 14, Extra Laws of 1919.

For a general discussion of irrigation matters, see 15 R. C. L. 442.

Irrigation company as a public utility, see note in 8 A. L. R. 268.

Right of eminent domain for irrigation purposes, see note in 102 A. S. R. 831.

3954. Duties of commission concerning organization and management of districts. It shall be the duty of the commission to encourage, aid and assist in the organization and management of irrigation districts in the state of Montana, wherever feasible; to employ under the direction of its chief engineer the necessary engineers for the purpose of making examinations and necessary surveys as to available water supplies and feasible areas to be benefited by irrigation, and to do all things necessary for the full development of the irrigation of lands within the state of Montana. The commission shall cause to be made by the chief engineer the necessary preliminary examinations for the organization of irrigation districts, in accordance with the terms of this act. It shall approve all contracts for the original construction of all works or for the acquisition of works, constructed or partly constructed for irrigation districts under its supervision; provided, however, that the provisions of this act shall not apply to irrigation districts co-operating with the reclamation service of the United States government. It shall assist with the issuance and sale of all bonds hereafter issued by irrigation districts under its supervision, and supervise the letting of contracts and the disbursements of moneys by such districts in the manner hereafter provided. It shall have the power to appropriate water and water rights for any irrigation district and may exercise the power of eminent domain for the purpose of acquiring any property or rights, except water rights for the district. It shall exercise the supervisory and advisory powers hereinafter specified, and co-operate with the boards of directors of irrigation districts for the successful irrigation of the lands within such district.

History: En. Sec. 2, Ch. 153, L. 1921.

3955. Duties of commission re irrigation of arid land. It shall be the duty of the commission to encourage and assist in the irrigation of the arid lands in the state of Montana, and for this purpose it shall obtain all possible data pertaining to water resources and to the irrigability of arid lands in the state and shall co-operate with the boards of county commissioners, county agricultural agents, or any other agency for the purpose of collecting data and encouraging the organization of irrigation districts. The commission is authorized to aid in every manner possible districts which are organized, or are organizing, for the purpose of seeking financial assistance from the United States government to the end that such assistance may be obtained with the least possible delay and in the

amounts and under the conditions assuring the successful irrigation of the lands of the district.

History: En. Sec. 3, Ch. 153, L. 1921.

3956. Procedure for organizing irrigation district—Petition—Map—Bond—Examination and report. For the purpose of establishing and organizing an irrigation district hereunder, a petition in duplicate, signed by a majority in number of the holders of title, or evidence of title to lands susceptible of irrigation from the same general source, and by the same general system of works, such holders of title or evidence of title also representing a majority in acreage of said lands shall be filed with the clerk of the district court of the county in which the lands of the proposed district, or the greater portion thereof, are situate, accompanied by written instructions that one of the copies of the petition shall be forwarded to the secretary of the public service commission of Montana; provided that if there are three or more counties embraced in the proposed district, and no one county embraces fifty per cent. or more of said lands, then and in that event shall be filed in the county which embraces a greater portion of said lands than either one of the other two counties embraced in said proposed district. The county assessment-roll or rolls for the year last preceding or the certificate of the county clerk and recorder or the certificate of the register of the state land office shall be sufficient evidence of title for the purpose of this act. Such petition shall set forth: (1) The name suggested for the proposed district; (2) A general description of the lands to be included in the proposed district; (3) The names of the holders of title or evidence of title to the lands in the proposed district ascertained in the manner hereinbefore mentioned; and if any holder is a non-resident of the county or counties in which the proposed district lies, the postoffice address of such non-resident owner, if known; (4) Generally the source from which the land in the proposed district is to be irrigated, the character of the works, water-rights, canals and other property proposed to be acquired or constructed for irrigation purposes in the proposed district; (5) A statement that signers will pay any and all expenses incurred and any tax or taxes that may be levied against their lands for the purpose of paying the expense of organizing or attempting to organize the proposed district, retiring any bonds that may be issued and the interest thereon; (6) A prayer that the lands embraced within the proposed district be organized as an irrigation district according to the provisions of this act.

The petition shall be accompanied with (1) a map or plat of the proposed district, and (2) a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is filed, equal in amount to the probable cost of organizing such district, to be filed under the provisions of this act, to pay all costs in and about the proceeding preliminary to the organization of the district in the event that said organization shall not be effected.

Mere error or omission in the description of any land or in the names of any of the holders of title or evidence of title to lands, shall not operate to render invalid any proceedings hereunder or to deprive either the district court or the commission of jurisdiction in the subject-matter;

provided, such misdescribed lands or misnamed persons shall not be included in said district.

It shall be the duty of the clerk of the district court in which such petition is filed to forward one copy of the petition, properly certified by him, to the secretary of public service commission, who shall refer the same to its chief engineer, who shall advise the commission of the estimated amount of his expenses in making a preliminary examination of the lands to be included in the proposed district and the source from which the lands are to be irrigated. The secretary of the commission shall thereupon advise the party or parties filing the petition for the proposed irrigation district, of the amount of the preliminary expenses of the engineer, which amount shall forthwith be paid to the secretary of the commission and by him turned over to the state treasurer to be credited to the Montana irrigation fund, hereby created. Upon payment of such amount to the secretary of the commission, the engineer shall make a preliminary examination of the lands to be included in the proposed irrigation district, and the source from which the lands are to be irrigated, and shall make a report to the commission as to the feasibility and advisability of the creation of such proposed district. The expenses of the engineer (not including his salary, but including the salaries of the necessary assistants) shall be paid out of the funds so deposited with the secretary of the commission and any surplus over and above said expenses shall be returned to the petitioners by a warrant drawn on the Montana irrigation fund. Upon the report of the engineer being filed with the commission, showing an estimate of the amount of water available for irrigating the lands to be served thereby, the number of acres that can be irrigated by such water and the approximate cost per acre and annual maintenance cost, the commission shall thereupon make a recommendation as to whether or not the estimated cost of the construction or acquisition of the irrigation works will be disproportionate to the benefits to be derived therefrom. The secretary of the commission shall thereupon transmit to the clerk of the district court in which the original petition was filed, a certified copy of such estimate and recommendations, under the seal of the commission. The district court shall examine and consider the estimate and recommendation of the commission before establishing any irrigation district, such estimate and recommendation being hereby made competent and relevant testimony. The petitioners shall have the right to subpoena and cross-examine any member of the commission or its engineers at the initial and all subsequent hearings pertaining to the district; provided, however, that the provisions of this act shall not apply to any irrigation district organized for the purpose of co-operating with the reclamation service of the United States government.

History: En. Sec. 4, Ch. 153, L. 1921.

3957. Notice of hearing on petition. After the receipt of the estimate and the recommendations of the commission, the district court or judge thereof shall make an order fixing the time and place of hearing on the petition and directing that notice thereof be given. Thereupon the clerk of said court shall cause to be published, at least once a week for two successive calendar weeks in some newspaper published in the county where the said petition is filed a copy of such petition, together with a notice,

stating the time and place by the said district court fixed, when and where the hearing on said petition will be had, and if any portion of the lands within the proposed district lies within any other county or counties, then the said petition and notice shall be published as above provided in a newspaper published in each such other county. If there be no newspaper published in such county said petition and notice may be published in a newspaper published in an adjoining county. The first publication of said petition and notice shall not be less than thirty days prior to the time mentioned in said notice for said hearing.

In addition to such publication, the clerk of said court shall, within three days after the first publication aforesaid, mail a copy of said petition and notice to each such land owner whose postoffice address is stated in said petition.

The certificate of the clerk of the district court, under seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts.

History: En. Sec. 5, Ch. 153, L. 1921.

3958. Hearing of petition—Adjournment—Amendment—Order of court. At the time specified in the notice mentioned in the preceding section, the district court in which the petition aforesaid is filed shall hear the petition, but may adjourn such hearing from time to time, not exceeding three weeks in all, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners, or any person or persons interested, shall permit the petition to be amended, and may order further or additional notice to be given. Upon such hearing all persons interested whose lands or rights may be damaged, benefited or affected by the organization of the district or the irrigation works or improvements therein, or to be acquired or constructed as hereinafter set forth, may appear and contest the necessity or utility of the proposed district, or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto.

It shall be the duty of the court to hear and determine whether the requirements of the two preceding sections have been complied with and for that purpose shall hear all competent and relevant testimony that may be offered.

The court may make such changes in the proposed district as may be deemed advisable, or as fact, right, and justice may require; but shall not exclude from such proposed district, if approved by the commission, any land which is susceptible of irrigation from the same general source and by the same general system of works applicable to the other lands of such proposed district if the owner or owners of such lands shall file in such district court a written request that such lands be included in such district; nor shall any lands which will not in the judgment of the court be benefited by irrigation by means of said system of works, nor shall lands already under irrigation, nor lands having water rights appurtenant thereto, nor lands that can be irrigated from sources more feasible than the district system, be included within such proposed district, unless the owner of such lands shall consent in writing to the inclusion of such lands in the proposed district, as hereinafter provided, and to this end the court may

subdivide lands included within the petition or proposed at the hearing to be included within such district into forty-acre tracts or smaller subdivisions thereof as near as may be; provided, however, that where a district is formed to co-operate with the United States, lands previously irrigated and having water-rights appurtenant thereto, may be included within the district boundaries if it shall appear to the court that the same will be benefited thereby; and, provided further, that all lands having water-rights appurtenant thereto which are served by a system of irrigation works supplying more than ten thousand acres of land, may, in the discretion of the court, be included in the proposed district on petition of at least a majority both in number and acreage of the holders of title or evidence of title to the land having water rights appurtenant thereto and served by the same system of irrigation works. Lands of the district need not be contiguous, and any particular tract or tracts, irrespective of their location in the district, may be excluded.

If, in the final hearing, it is found by the court that the petition does not substantially comply with the aforesaid requirements of this act, or that the facts therein stated are not sustained by the evidence, then the court shall dismiss the petition at the cost of the petitioners, and shall make and enter an order to that effect; but if it is found that said petition substantially complies with said requirements and that the facts therein stated are sustained by the evidence, then the court shall make and enter an order: (1) Setting forth said finding and allowing said petition; (2) Establishing the proposed district; (3) Giving descriptions of the lands included within the proposed district sufficient to identify the same; (4) Dividing the proposed district into three (3), five (5) or seven (7) divisions, approximately equal in area and number of holders of titles; (5) Appointing as director one competent person for each division of the district having the qualifications as provided by the next section of this code.

Such finding and order shall be conclusive upon all the owners of lands within the district that they have assented to and accepted the provisions of this act; and shall be final unless appealed from to the supreme court within sixty days from the day of entry of such order. A copy of such order duly certified to by the clerk of said court shall be transmitted to the secretary of the public service commission, and one copy duly certified shall be filed for record, within thirty days after such order is made and entered with the county clerk and recorder of each county wherein the lands included within such district are situated.

Every irrigation district so established hereunder is hereby declared to be a public corporation for the promotion of the public welfare, and the lands included therein shall constitute all the taxable and assessable property of such district for the purposes of this act.

History: En. Sec. 6, Ch. 153, L. 1921.

3959. Directors—Qualifications—Term of office and bond. No person shall be qualified to hold the position of director unless he be an owner of land within the district, and shall be a resident of the county in which the division of the district, or some portion thereof, for which such director is elected, is situated.

The directors appointed as aforesaid shall hold their respective offices

until the third Saturday in April following their appointment and until their respective successors are elected and qualified as and in the manner hereinafter provided. Each of such directors shall give a bond in the sum of two thousand dollars, conditioned upon the faithful performance of his duties, to be made payable to the state for the benefit of the district; which bond shall be approved by the district court or judge thereof and filed in the office of the clerk of said court; provided, that in case any district organized under this title is appointed fiscal agent of the United States each director shall execute a further and additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal agent of the United States under such appointment or authorization, and any such bond may be sued upon by the United States or any person injured by the failure of such director or the district to fully, promptly, and completely perform their respective duties.

History: En. Sec. 7, Ch. 153, L. 1921.

3960. Meeting of directors—Election secretary—Office. The directors shall meet within ten days after their appointment by the court, and shall organize as a board by the election of one of their number as president, to serve at the pleasure of the board; they shall also elect a secretary (who may or may not be a director). The compensation of the secretary and all other employees authorized under this act shall be fixed by the board.

The board shall also at this meeting designate the place in the district where the office of the board shall be established and maintained and its records kept, which place shall be in the county containing the major portion of the lands of the district; and such place shall not be changed except by resolution of the board, of which notice shall be given by at least one publication in some newspaper published, or of general circulation, in the county wherein the office of the district is located, and by posting in at least three public places in each division.

History: En. Sec. 8, Ch. 153, L. 1921.

3961. Record of proceedings—Meetings and quorum. All meetings of the board of directors shall be public and a complete record of all proceedings shall be kept by the secretary.

Regular meetings of the board shall be held at such times as the board may by rule or by-laws prescribe; and special meetings may be called on twenty-four hours' notice by the president or any two members of the board, or in such other manner and upon such other notice as the board may by rule or by-laws prescribe. All meetings of the board may be adjourned as the board shall order or direct. A majority of the directors shall constitute a quorum for any and all lawful purposes.

History: En. Sec. 9, Ch. 153, L. 1921.

3962. Compensation of directors—Interest in contracts forbidden. The directors when sitting as a board, or when engaged in the business of the district, shall each receive not to exceed five dollars per day and their actual and necessary expenses including premium or bond. No directors,

district engineer, member of the public service commission, or employee, thereof, or any other officer named in this act shall in any manner be interested directly or indirectly in any contract, awarded or to be awarded or in the sale of any material to be used by the board, or in the profits to be derived therefrom; and for any violation of this provision such officer shall be guilty of a misdemeanor and his conviction thereof shall work a forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 153, L. 1921.

3963. District engineer — Employment — Contract — Duties. Within thirty days after organizing, the board of directors shall appoint a competent civil engineer, as district engineer who has had construction experience in irrigation work. He may be an individual, co-partnership or corporation. Prior to his appointment, the directors shall draw up a contract with said engineer setting forth all the terms and conditions relating to his duties and compensation to be paid for such services; such contract to be submitted in duplicate to the commission for approval, prior to making the appointment. The district engineer thereafter shall have control of the engineering work of the district under the direction of the chief engineer of the commission; he shall make all surveys and examinations, prepare all plans and specifications for the construction of any or all irrigation or drainage works constructed or partly constructed and shall be superintendent of the construction, and no payments shall be made to contractors unless the bills for work done and materials furnished shall be approved by the district engineer.

No engineer-in-chief shall be employed by the board of directors of any irrigation district under the supervision of the commission, either in a consulting capacity or for the purpose of carrying out any engineering work, unless his appointment, and contract fixing the rate of compensation for his services and the terms of his employment, have first been approved by the commission for the particular work for which the board of directors wish to employ him.

History: En. Sec. 11, Ch. 153, L. 1921.

3964. Powers of board of directors—Approval of contracts—Appropriation of water—Plans. The board of directors of every irrigation district established and organized under and by virtue of this act shall constitute the corporate authority of said district. They shall have the power to sue and may be sued in the courts of the state and of the United States, and it shall be their duty to manage and conduct the business and affairs of the district; adopt a corporate seal therefor; make and execute all necessary contracts; employ and appoint such agents, officers, employees as may be required, and prescribe their duties. All contracts for the purchase of irrigation and drainage works already constructed, and all contracts for the construction of irrigation and drainage works for districts under the supervision of the commission, where the amount to be paid under such contract is in excess of two thousand five hundred dollars shall be approved by the commission before any warrants upon the funds of the

district shall be drawn by the board of directors. No expenditures in excess of two thousand five hundred dollars for any single piece of work shall be incurred by the board of directors without such expenditure being first approved by the public service commission. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works and the line for any canal or canals, and the necessary branches for the same on any lands which in the judgment of the board may be deemed best suited for such location. Said board shall have power and authority to appropriate water in the name of the district, and to acquire by purchase water and water rights, and to acquire by purchase, condemnation, or other legal means, lands for right of way, lands for reservoirs for the storage of needful waters, lands for dam-sites, and such other lands as may be necessary for the construction, use, maintenance, repairs and improvement of such system of works, and also to acquire by purchase canals and works already completed or in the course of construction, and to contract with the owner or owners of such canals and works so purchased and in course of construction for the completion thereof, subject to the approval of the commission in each instance where the contract or purchase price exceeds the sum of twenty-five hundred dollars as hereinbefore provided. The board may contract with the United States for a water supply under any act of congress providing for or permitting such contract, and in case contract has been made or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at not less than ninety per cent. of their par value, to the amount to be paid by the district to the United States under any such contract, if approved by the commission, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment as hereinafter provided for an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept on behalf of the district, appointment of the district as fiscal agent by the United States, or authorization of the district by the United States to make collection of moneys for or on behalf of the United States, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto, said board shall also construct and maintain the necessary dams, reservoirs and works for the collection and distribution of water for the district and do any and every lawful act necessary to be done in order that sufficient water may be furnished to each land owner in the district for irrigation purposes. The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of the district to and for the uses and purposes herein expressed and to institute and maintain any and all

actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act, or acquired in pursuance thereof and in all courts, suits or proceedings, the said board may sue, appear and defend in person or by attorneys, and in the name of such irrigation district. The said board may adopt rules and by-laws governing the calling and holding of meetings of the board, the manner of transacting business thereat, and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or adopt by-laws, rules and regulations for the apoprtionment and distribution of water to the lands of the district, and for the protection and preservation of the works and other property of the district, which shall be printed in convenient form for distribution in the district. Said board shall have power generally to do and perform all such acts as shall seem necessary or appropriate to fully carry out the purposes of this act. All orders and resolutions shall be passed or adopted by a majority of directors by a yea and nay vote, to be entered upon the records of the board. For the purpose of purchasing or constructing necessary irrigation canals or works or acquiring the necessary property and rights therefor and otherwise carrying out the provisions of this act, the board of directors of any such irrigation district must as soon after such district has been organized, as practicable, formulate a general plan for such purchase, construction, and acquisition of such property, and shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plan, the amount of land that can be irrigated thereunder, and furnish the proper basis for an estimate of the cost of carrying out such plan and the value of any canal, works, property, or system of irrigation proposed to be purchased. All such surveys, examinations, maps, plats and estimates shall be made by or under the direction and supervision of the district engineer provided for in the preceding section, under the general direction of the chief engineer of the commission, and all such necessary surveys, examinations, maps, plans, and estimates must be certified to by him. When all such plans are completed, he shall submit them with all proper field notes to and file them with the board of directors, accompanied by his report and recommendation thereon. This report shall be submitted in duplicate and include a discussion of said plans by him submitted to said board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, of the probability of its being acquired or constructed within the estimate of the cost stated, and such general discussion and recommendations in regard to the engineering and financial features of the whole matter as in the judgment of such engineer shall be desirable for the information of the people of the district, the board of directors and the commission. Such report shall be accompanied by a map when such is necessary for a proper explanation or understanding of the same. Upon receiving such report said board of directors shall forward a true copy thereof, including plans, maps, and estimates to the secretary of the commission.

History: En. Sec. 12, Ch. 153, L. 1921.

3965. Plan of reclamation—Final report of commission. It shall be the duty of the commission to assist and co-operate with the board of directors in the proceedings for the confirmation of any bond issue. Upon receipt of the copy of the district engineer's report, plans, estimates and maps, the commission shall thereupon cause to be made by its own engineers such additional surveys and field investigations as may be necessary and approve or disapprove of all or any portion of such proposed plans, estimates and specifications, and shall have the authority to order such changes or alterations in such plans, estimates and specifications as may in its judgment be necessary; when the plans are complete to the satisfaction of the commission and are formally adopted, they shall thereafter be known as "the plan of reclamation," a copy so certified shall be forwarded to the clerk of the board and no change of major importance shall thereafter be made without an express order from the commission in each case. The commission shall submit a final report in writing upon such matters as it may deem essential and particularly upon the following points:

1. The sufficiency of the water supply available for the project and the right of the district to so much of the water as may be needed.

2. The nature of the soil as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage.

3. The feasibility of the proposed irrigation or storage system and of the specific project for which the bonds under consideration are desired or have been used, whether such system and project be constructed, projected or partially completed.

4. The reasonable market value of the water, water rights, canals, reservoirs, reservoir sites or other irrigation works owned by such district or to be acquired or constructed by it with the proceeds of such bonds.

5. The reasonable market value of the land included within the boundaries of the district, both before and after the proposed irrigation plans have been completed.

6. A discussion of the crops and value thereof as related to the estimated annual assesments for all purposes than may be levied against the district.

7. Its conclusions, findings, and recommendations as to the entire feasibility of the district and a result of all investigations and advisability of carrying out the plans as adopted.

The commission is authorized to call upon and it is hereby made the duty of the state engineer to make an investigation and report as to the available water supply and the right of the district to use the water as proposed, said report, or true copy thereof to be included in the report of the commission as outlined in paragraph (1) above.

The final report of the commission shall be filed with the clerk of the district court in which the petition was originally filed, and one copy shall be sent to the secretary of the district board. Such report from the public service commission shall be signed by the chairman and the secretary of the commission and have affixed thereto the seal of the commission, and shall be considered by the district court as competent and relevant testi-

mony in subsequent hearings upon the confirmation of bond proceedings. The order of confirmation shall not be made until such report shall have been filed with the clerk and considered by the court.

History: En. Sec. 13, Ch. 153, L. 1921.

3966. Issuance of bonds—Procedure—Resolution. For the purpose of providing the funds for constructing the necessary irrigation canals and works, and acquiring the necessary property and rights therefor, and meeting the expenses incident thereto and for the purpose of acquiring by purchase or otherwise, water rights, canals, and irrigation works constructed or partially constructed, and for the purpose of otherwise carrying out the provisions of this act, the board of directors of any district organized hereunder may issue negotiable coupon bonds of the district as and in the manner hereinafter provided. No bonds shall be issued by or on behalf of any irrigation district organized hereunder, except upon petition signed by at least a majority in number and acreage of the holders of title or evidence of title to the lands included within said district. Such petition shall be addressed to the board of directors, shall set forth the aggregate amount of bonds to be issued, and the purpose or purposes thereof; shall have attached thereto an affidavit verifying the signatures; and shall be filed with the secretary of the board of directors. Upon the filing of such petition the board of directors shall by appropriate resolution authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the petitions; fix the numbers, denominations, and maturity or maturities of said bonds; specify the rate of interest thereon; designate the place of payment of said bonds and interest coupons; prescribe the forms of said bonds and interest coupons to be attached thereto; and provide for the levy of a special tax or assessment as in this act provided on all the lands in the district for the irrigation and benefit of which said district was organized and said bonds are issued, or said contract is to be made, sufficient in amount to pay the interest on and principal of said bonds when due. Such resolution shall provide for the confirmation proceedings in the district court as provided in the next section.

History: En. Sec. 14, Ch. 153, L. 1921.

3967. Procedure to determine validity bond issue—Order of court. Within ten days after the adoption of the resolution mentioned in the preceding section, the board of directors shall file a petition in the district court of the judicial district wherein is located the office of said board, to determine the validity of the proceedings had relative to the issuance of said bonds and to the levy of said special tax or assessment.

Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by notice given as hereinafter provided. Such petition shall set forth (1) generally, the establishment and organization of the district; (2) a certified copy of the petition mentioned in the preceding section; (3) a certified copy of the resolution mentioned in the preceding section; (4) the certificate of the public service commission as mentioned in section 3965 of this code; (5) a prayer for the confirmation of the proceedings of the board stated in the petition, and for the confirmation of the bond issue and the special tax or assessment

levied to pay the bonds and interest thereon. Upon the filing of said petition in the district court, the court or judge thereof shall fix the time for the hearing of said petition, which shall not be less than fifteen days from the date of filing the petition in said court, and shall order the clerk of the court to give notice of the filing of said petition and the date of the hearing thereon by publication at least once a week for two calendar weeks in a newspaper published or of general circulation in the county where the office of the board of directors of the district is situated, and also by posting a written or printed copy of such notice in at least three public places in each division of the district, the first of such publications and posting to be not less than fifteen days prior to the date fixed for said hearing.

Said notice shall state the substance of the petition and the time and place fixed for the hearing thereon, and that any person interested in or whose rights may be affected by the issuance or sale of said bonds, or the levy of said special tax or assessment in the proceedings had or to be had by the said board of directors with respect to said matters, may on or before the day fixed for the hearing of said petition, demur to or answer said petition, and may appear at said hearing and contest the granting of the prayer of said petition and the entry of any order or confirmation pursuant thereto.

Any person interested in or whose rights may be affected by the issuance or sale of said bonds, or the levy of said special tax or assessment, or the proceedings had or to be had by the board of directors of the district in connection with said matters and the entry of any order of confirmation pursuant thereto may enter his appearance in such proceedings and demur to or answer said petition and contest the granting of the prayer of said petition.

The provision of the Code of Civil Procedure respecting the demurrer or answer to a verified complaint shall be applicable to a demurrer or answer to said petition. The person so demurring to or answering said petition shall be the defendants in the proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall be taken as true and every holder of title or evidence of title to lands included in the district failing to answer or demur to the petition shall be deemed to admit as true all the material statements thereof. The procedure in such action shall be determined by the Code of Civil Procedure.

Upon the hearing the district court shall find and determine whether the provisions and requirements of the preceding section have been complied with, and whether notice of the filing of the petition in the district court, and of the time and place of the hearing thereon has been duly given for the time and in the manner herein prescribed, and shall have power and jurisdiction to examine and determine the regularity, legality and validity of the proceedings had preliminary and relative to the issuance of the bonds and the levy of the special tax or assessment in the petition mentioned, and the legality and validity of said bonds and special tax or assessment, and any and all actions taken by the board of directors in connection with said matters, and shall hear all objections filed to said proceedings, or any part thereof, or to the issuance of said bonds or

the levy of the said special tax or assessment or any portion thereof. The court in inquiring into the regularity, legality and validity of said proceedings, shall disregard any error, omission, or other irregularity which does not affect the substantial rights of the parties to said proceedings. The court may ratify, approve and confirm said proceedings in whole or in part, and may ratify, approve, and confirm said bonds and special tax or assessment, and enter its judgment or decree accordingly. From any such judgment or decree an appeal may be taken to the supreme court at any time within thirty days from the entry of such judgment or decree. Such appeal shall be taken, perfected, and heard in the manner prescribed by the Code of Civil Procedure covering appeals from the district courts to the supreme court and shall be heard by the supreme court as soon as convenient. If no such appeal be taken within the time aforesaid, or if taken and the judgment or decree of the district court be affirmed by the supreme court, such judgment or decree shall be forever conclusive upon all the world as to the validity of said bonds and said special tax or assessment and the same shall never be called into question in any court in the state. The costs of said proceedings shall be allowed or apportioned between the parties in the discretion of the court.

History: En. Sec. 15, Ch. 153, L. 1921.

3968. Bonds—Form and terms—Legal investments. The bonds shall be numbered consecutively, commencing with number one and following in numerical order. They shall mature serially in annual amounts so as to be approximately equal, principal and interest, in not less than ten years nor more than forty years after the date of issue, as the board of directors may determine. They shall be negotiable in form and payable in gold coin of the United States of the present standard weight and fineness, or in its equivalent; provided, however, that bonds shall be issued so as to include a sum sufficient to pay the first three years' interest to accrue on said bonds.

The bonds shall bear interest at the rate of not to exceed six per centum per annum, payable semi-annually on the first days of January and July of each year, and the principal and interest shall be payable at the office of the county treasurer of the county in which the office of the district board is located. Said bonds shall be each of the denomination of not less than one hundred dollars nor more than one thousand dollars, shall be signed by the president and secretary of the board of directors of the district, and the seal of the district shall be affixed thereto. The interest to become due on each bond shall be evidenced by interest coupons attached to such bond, which interest coupons shall bear the engraved facsimile signatures of the president and secretary of the board of directors of the district. Said bonds shall be registered in the office of the treasurer of the county in which the office of the board of directors of the district is situated, and in the office of the public service commission of Montana, in books kept in their respective offices for that purpose, and therein must be stated the number, date, amount of bond, time and place of payment, rate of interest, number of coupons attached and any other description proper for future identification of each bond, and such commission shall indorse on each such bond a certificate substantially in the following form:

We, ..., and ....., and ....., being and constituting the public service commission of Montana do hereby certify that the within bond No....., of the..... irrigation district, issue ..... (first date) ..... is in accordance with an act of the legislature of Montana, approved ..... (insert date) .....a legal investment for trust funds, the funds of insurance companies, banks, both commercial and savings trust companies, bonding companies, permanent school funds of the state of Montana, and any funds which may be legally invested in county, municipal or school district bonds, and it may be deposited as security for the faithful performance of any contract or act whenever the bonds of any county, city or school district may be so deposited, it being entitled to such privilege by virtue of an examination of said district by the public service commission of Montana in pursuance of said act. The within bond may also be used as security for the deposit of public money in the banks of said state.

Attest:

Official

.....

Secretary

(Seal)

.....

.....

.....

Being and constituting the Public Service Commission of Montana.

All bonds certified in accordance with the terms of this act shall be legal investments for all trust funds, and the funds of all insurance companies, banks, both commercial and savings, trust companies in the state of Montana, state permanent common schol funds and other permanent state educational, charitable and penal institution funds of the state of Montana; and whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, counties, school districts or municipalities in the state of Montana, such money or funds may be invested in said bonds of irrigation districts organized under, or subject to the provisions of this act, and whenever bonds of cities, counties, school districts, or municipalities may, by any law or hereafter enacted, be used as security for the performance of any act, said bonds of irrigation districts under the limitations of this act provided may be so used.

History: En. Sec. 16, Ch. 153, L. 1921.

3969. Delivery of bonds to contractor in lieu of sale—Sale of bonds. The board may, with the consent and approval of the commission, elect not to sell such bonds but to deliver the same to the person, persons or corporation contracting to construct the works in payment thereof, and the board may provide in the contract therefor that the bonds shall be delivered to such contractor as the work progresses, or upon the completion thereof, provided, however, that no bonds shall be delivered to such contractor in excess of the amount of work actually done at the time of delivery, nor shall the total amount issued and delivered to such contractor be in excess of the amount due such contractor upon the completion of his contract, and no bonds shall be delivered or received in payment at a less value than eighty-five per cent. of the face value thereof.

If the board elects to sell the bonds which have been authorized by the confirmation order of the court, the board may sell the same from

time to time, and in such quantities as may be necessary and most advantageous, and it shall be the duty of the commission to assist in the sale of the bonds of the district, by advertising in newspapers or periodicals or in any other manner they see fit. Before making any sale the board shall, at a meeting, by resolution, declare its intention to sell a specified amount of bonds and the day and hour and place of such sale, and shall cause such resolution to be entered on the minutes and one copy to be forwarded to the secretary of the commission, and notice of sale to be given by publication thereof at least thirty days in three newspapers published in the state, one of which shall be a newspaper published in the county in which the office of the board of directors is situated, if there be a newspaper published in said county, and in any other newspaper, at their discretion; the notice shall state that sealed proposals will be received by the board at their office for the purchase of the bonds till the day and hour named in the resolution. At the time appointed, the board shall open the proposals and either accept the most favorable bid received from responsible parties, or may reject any and all bids; and after offering said bonds for sale, as above provided, if no satisfactory bid is received, may use said bonds for any purpose for which the proceeds from the sale of bonds may be used, but such board shall in no event sell or dispose of any of said bonds for less than eighty-five per cent. of the face value thereof, provided that each sale of bonds at less than par value must be approved by the commission and nothing in this act shall prohibit said district from providing for the irrigation or drainage, or either, of units or portions of said district from time to time; provided, further, that the board may, by resolution duly entered on its records cancel any bonds which may have been voted or issued which have not been sold, disposed of, or deposited as security for funds advanced or to be advanced and against which the state, United States, or any other person, firm or corporation shall have no claim to or equity in, and after the cancellation of said bonds the same shall not be sold or otherwise disposed of and shall be invalid and of no effect.

History: En. Sec. 17, Ch. 153, L. 1921.

3970. Payment of bonds—Liability of property—Lien. Said bonds and the interest thereon due or to become due to the United States under any contract between the district and the United States, and all bonds and obligations for the payment of money authorized and incurred under this act, shall be paid by the revenue derived from the annual assessments upon the land in the district, and all the lands in the district shall be and remain liable to be assessed for such payments as herein provided, subject to the provisions of this act.

In addition to the provision for the payment of said bonds and interest by taxation and other provisions of this act, all the property of the district, including irrigation and other works, shall be liable for the indebtedness of the district, and the holder or holders of the bonds of the United States, in case contract has been executed by the United States, may in case of default in the payment of interest or principal on the bonds, or the amount due on the contract, upon the order of the court, take possession of the irrigation and other works of the district and operate the same until the amount in default shall have been fully paid.

All bonds issued hereunder shall be a lien upon all the lands originally or at any time included in the district for the irrigation and benefit of which said irrigation district was organized and said bonds issued, except as to such lands as may at any time have been included in such district on account of the exchange or substitution of water under the provisions of this act, if any there be, and all such lands shall be subject to a special tax or assessment for the payment of principal and interest of such bonds; and said special tax or assessment shall constitute a first and prior lien on the lands against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

History: En. Sec. 18, Ch. 153, L. 1921.

3971. Delivery of bonds—Disposal of proceeds. In the event that bonds are sold for cash, they shall be delivered to the county treasurer of the county wherein the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price therefor after making a complete record of the same. The county treasurer shall receive the proceeds of the sale of said bonds from the purchaser, and place the same to the credit of said district; and the moneys received from the sale of bonds shall be paid out by the county treasurer only upon a warrant signed by the chairman and secretary of the board of directors and bearing the seal of the district. Said proceeds shall be expended for the purpose or purposes for which said bonds were issued and for no other.

History: En. Sec. 19, Ch. 153, L. 1921.

3972. Advertisement for bids for construction—Bond of contractor. After the notice of approval by the commission of the plans and specifications and after the election of the board, approved by the commission, to deliver the bonds to the contractor in payment of the work, or, in the absence of such election, after the bond issue, or so much thereof as may be necessary for the construction contemplated, has been sold, the board of directors shall give notice, by publication or otherwise, as it may deem advisable, calling for bids for the construction of such work or any portion thereof. Said notice shall set forth that plans and specifications can be seen at the office of the board, and the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which, at the time and place appointed, shall be opened in public; and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest bidder subject to the limitations as mentioned in section 3964 of this code, or they may reject any and all bids and readvertise for proposals, or may proceed to construct the work under their own superintendence. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties to be approved by the board, payable to said district for its use for not less than fifty per cent. of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction of the district engineer, and such work shall be inspected from time to time and approved by the chief engineer of the commission.

History: En. Sec. 20, Ch. 153, L. 1921.

3973. Determination amount annual assessment—Sinking fund—Tax levy—Investment funds. The board of directors shall on or before the third Monday in July of each year determine the whole amount of money necessary to be raised by said district for the ensuing year, for any and all purposes whatsoever in carrying out the provisions of this act, including bond interest, sinking fund requirements and maintenance. Said amount of money, when so determined by said board, shall be and constitute an assessment upon all of the lands included in said district, and shall be apportioned by said board to the lands owned or held by each person, firm, or corporation, so that each acre of irrigable land in the district shall be assessed and required to pay the same amount as every other acre of irrigable land therein except as hereinafter provided; provided, however, that no assessment shall be made or levied against any lands which may at any time be included within the district on account of the exchange or substituting of water under the provisions of this act, but all such lands shall be assessed for administrative and maintenance purposes the same as other lands in the district. The board of directors shall determine the number of irrigable acres owned by each land owner in the district and the proportionate assessments as herein provided for as nearly as may be from available information, and should it be found that a substantial error has been made in such determination, proper adjustment may be made at the next equalization of the annual assessment by increasing or decreasing the amount any landowner shall pay.

Where straight maturity bonds are issued, it shall be the duty of the board of directors of the district to create and maintain a sinking fund sufficient to pay and discharge said bonds at maturity. If said bonds shall be issued for twenty years or less, there shall be annually levied for such sinking fund a special tax or assessment as aforesaid, sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if said bonds are issued for more than twenty years, then it shall not be necessary to levy a special tax or assessment for sinking fund until the twentieth year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth part of the aggregate amount of the principal of the bonds. A certified copy of such proportionate assessments as made by the board of directors and specifying the percentage of each that has been levied for the United States contract fund; bond principal and interest fund; sinking fund to redeem bonds; maintenance fund; construction fund and general fund shall be filed with the county clerk of each county in which the lands of the irrigation district lie and the special tax or assessment therein provided for shall be levied and collected as hereafter prescribed, and when so collected by the county treasurer having custody of the funds of the district shall be placed in a special fund and used solely for the payment of the interest on the principal of said bonds when due so long as any of said bonds or the interest coupons thereto appertaining remain outstanding and unpaid, and in the event that the board of directors shall fail to make such levy or make a levy insufficient in amount for the carrying out of the provisions of this act including sinking fund

requirements, bond interest, annual maintenance charges, it shall be the duty of the public service commission to certify the amount of the necessary levy to the county clerk in which any part of such irrigation district is located, who shall thereupon levy the same. In the event that for any reason any special tax or assessment hereinabove provided for cannot or shall not be levied and collected in time to meet any interest falling due on any bonds issued hereunder, then the board of directors shall have the power and authority and it shall be its duty to provide for and pay such interest when due either out of any of the funds in hand in the treasury of the district not otherwise appropriated, or by warrants (which may bear interest at a rate not to exceed six per centum per annum) drawn against the next district tax or assessment levied or to be levied. Said warrant shall be in addition to those mentioned in section 3975 of this code.

The board shall have power and authority to direct the investment of funds in any bond sinking fund in interest-bearing securities, whenever in their judgment the same may be to the best interests of the district. But all such securities shall be such as will be paid and converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity.

History: En. Sec. 21, Ch. 153, L. 1921.

3974. Determination annual administrative expenses—Levy and collection of tax. On or before the second Monday in July each year the board of directors of each irrigation district in this state shall ascertain the total amount required to be raised in that year for the general administrative expense of the district, including costs of maintenance and repairs and interest on and the principal of the outstanding bonded or other indebtedness of the district, including any indebtedness incurred under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States, and shall levy against each forty-acre tract, or fractional forty-acre tract of land in the district (or where lands shall be owned and held in twenty-acre tracts or less, then against each said tract), that portion of the said amount so to be raised with the irrigable area of such tract bears to the total area of all the irrigable lands in the district. But the tax thus determined by the irrigable area of each such tract shall become a lien upon the entire tract of land of which such irrigable area forms a part, and attaches thereto as of the first Monday of March of that year. In order that such irrigable area may be determined, the directors shall cause to be made under the direction of the district engineer, a careful topographical survey and map of all the irrigable lands in the district. A copy of the assessment-list as outlined herein shall be transmitted to the county clerk of each county in which any of the lands of the district are situated not later than the first Monday in August of each year, and a duplicate copy thereof accompanied by a statement showing the various items of expense the assessment is designed to cover, shall be transmitted to the secretary of the commission by registered mail. In case the commission finds it necessary to increase the levy as made by the board the secretary shall transmit such change to the county clerk in each county containing acreage within the district not later than the first Tuesday in September;

immediately thereafter the county clerks shall cause to be entered in the assessment-book of said county or counties, and prior to the delivery of the said assessment-books to the county treasurer, the assessment-roll as transmitted by the commission, or in the event the commission has seen fit to make no change in the assessment as made by the board of directors, the original assessment-roll as submitted by the board shall be taken as the true and correct assessment against each tract for that year. The county treasurer shall thereafter collect such taxes or assessments at the same time and in the same manner as county and state taxes.

In the event that the ownership of any tract of land in the district shall be divided after any tax or assessment against the same has been levied, each or either of the owners of such divisions shall be entitled to have such tax or assessment equitably apportioned to and against such divisions, so that each such owner shall be enabled to pay such tax or assessment against his portion of such tract, and have the same discharged from the lien thereof.

History: En. Sec. 22, Ch. 153, L. 1921.

3975. Limitation powers directors to incur debt. The board of directors or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, except as provided in this act; and any debt or liability incurred, in excess of such express provision, shall be and remain absolutely void, except that for the purposes of organization, or for any of the immediate purposes of this act, or to make, or purchase surveys, plans and specifications, or for stream gauging and gathering data, or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of directors may, in any one year, incur an indebtedness of one-half as many dollars as there are acres in the district, and may cause warrants of the district to issue therefor, bearing interest at the rate of not to exceed six per cent. per annum.

History: En. Sec. 23, Ch. 153, L. 1921.

3976. Findings of directors, when conclusive. In determining the proper and just tax or assessment to be levied against any land for district purposes, the finding of the board of directors of the district, together with such changes as may be ordered by the commission, in the absence of fraud or mistake, shall be conclusive and final, except as herein otherwise provided.

History: En. Sec. 24, Ch. 153, L. 1921.

3977. Custodian of funds. The county treasurer of the county wherein the office of an irrigation district is located shall be the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of directors except as to payments on bonds and interest, and payments under any contract between the district and the United States. Where such orders are for the payment of money for construction work, the same shall be accompanied by and attached to the written estimate of the district engineer.

When more than one series of bonds shall have been issued by a district the funds for the payment of each series shall be kept separate and distinct, and when contract is made between the districts and the United

States, the funds for the payment to be made under any such contract shall be kept separate and distinct.

History: En. Sec. 25, Ch. 153, L. 1921.

3978. Taxes when lands in more than one county. Where the lands of any district lie in more than one county the district taxes or assessment collected in counties containing less than a majority of the lands shall be transmitted on or before the 26th day of December of each year by the county treasurer of such county to the county treasurer of the county wherein the office of the district is located.

History: En. Sec. 26, Ch. 153, L. 1921.

3979. Delinquent tax sales, how made—Issuance debenture certificates—Redemption. Delinquent sales of land for unpaid taxes or assessments shall be made in the same manner and at the same time as for state and county taxes in the respective counties where such lands are situated, and the right of redemption shall in all cases be made the same as in cases where lands are sold for state or county taxes.

Whenever any lot, tract, piece or parcel of land included within and forming a part of any irrigation district, created under the provisions of this act, or included within any extension of such district, shall be sold by the treasurer of the county wherein such land is situated, in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes, and taxes or assessments of such irrigation district, form all or a part of the taxes for which such lands are sold, it shall be the duty of the county treasurer making such sale or sales, to place to the credit of the proper funds of such irrigation district out of the proceeds of such sale or sales, the total tax or assessment of such irrigation district, inclusive of the interest and penalty thereon as provided for by the general laws relating to delinquent taxes for state and county purposes, and whenever any such lands are struck off at such sale to the county wherein the same are situated, pursuant to the provisions of section 2191 of this code, the county treasurer of such county must upon the issuance of the certificate of tax sale to said county, issue to said irrigation district, and in its corporate name, a debenture certificate, for the amount of taxes and assessments due to said irrigation district from said lands and premises so sold, inclusive of the interest and penalty thereon, which certificate shall be evidence of and conclusive of the interest and claim of said irrigation district, in, to, against and upon the lands and premises so struck off to said county, at such tax sale, and that from and after the issuance of said certificate, the sum named therein, and the taxes and assessments of said district evidenced thereby, shall bear interest at the rate of one per centum per month from the date of said certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes, or until paid, from the proceeds of the sale of the lands and premises described therein, in manner provided for by section 2235 of this code, and duplicates of such certificates so issued to said irrigation district, shall be filed in the office of the county clerk and county treasurer of said county with the certificate of tax sale of said lands and premises.

The certificates provided for by the preceding paragraph hereof

shall be assignable, and may be sold or negotiated by the board of directors of said irrigation district and the proceeds thereof delivered to and deposited with the county treasurer of said county for the proper credit to the respective funds of said irrigation district and upon the sale, negotiation or transfer thereof as above provided for, the lien of said irrigation district shall vest in the purchaser thereof and is only divested by the payment to the purchaser or the county treasurer of said county for his use of the sum for which said certificate until redeemed as hereinafter provided for.

That upon the redemption of any lands so sold for taxes in the manner provided for by section 2201 of this code, the county treasurer of said county, out of the redemption money, shall pay to the holder or holders of such certificate or certificates, the sums for which the same were issued, with interest as therein provided to the date of the redemption of said lands.

That when the lands and premises so sold for taxes and upon and against which the certificates herein provided for have been issued for the taxes and assessments of such irrigation district, are not redeemed within the time provided for by section 2201 of this code, it shall be the duty of the board of county commissioners of said county, within three months thereafter, to cause said lands and premises to be sold as provied for by section 2235 of this code, and out of the proceeds of the sale thereof, the county treasurer of said county shall pay to the holder or holders of such certificates the sum or sums for which the same were issued with interest as therein provided for to the date of said sale of said lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this act have been issued, shall upon such sale be struck off and sold for a less sum than the amount of taxes and assessments of said irrigation district represented by said certificates, inclusive of the interest thereon in addition to the state and county taxes, if any, against the same.

In case the property so assessed for irrigation district purposes is struck off to the county as provided for by law, and certificates of the taxes and assessments of said irrigation district issued thereon as hereinbefore provided for, and the said lands and premises be not redeemed before the next annual assessment for irrigation purposes shall become delinquent thereon, then and in that event, whether said lands and premises be again sold by the county treasurer of said county or the sale thereof adjourned as provided for by sections 2231 and 2232 of this code, like certificates for each year's irrigation district, taxes and assessments shall be issued against said land and shall be included in and satisfied by any redemption thereof with interest as hereinbefore provided for, and shall in like manner be paid from the proceeds of sale of said lands by the board of county commissioners, if the same be not redeemed as provided for by law.

That in all cases where lands and premises included within and forming a part of any irrigation district, formed under this act, shall have heretofore been sold for delinquent taxes in the manner provided for by law and the same have been struck off to the county in which said lands are located, the treasurer of said county shall within thirty days after the

passage and approval of this act issue to said irrigation district, like certificates for taxes and assessment of said irrigation district, included within and forming a part of the total tax for which said lands and premises were so struck off and sold to such county and for all taxes and assessments of said irrigation district, levied and assessed against said lands and premises, subsequent to the first sale thereof, which then remain delinquent, and file like duplicates thereof, in manner and form as hereinbefore provided for, and all of the preceding provisions of this act shall apply with like force and effect to such certificates.

History: En. Sec. 27, Ch. 153, L. 1921.

3980. Liability county treasurer for funds—Payment of warrants. The county treasurer to whom district funds or securities are intrusted shall be liable on his bond for the safe keeping of said funds and securities, and such funds shall be properly divided into the respective funds for which district taxes or assessments were levied; that is to say, United States contract funds; bond principal and interest fund; sinking fund to redeem bonds; maintenance fund; construction fund, and general fund. The construction fund shall be available for the payment of the purchase price of all works, water rights, or other property purchased by or for the district and all expenses incident thereto, as well as for the payment of the cost of construction or works, including cost of engineering, superintendence, and other expenses incident thereto. All warrants issued for preliminary and organization expenses and all administrative expenses shall be paid from the general fund. The county treasurer is authorized to receive in lieu of cash interest coupons maturing within the year in payment of any tax or assessment levied for payment of interest on bonds, and the county treasurer at any time upon the order of the board of directors of the district, shall turn over to said board any bonds or securities held by him and required to be delivered to said board in accordance with the provisions of this act.

All interest coupons so received or otherwise paid and all bonds of the district upon payment thereof shall be immediately canceled and retained by the county treasurer as vouchers.

History: En. Sec. 28, Ch. 153, L. 1921.

3981. Transfer of lands to include water. Where any lands in any district are sold or transferred either by deed, mortgage, foreclosure sale or otherwise, such sale or transfer shall include the water belonging to and appurtenant to the land, whether or not the same is expressly stated in the deed, instrument of transfer or decree, and such land shall be liable to special tax or assessment the same as if such sale or transfer had not been made.

History: En. Sec. 29, Ch. 153, L. 1921.

3982. Consolidation of appeals. If more than one appeal shall be pending at the same time concerning similar contests in this act provided for, such appeals shall be consolidated and tried together.

History: En. Sec. 30, Ch. 153, L. 1921.

3983. Rules of pleading and practice applicable. The court hearing any of the contests or proceedings herein provided for shall disregard any

error, irregularity or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure which are not inconsistent with the provisions of this act are applicable to all actions or proceedings herein provided for. The costs of any such hearing or contest may be allowed and apportioned between the parties or taxed to the losing parties in the discretion of the court.

History: En. Sec. 31, Ch. 153, L. 1921.

3984. Penalty for officers' violation of duty. For any wilful violation of any express duty hereunder on the part of any officer herein named, he shall be liable upon his official bond and be subject to removal from office by proceedings brought in the district court of the county wherein the office of the board of directors of the district is located, by any tax or assessment payer of the district.

History: En. Sec. 32, Ch. 153, L. 1921.

3985. Transfer of moneys from construction fund. In the event of any money remaining in the construction fund after the completion of any district project, the same may be transferred to an appropriate fund for the redemption of the outstanding bonds of the district.

History: En. Sec. 33, Ch. 153, L. 1921.

3986. Transfer of moneys—Powers of directors. The board of directors shall have power to transfer money from any one fund to any other fund and the county treasurer is hereby authorized to make such transfer upon presentation of certified copy of a resolution passed by the board of directors, except that no money shall be drawn from the sinking fund or construction fund except as specifically provided in this act; provided, that no money in the United States contract fund shall ever be diverted to any other fund.

History: En. Sec. 34, Ch. 153, L. 1921.

3987. Written consent—Acknowledgment and filing. Whenever any written consent is required to be given by or obtained from the owner or owners of any lands by any of the provisions of any of the sections of this act, such written consent must be acknowledged before some officer authorized to take acknowledgments, and shall be filed and recorded in the office of the clerk and recorder of the county in which such lands are situated, and a certified copy thereof must be filed in the office of the clerk of the court in the county in which the proceedings for the organization of such district were instituted, but the provisions of this section shall not apply to any petition provided for by this act; and all such petitions may be signed in any number of original parts with the same effect as though all signatures had been affixed to one instrument.

History: En. Sec. 35, Ch. 153, L. 1921.

3988. Records subject to examination. All books, accounts, records, contracts and securities of every kind, pertaining or belonging to any district shall be subject to examination by the auditor of the public service commission and by the state examiner, and it is hereby made the duty of the state examiner to examine the same as provided by law for the examination of the affairs of county officers, and the board of directors or the

secretary thereof shall at all reasonable hours allow such officers to have access to all books, records and vouchers of the district which are in possession or control of the secretary or of said board.

History: En. Sec. 36, Ch. 153, L. 1921.

3989. Division of districts into election precincts. The board of directors shall within six months after the organization of the district divide the district into one or more election precincts.

Said board, when they deem it advisable for the best interests of the district and the convenience of the electors thereof, may, at any time, but no less than ninety days before any election to be held in the district, change the boundaries of the divisions and election precincts of the district; provided, that such action of the board, to be effective, shall be approved by the district court, and provided also, that in making such changes the several divisions of the district shall be kept as nearly equal in area and population as practicable.

Such division into election precincts and such change of boundaries of the divisions or election precincts shall be made by resolution or order of the board to be recorded in the minutes of the board, together with the order of the district court, approving the same, and a certified copy of the same shall be filed in the office of the county clerk and recorder in each county in which any of the lands of the district are situated.

History: En. Sec. 37, Ch. 153, L. 1921.

3990. Election of directors—Bond—Organization. The regular election for directors in each district shall be held annually on the first Saturday in April of each year; the term of office of directors shall commence on the third Saturday in April following the election. At the first regular election following the creation of a district there shall be elected one director from the first division who shall hold his office for a term of one year; one director from the second division who shall hold his office for a term of two years; one director from the third division, who shall hold his office for a term of three years; if there be five divisions in a district, one director shall be elected from the fourth division who shall hold his office for two years and one director shall be elected from the fifth division who shall hold his office for three years and if there be seven divisions in a district, one director shall be elected from the sixth division who shall hold his office for two years and one director shall be elected from the seventh division who shall hold his office for three years. At the regular elections held thereafter each year, there shall be elected for a three-year term one director for each vacancy caused by the expiration of the term of office of a director that year; each director so elected must be a qualified elector and a resident of the same division as the director whom he is to succeed in office. Directors shall be chosen by the electors of the entire district, and each director-elect before taking office shall take and subscribe the official oath to be administered by the held-over members of the board, and file same in the office of the board of directors. Each member of the board of directors shall execute an official bond in the sum of two thousand dollars, which said bond shall be approved by the judge of the district court of said county where the organization was effected, and shall be recorded in the office of the county recorder thereof and filed with the secretary of said board. All official bonds of directors

shall be in the form prescribed by law for the official bonds of county officers.

On the third Saturday in April following each regular election, the board shall meet and organize by electing a president from their number and a secretary who may or may not be a director and who shall hold office during the pleasure of the board.

The board of directors may submit any proposal of major importance to a vote of the electors of a district at any regular or special election for decision; provided that such proposal when passed upon at an election shall be final and binding upon said board, unless reversed at a later election.

History: En. Sec. 38, Ch. 153, L. 1921.

3991. Vacancy in directors, how filled. In case of a vacancy in the board of directors from any cause, such vacancy shall be filled for the remainder of the term by appointment by the judge of the district court of the county in which the division or major portion thereof is situated. The appointee shall be an owner of land situated in the same division of the district as his immediate predecessor of such board, and shall hold office until his successor is elected and qualified.

History: En. Sec. 39, Ch. 153, L. 1921.

3992. Notice and conduct of election. Fifteen days before any election held under this act, the secretary of the board of directors shall post notices in three public places in each election precinct of the time and places of holding the election, and shall also post a notice of the same in the office of said board. Prior to the time for posting notices the board by a resolution or order entered on their records, shall designate the house or place to be used as a polling place, and from the electors thereof, they shall appoint three judges who shall constitute a board of election for such precinct. Said judges shall appoint one of their number to act as clerk. If the board fails to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board shall prescribe the forms and provide for the printing and distribution of the ballots for all elections held under this act.

History: En. Sec. 40, Ch. 153, L. 1921.

3993. Judges may administer oaths. The judges may administer all oaths required in the progress of an election, and appoint judges and clerks, if, during the progress of election, any judge or clerk shall cease to act. Any member of the board of election may administer and certify oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath to faithfully perform the duties imposed upon him by law. Any elector of the precinct may administer and certify any such oath.

History: En. Sec. 41, Ch. 153, L. 1921.

3994. Opening and closing of polls. The polls shall be opened at twelve o'clock m. and be kept open until five o'clock p. m., when the same shall be closed.

History: En. Sec. 42, Ch. 153, L. 1921.

3995. Voting, how conducted—Election returns. Voting may commence as soon as the polls are opened and may continue during all the time the polls remain opened, and such election shall be conducted, except as herein otherwise provided, as nearly as practicable in accordance with the provisions of the general election laws of this state, except that no registration shall be required. As soon as all the votes are counted, a certificate shall be drawn upon each of the papers containing the poll-list and tallies, or attached thereto, stating the number of votes cast for each candidate or for each proposition, and designating the office or proposition voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerk and judges. One of said certificates, with the poll-list and the tally paper to which it is attached, shall be retained by one of the judges, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the judge during the counting thereof, in the order in which they were entered upon the tally list by the clerk; and said ballots, together with the other of said certificates, with the poll-list and tally to which it is attached, shall be sealed by the judges and clerk, and indorsed: "election returns of (naming the precinct) precinct," and be directed to the secretary of the board of directors of said district, and shall be immediately delivered by the judges or some other safe and responsible carrier designated by said judges, to said secretary, and the ballots shall be kept by the board in the same manner as ballots of other elections.

History: En. Sec. 43, Ch. 153, L. 1921.

3996. Canvass of returns—Rejection. No list, tally paper, or certificate returned from any election, shall be set aside or rejected merely for want of form, if it can be satisfactorily understood. The board of directors shall meet on the first Monday after the election to canvass their returns. If at the time of the meeting, the returns from each precinct in the district in which the polls were opened have been received, the board shall then and there proceed to canvass the returns thereof; but if all the returns have not been received, the canvass shall be postponed from day to day until all the returns have been received. The canvass must be made in public. The board shall declare elected the person receiving the highest number of votes, except as hereinbefore provided for the first election held in each district, and also declare the results of the vote on any question submitted.

History: En. Sec. 44, Ch. 153, L. 1921.

3997. Statement of results of election—Contents. The secretary of the board of directors shall, as soon as the result of any election held under the provisions of this act is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located, a statement of such results, which statement must show: First, a copy of the election notice and the proof of posting the same. Second, the names of the judges and clerk of said election. Third, the whole number of votes cast in the district, and each precinct of the district. Fourth, the names of the persons voted for. Fifth, the office to fill which each person was voted for. Sixth, the number of votes given in each precinct for each of such persons. Seventh, the number of votes

given in the district for each of such persons. Eighth, the names of the persons declared elected. Ninth, the proposition or propositions submitted, the vote for and against each, and the result of the vote thereon. The secretary shall immediately make out and deliver to each person elected a certificate of election, signed by him and authenticated with the seal of the district.

History: En. Sec. 45, Ch. 153, L. 1921.

3998. Qualification of electors—Basis of votes. At all elections held under the provisions of this act, except as herein otherwise expressly provided, the following persons holding title or evidence of title to lands within the district shall be entitled to vote:

(1) All persons having the qualifications of electors under the constitution and general and school laws of the state;

(2) Guardians, executors, administrators and trustees residing in the state;

(3) Domestic corporations, by their duly authorized agents.

In all elections held under this act, each elector shall be permitted to case one vote for each irrigable forty acres of land or major fraction thereof in the district owned by such elector, but any elector owning twenty acres or less shall be entitled to one vote. In case of an election held before it has been possible to segregate the irrigable from the non-irrigable land under the plan of reclamation proposed, all land within the district will be considered as irrigable for purpose of the election.

History: En. Sec. 46, Ch. 153, L. 1921.

Scope and import of term "owner" in statutes relating to formation of irrigation districts, see note in 2 A. L. R. 791.

3999. Nomination of candidates for director. Candidates for the office of director to be filled by election under the provisions of this act, may be nominated by petition filed with the secretary of the board of directors of the district at least ten days prior to said election and signed by not less than five electors of the district; such petition shall specify the respective divisions for which such nominees, respectively, are candidates; and the names of all candidates for each division of the district shall be printed on the same ballot.

If no nominations are made the electors of the district shall write on the ballots the names of the persons for whom they desire to vote for directors, provided nothing herein contained shall prevent an elector from voting for any qualified person, although the name does not appear upon the official ballots.

History: En. Sec. 47, Ch. 153, L. 1921.

4000. Special elections, how called and held. The board of directors may at any annual election or at any time call a special election and submit to the qualified electors of the district any question which under the provisions of this act is required, or which in the judgment of the board is proper, to be submitted to popular vote. Such election shall be called, noticed and conducted and the result thereof determined and declared in the manner provided in this act relative to general district elections; provided, however, that the notice thereof shall in addition to being posted also be published at least once, not less than ten days prior to

the date of the election, in some newspaper published in the county in which the office of the board of directors of the district is located.

History: En. Sec. 48, Ch. 153, L. 1921.

4001. Filing of papers when lands in more than one county. Where the lands of a district lie within more than one county, all petitions, papers, documents or other instruments shall be filed, and proceedings had in the county where the petition for the organization of the district was filed.

History: En. Sec. 49, Ch. 153, L. 1921.

4002. Change of boundaries—Procedure—Order of court—Appeals. The boundaries of any irrigation district organized hereunder may be changed in the manner herein prescribed; provided such change of the boundaries of the district shall not impair or affect its organization or its rights in or to property nor any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made.

Whenever lands have been included within the boundaries of an established and organized irrigation district which, from their location or confirmation cannot be successfully irrigated by the irrigation works or system already constructed or proposed to be constructed, or the cost of irrigating the same will become burdensome upon the land owners of the district, a majority in number of the holders of title or evidence of title to the land included in such district, such holders of title or evidence of the title also representing a majority in acreage of said lands, may petition the district court of the county in which the lands of the district, or the greater portion thereof, are situated, for an order or decree changing the boundaries of the district by the elimination therefrom of such lands. The petition for this purpose must be signed by the required number of holders of title or evidence of title to lands within such district as hereinbefore specified and the same shall be filed with the clerk of the district court as herein designated. Such petition shall set forth:

(1) The name of the district;

(2) A general description of the lands to be eliminated or excluded from the district;

(3) The names of the holders of title or evidence of title to the lands sought to be excluded; also the names of the holders of title or evidence of title to the remainder of the lands of said district; and if any holder of title is a non-resident of the county or counties in which the district lies, the postoffice address of such non-resident owners, if known;

(4) A brief description of the character of the works, water rights, canals and other property acquired or proposed to be acquired or constructed for irrigation purposes in the district;

(5) A brief statement of the reasons why the lands sought to be excluded should be eliminated from the district;

(6) A prayer for the exclusion of the lands sought to be eliminated therefrom.

The petition shall be accompanied with (1) a map or plat of the district showing thereon the lands sought to be eliminated therefrom and (2)

a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions hereof, to pay all costs in and about the proceedings and the hearing thereof in the event that said petition is denied.

Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of jurisdiction of the subject matter.

On such petition being filed, the district court or judge thereof shall make an order fixing the time and place of hearing on the petition and directing that notice thereof be given. Thereupon the clerk of said court shall cause to be published at least once a week for two successive calendar weeks in some newspaper published in the county where the said petition is filed, a notice stating the time and place by the said district court fixed when and where the hearing on said petition will be had and containing a brief statement of the matters set forth in said petition and the object thereof; that if any portion of the lands sought to be excluded from the district lie within any other county or counties, then said notice shall be published as above provided in a newspaper published in each such other county.

The first publication of said notice shall be not less than thirty days prior to the time mentioned in said notice for said hearing.

If any holder of title or evidence of title to lands sought to be excluded from the district is a non-resident of the county or counties in which the district lies, the clerk of said court shall within three days after the first publication aforesaid mail a copy of said notice to each such non-resident whose postoffice address is stated in said petition. The certificate of the clerk of the district court under the seal of the court as to the facts of the publishing and mailing of said notice affixed to a copy thereof shall be sufficient evidence of such facts.

At the time specified in the notice the district court in which the petition is filed shall hear the petition, but may adjourn such hearing from time to time, not exceeding two weeks in all, and may continue the hearing for the want of sufficient notice or other good cause. The court, upon application of the petitioners, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing all persons interested whose lands or rights may be damaged or benefited by the granting of the petition or the exclusion of the lands from the district may appear and contest the necessity or justice of the court's making an order granting such petition in whole or in part and the contestants and petitioners may offer any competent evidence in regard thereto.

It shall be the duty of the court to hear and determine whether the requirements as herein set forth have been complied with and for that purpose shall hear all competent and relevant testimony that may be offered.

The court may grant such petition in whole or in part and may make an order making such changes in the boundaries of the district by the exclusion of such lands therefrom as may be deemed advisable or as fact, right and justice may require.

Such order shall be conclusive upon all of the owners of lands within the district and shall be final unless appealed from to the supreme court within sixty days of the entry of said order. For the purpose of any such appeal such order shall be regarded as a final judgment of said district court. A copy of such order duly certified to by the clerk of said court, shall be filed for record within thirty days after such order is made and entered with the county clerk and recorder of the county wherein lands included within such district are situated; provided, however, there shall be omitted from such copy lands not situated in the county in which such copy is filed.

History: En. Sec. 50, Ch. 153, L. 1921.

4003. Extension of boundaries—Order of court—Reduction of acreage—Order of court. (a) The boundaries of any irrigation district may be extended at any time to include lands susceptible of irrigation by the works of the districts or through exchange or substitution of water as hereinafter provided, excluding and excepting therefrom, however, all lands already under irrigation, or lands having water rights appurtenant thereto or lands that can be irrigated from sources more feasible than the district system, unless the owner of such lands shall consent, in writing, to have such lands included in said district; provided, however, that a petition be presented to the district court of the judicial district in which the irrigation district was organized, asking for such extension upon terms to be fixed by the court, signed by the holders of title, or evidence of title (evidence as in this act provided) of the lands proposed to be included in the district, representing not less than two-thirds in acreage of said lands. When such petition is presented, the district court, or judge thereof, shall appoint a day for a public hearing, notice of which shall be given by the clerk of the court, by publication at least once a week for at least two weeks in a newspaper published or in general circulation in the county in which the office of the district is situated; and if any of said lands sought to be included in the district lie in a county or counties other than that in which the office of the district is situated, such notice shall also be likewise published in some newspaper published or of general circulation in such other county or counties; or if there be no such newspaper, then such notice shall be posted in at least three public places in the territory sought to be included. At such public hearing, the district court shall hear those who may desire changes made in the proposed extension, and all those whose lands are included or sought to be included in the district, and all other persons whose rights may be affected by the proposed extension. Such public hearing may be adjourned from day to day, not exceeding twenty days in all, and the court shall make an order, either granting or denying said petition; and if said petition is granted, said order shall describe the lands included in said extension and the terms on which said land shall be included, and a copy of said order shall be filed with the county clerk and recorder in the county wherein said lands are situated. The order of the district court shall be final and conclusive, the same as the order originally creating the district, unless appealed from to the supreme court within two days from the entry of the order; provided, however, that the extension of such boundaries shall not

deprive the lands already in said district of an adequate supply of water for irrigation purposes.

(b) That whenever any lot, tract, or parcel of land has been heretofore, or may hereafter be included, within the boundaries of any public irrigation district formed under the provisions of this act, and the acreage thereof fixed and stated in the decree for creation of said district or in any other proceeding relating thereto, is fixed at a greater number of acres than actually exists within such lot, tract or parcel of land, or at a greater number of acres than can be irrigated from the reclamation system of said district, or whenever from any action or proceeding by or on behalf of said district or its commissioners, any such lot, tract or parcel of land included therein has been or is about to be assessed for a greater acreage than exists therein, or can be irrigated from the reclamation system of said district, the owner or holder of title, or evidence of title to said lands as defined by the irrigation district act, may have the taxable acreage contained therein fixed and adjudicated as provided for by this act.

(c) That the owner or holder of title, or evidence of title, as defined by the irrigation district acts, may file in the district court of the county wherein said lands are situated a petition praying that the acreage of the lands set forth and described in such petition may be permanently fixed and adjudicated, which petition shall set forth:

(1) The name or names of the owners, holder of title or evidence of title thereto, who shall be the party or parties "plaintiff" therein.

(2) The names and kind and character of interest of every person owning, holding, or claiming any right, title or interest in or to the lands described in said petition, who shall, where they do not appear as parties plaintiff under subdivision 1 hereof, sit as parties "defendant";

(3) The name of the district in which said lands are included, together with the name of the board of commissioners thereof, and the secretary thereof, and the name or names of the bondholders, if any, thereof, if known; and said district, its commissioners, secretary, and the known or unknown bondholders thereof shall be made parties defendant therein;

(4) A statement of the substance of all proceedings, orders, and decrees creating said districts and fixing the acreage of the lands therein described, together with any proceedings of the board of commissioners of said district, or its officers, relating to the acreage thereof, to such extent as to fully inform the court of the manner and extent to which said lands have been included and taxed or assessed in said district;

(5) The actual acreage of the lands described irrigable from the reclamation system of said district;

(6) The excess of acreage complained of;

(7) The amount of taxes previously paid on such excess acreage;

(8) A general statement of the exact nature of the relief sought and the grounds therefor;

(d) That upon the filing of such petition, summons shall be issued thereon and served upon all parties defendant thereto, in the same manner and in the same form as are issued in civil actions;

(e) That whenever the bondholders of any district who are necessary

parties to such a proceeding are unknown, they may be joined as the unknown bondholders of said district, and whenever said bondholders are unknown or any necessary party thereto cannot after due diligence be found within the state of Montana, service upon such party or parties, including said bondholders, may be had by publication of a summons which shall be obtained, issued, and published in the same manner as a published summons in a civil action;

(f) That the provisions of the code of civil procedure of the state of Montana, and the rules of pleading and practice applicable to civil actions generally shall apply, so far as applicable, to this proceeding;

(g) That if the allegations of such petition be denied the district court shall, when the time for appearance of the parties defendant thereto has expired and said parties have appeared by answer or made default, proceed to hear and determine the issues in said proceedings as joined;

(h) Upon the hearing of said petition the court shall by its decree, fix and determine the irrigable acreage contained in the lots, tracts or parcels of land complained of, and the acreage so fixed by such decree shall be the acreage upon which all assessments of said lands in said irrigation district shall thereafter be based, and upon said hearing the court shall determine the amount of taxes, if any, which have theretofore been levied and assessed upon any excess or non-existent acreage, and shall enter judgment in favor of the owner or holder thereof and against said district for the excess of taxes theretofore collected by said district, or shall cancel such excess if the same shall not have been collected for the benefit of said district; provided, however, that no judgment for the recovery of excess taxes paid shall be entered against any district until there shall have been deducted therefrom any unpaid valid taxes and assessments levied and assessed for the benefit of said district against the lands described in said petition, and all sums so recovered shall bear interest at the rate of eight per cent. per annum from the date of payment by the landholder, and said judgment shall bear legal interest from the date of entry; and the judgment so rendered may be paid by warrants or funds of said future taxation upon said lands, and costs shall be allowed to the plaintiff in the same manner as other civil actions;

(i) From any such judgment or decree an appeal may be taken to the supreme court by any party thereto, at any time within ten days of the entry of said judgment or decree. Such appeal shall be taken, perfected, and heard in the manner prescribed by the Civil Code of Procedure governing appeals from the district court to the supreme court. If no such appeal be taken within the time aforesaid, or if taken, the judgment or decree of the district court shall be affirmed by the supreme court, such judgment or decree shall be forever conclusive upon the parties thereto; provided, that in case contract has been made between the district and the United States no change shall be made in the boundaries of the district, and the district court shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the district court.

History: En. Sec. 51, Ch. 153, L. 1921.

4004. Construction of works across streams, highways, etc. The board of directors shall have the power to construct the said irrigation works

across any stream of water, water-course, street, avenue, highway, railway, canal, ditch or flume which the route of said canal or canals may intersect or cross, in such manner as to afford security to life and property; but said board shall restore the same, when so crossed or intersected, to its former state as near as may be so as not to destroy its usefulness; and every company whose railroad shall be intersected or crossed by said works, shall unite with said board in forming said intersection and crossing; and if such railroad company and said board, or the owners and controllers of said property, thing or franchise so to be crossed cannot agree upon the amount to be paid therefor, or the points or the manner of said crossing or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

But nothing herein contained shall require the payment to the state, or any subdivision thereof, of any sum for the right to cross any public highway with any such works. The right of way is hereby given, dedicated, and set apart, to locate, construct and maintain said works over and through any of the lands which are now or hereafter may be the property of this state.

History: En. Sec. 52, Ch. 153, L. 1921.

4005. Navigation not to be impeded—Other rights preserved. Navigation shall never in anywise be impeded by any operation of this act, nor shall any vested interest in or to any ditches, or in or to any water rights, or reservoirs or dams now used beneficially by the owners or possessors thereof, in connection with any other industry, or by persons purchasing or renting the use thereof, or in or to any other property now used, directly or indirectly, in carrying on or in promoting the mining or agricultural industry, ever be affected by or taken under its provisions save and except that rights of way may be acquired over the same; provided, further, that the right of eminent domain shall not be otherwise considered abridged by the provisions hereof.

History: En. Sec. 53, Ch. 153, L. 1921.

4006. Interference with other interests forbidden. Nothing herein contained shall be deemed to authorize the diversion of the waters of any river, creek, stream, canal, or waters therein or to permit any interference with, or encroachment on, the interest of any said person or persons.

History: En. Sec. 54, Ch. 153, L. 1921.

4007. Leasing of works—Procedure. The board of directors shall have the power, with the written consent of a majority in number and acreage of the owners of the lands in the district, to lease in whole or in part the system of canals and works or water belonging to the district, whenever such leasing may be deemed for the benefit of the district; provided, that when said board contemplates the leasing of the canals or works, or water of such district, they shall so declare by resolution or order, and give notice thereof by publishing the same in some newspaper published in the county in which the office of such irrigation district is situated, at least two calendar weeks prior to the making of any lease; provided, however, that no such lease shall be made unless a majority in

number and acreage of the holders of title or evidence of title to the lands in the district, shall file with the board a written consent to make such lease. Such lease shall in no way interfere with any rights that may have been established by law at the time such lease is made, nor shall such lease operate so as to deprive any owner or owners of land in such district of the use of water from such works upon such lands; and further provided, that the board of directors shall require a good and sufficient bond to secure the faithful performance of the lease by the lessee.

History: En. Sec. 55, Ch. 153, L. 1921.

4008. Vesting of legal title to property. The legal title to all property acquired by or for any irrigation district under the provisions of this act shall immediately and by operation of law vest in such district as set forth in this act. And the board of directors is hereby authorized and empowered to hold, use, maintain, acquire, manage, occupy and possess said property as herein provided.

History: En. Sec. 56, Ch. 153, L. 1921.

4009. Use of water a public use. The use of all water acquired for the irrigation of the land of any district formed under the provisions of this act, together with the rights of way for canals and ditches, sites for reservoirs, and all property required in fully carrying out the provisions of this act, is hereby declared to be a public use, subject to the regulations and control of the state, in the manner prescribed by law.

History: En. Sec. 57, Ch. 153, L. 1921.

Irrigation as a public use or benefit, see notes in 1 Ann. Cas. 304; 4 Ann. Cas. 1174; 14 Ann. Cas. 905.

4010. Water, use apportioned for irrigation. The board of directors shall apportion the water for irrigation among the lands in the district in a just and equitable manner and the maximum amount apportioned to any land shall be the amount that can be beneficially used on said land, and such amount of water shall become and shall be appurtenant to the land and inseparable from the same, but subject to reduction as hereinafter provided; provided, however, that any water owner of the district shall have the right to sell or assign for one season any of the water apportioned to him and not required for use upon the land to which such water belongs.

History: En. Sec. 58, Ch. 153, L. 1921.

4011. Reduction on shortage of water. In the event of a shortage of water, the amount of water delivered to each particular tract or piece of land shall be reduced proportionately, and all surplus water belonging to the district may be sold or disposed of by the board for the benefit of the district.

History: En. Sec. 59, Ch. 153, L. 1921.

4012. Inclusion of land under irrigation. Any land already under irrigation from any source may be included in any irrigation district,

either at the time of the organization of such district, or at any time thereafter, and such land shall be entitled to receive and shall be given the same amount of water necessarily used thereon at the time of such inclusion; and the canals, ditches, flumes, dams, or other works previously used to irrigate such land, may be used or supplanted either wholly or in part by the district works; provided, however, that the owner of such land, canals, ditches, flumes, dams or other works shall be entitled to compensation for any and all damages sustained by reason of the appropriation of the same, or by the construction of said district works; provided, however, that lands already under irrigation, or lands having water rights appurtenant thereto, or lands which can be irrigated from sources more feasibly than the district system, shall not be included within such district, unless the owner of such lands shall consent in writing to have such lands included in said district.

History: En. Sec. 60, Ch. 153, L. 1921.

Lands which may be included in an irrigation district, see note in Ann. Cas. 1916A, 1222.

4013. Contract with owners for use of water—Mutual rights. Whenever any canal, constructed, owned, or controlled by the district crosses any creek, stream, water channel or course, the water of which is used to irrigate land lying below such canal, the district shall have the right to contract with the owner or owners of the right to the use of the water or waters in any such stream, creek, water channel or course, for an exchange of water, and to supply him with water from the district system, which contract shall be in writing, signed and acknowledged by all the parties thereto before some officer authorized to take acknowledgments, which acknowledgment shall be certified by such officer in the manner that deeds are now required to be certified to entitle them to be recorded, and shall be filed and recorded in the office of the clerk and recorder of the county in which the creek, stream, water channel or course is situated, and thereafter such district shall have the right to supply such land below the canal whether such land is included in the district or not, with water from the works of the district, and the owner or lessee of such land shall, in such case, be furnished with the same quantity of water as that to which such owner or lessee would be entitled out of such creek, stream, water channel or course, had the district works not been built. The district shall have the right to appropriate and take possession of the water so replaced and shall have the same right to such water as the owner or lessee of the land had, so long as such water shall be replaced by a like quantity of water but the district shall never deprive such owner or lessee of the right to retake and use the same, should such owner or lessee at any time be prevented from having or using a like quantity of water from such works; and the district shall also have the right to make appropriation and take possession of such water at any point, and to sell, lease, or use such water on any land, either above or below the canal, and the appropriation of such water at any point or selling, leasing, or using the same shall not prejudice the right of the district to the water and shall not increase the right of the owner or owners of any water right on such creek, stream, water channel or course.

History: En. Sec. 61, Ch. 153, L. 1921.

4014. Inclusion state lands—Power of land board. The state land board for and on behalf of the state of Montana is hereby empowered to sign a petition for the inclusion of any lands belonging to the state in an irrigation district, and to pay all annual assessments thereon to the treasurer of the county in which the lands are located out of appropriations made by the legislative assembly for such purpose; such payments shall be added each year to the appraised value of the land, and the land shall thereafter be sold for a sum not less than the appraised value, plus all assessments paid to date of sale.

History: En. Sec. 62, Ch. 153, L. 1921.

Power of legislature to authorize appropriation of school or other public lands of state for irrigation purposes, see Ann. Cas. 1914B, 338.

4015. Certain irrigation works not chargeable with tax. Where lands already under irrigation, the water and irrigation works irrigating the same belonging to the owner of said lands, are included in any district, such lands shall not be charged with any tax or assessment for construction or for payment of the interest or principal of any bonds issued to secure money for construction or purchase of the district irrigation works, or for any payments other than for operation and maintenance, except with the consent of the owner thereof, which consent shall be filed with the county recorder of the county in which such lands are situated, but such lands shall be assessed for administrative and maintenance purposes the same as other lands in the district.

History: En. Sec. 63, Ch. 153, L. 1921.

4016. Generation of power. Any irrigation district which shall generate power for the purpose of pumping water for irrigation, or which shall have a dam across a stream, and can produce power therefrom, may generate power for lighting and domestic purposes within the irrigation district. An irrigation district is also authorized to contract and pay for power for the purpose of pumping water for irrigating the lands of the district. The commission shall have and exercise general supervisory control over all rates charged and to be charged under this section.

History: En. Sec. 64, Ch. 153, L. 1921.

4017. Apportionment cost pumping projects. In the event that water for irrigating all or any portion of the lands of an irrigation district is obtained by pumping, and for the purpose of irrigating the lands of such district it is necessary to pump water to different elevations, the total cost of such pumping, maintenance and operation of the pumping project shall be apportioned and levied in such manner as may be determined fair and equitable by the public service commission after considering the facts in each case. Such apportionment shall be made and shall be certified to the board of directors before the time fixed herein to make the first levy.

History: En. Sec. 65, Ch. 153, L. 1921.

4018. Drainage expense, how defrayed. In case it becomes necessary to drain any lands within an irrigation district on account of seepage or saturation, or for the purpose of carrying off waste water, such drains

shall be constructed by the board of directors, and all expenses in connection with the same shall be borne by the district and paid by warrants upon the general fund of the district.

History: En. Sec. 66, Ch. 153, L. 1921.

4019. Dissolution of organized district—Procedure. Whenever an irrigation district has been organized under this act, and no irrigation system for the reclamation of the lands in the district has been constructed, purchased, or acquired, and no bonded indebtedness has been incurred, and all expenses of organization, and all other indebtedness of the district have been paid, then such district may be dissolved by an order of the district court of the county in which the lands, or greater portion thereof, are situated. In order that the district court may acquire jurisdiction to enter such order dissolving the district a petition must be filed with the clerk of said court, signed by an equal number of holders of title, or evidences of title as are required to sign the original petition for the creation of the district. The court must make an order for the hearing of said petition within sixty days from its filing, and the clerk must transmit a copy of such petition and order to the public service commission of Montana, and give notice of such hearing by posting a notice thereof in each of three public places in said district and by publishing a copy thereof once a week for two consecutive weeks in a newspaper of general circulation published in such county. Upon the hearing of said petition any person interested may appear and give evidence for or against the granting of the petition. If upon said hearing the court finds that no bonded indebtedness of the district exists, that all expenses of organization and all other indebtedness have been paid, and that the best interests of the land owners of said district require that the district shall be dissolved, the court shall make an order dissolving such district, and shall cause a certified copy thereof to be filed in the office of the clerk and recorder of each county in which any of the lands included in such district are situated.

History: En. Sec. 67, Ch. 153, L. 1921.

4020. Liberal construction of act. The object of this act being to better secure the irrigation of lands of the state and thereby to promote the prosperity and welfare of the people, its provisions shall be liberally construed so as to effect the objects and purposes herein set forth.

History: En. Sec. 68, Ch. 153, L. 1921.

4021. Expenses public service commission, how paid. All expenses incurred by the public service commission pursuant to the provisions of this act in connection with the organization of any irrigation district, except the salary of the chief engineer, or such engineer as the commission may detail for its investigative work in connection with the district or in the issuance of bonds thereof, shall be borne by such irrigation district and shall be paid by warrants drawn upon the funds derived from the sale of bonds of such district, such warrants to be payable to the public service commission and deposited in the state treasury to the credit of the Montana irrigation fund herein created.

History: En. Sec. 69, Ch. 153, L. 1921.

4022. Employment assistants by public service commission. It shall be the duty of the public service commission to employ such attorneys, engineers, accountants and assistants necessary to carry out the provisions of this act, fixing the term of their employment and rate of compensation. The secretary of the commission shall keep a record of the amount of time spent by employees on work connected with the several districts and shall make proper charges therefor, together with the necessary traveling expenses.

History: En. Sec. 70, Ch. 153, L. 1921.

4023. Bonds of engineers—Payment of premium. The chief engineer of the public service commission and any assistant irrigation engineers employed by the commission pursuant to the provisions of this act, placed in responsible charge of investigations relative to the feasibility of districts, shall, before entering upon the discharge of duties hereunder, give a good and sufficient bond to the state of Montana in the sum of ten thousand dollars for the chief engineer, and in the sum of five thousand dollars for each said assistant engineer, with sureties to be approved by the governor, conditioned upon the faithful discharge of their duties hereunder. The premium on said bonds, if any, shall constitute a valid charge against the state of Montana and be paid, on proper claim therefor, by the state board of examiners in the same manner as the premiums on the bonds of elected and appointed officers of the state, where bond is required.

The board of directors of any district organized under the provisions of this act, may require, before confirming the appointment of the district engineer, a bond in such amount as may be justified by the amount of responsibility involved, said bond to be for the faithful discharge of the duties as herein outlined, the premium thereon to be a legitimate claim against the district and to be paid by the board of directors in the same manner as other claims against the district.

History: En. Sec. 71, Ch. 153, L. 1921.

4024. Validity existing districts and bonds not affected—Election of act. Nothing in this act shall be construed as to affect the validity of any district heretofore organized under the laws of this state, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien, or charge for, or upon which it was or might become liable or chargeable had not this act been passed; nor shall it affect the validity of any bonds which have been issued but not sold.

And where districts have heretofore been organized, or bonds authorized, issued or sold or any proceedings have been undertaken on the theory that under the laws as they then existed, assessments might be assessed, levied or collected, such organization, authorization, issuance or sale of bonds and any and all such proceedings are hereby validated, cured and confirmed. All districts that have been organized or that are now in process of organization in the manner provided by chapter 14, acts of extraordinary session sixteenth legislative assembly shall hereafter be considered as being subject to and governed by the provisions of this act and all proceedings conforming with the provisions of said

chapter 14 to and including the order for the creation of the district by the judge of the district court, are hereby declared sufficient and confirmed and complying with the terms of this act; and provided, further, that any district organized or in process of organization under the provisions of chapter 146 acts of eleventh legislative assembly and acts amendatory thereof and supplemental thereto, may at any time elect to hereafter proceed under and be governed by the provisions of this act by filing a written election and consent in duplicate to that effect with the clerk of the district court with written instructions that one copy be forwarded to the public service commission, said written election and consent to include the signatures of the majority in number of the holders of title, or evidence of title, such signatures also representing a majority in acreage of said lands, and otherwise conforming to the general requirements of that petition mentioned in section 3956 of this code; and when such written objection and consent shall be so filed in the office of the clerk of said district court and copy thereof forwarded to the office of the commission, such district shall be thereafter under, subject to and controlled by the provisions of this act; and provided further that if any district heretofore created shall have issued any bonds or entered into any contracts for the construction or acquisition of works or property, nothing herein contained shall be construed as affecting the rights of the holders of such bonds or the right of any person, persons or corporation, party or parties to any such contract with the district under or by virtue of any of the provisions of said acts.

History: En. Sec. 72, Ch. 153, L. 1921.

4025. Repealing clause—Proviso. Chapter 14 acts extraordinary session sixteenth legislative assembly entitled "An act to create the Montana irrigation commission; to define its powers and duties; to define the powers and duties of the state engineer in connection therewith; to provide for the furnishing of and contracting for power by an irrigation district; to provide for the apportionment of the cost of pumping water; to provide for drainage of lands within an irrigation district; and to provide penalties for a violation of the provisions of this act," and all other acts and parts of acts in conflict herewith are hereby repealed; provided, however, that none of the provisions of chapter 146 acts of eleventh legislative assembly or of any act amendatory thereof or supplemental thereto (sections 7166-7263) shall be deemed to be repealed by this act, it being intended that after the passage of this act two methods shall be prescribed by the laws of this state for the creation, organization, administration and control of irrigation districts, one of such methods being prescribed by chapter 146 acts eleventh legislative assembly and acts amendatory thereof and supplemental thereto (sections 7166-7263), and the other provided by this act, and hereafter, any persons desiring to create and organize any irrigation district shall have the option of causing such district to be created, organized, governed and controlled either under and by the provisions of said chapter 146 acts eleventh legislative assembly and acts amendatory thereof and supplementary thereto, or under and by the provisions of this act.

History: En. Sec. 73, Ch. 153, L. 1921.

CHAPTER 264.

REGULATION OF STOCK-BROKERS AND INVESTMENT COMPANIES (BLUE SKY LAWS).

Section 4026. "Investment Company" Defined—To Whom Law Applicable.
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4028. Exceptions.
4029. "Stock-Broker" Defined.
4030. Definition of Terms "Domestic" and "Foreign."
4031. Definition of "Agent."
4032. Permit to Do Business.
4033. Application and Fee for Permit.
4034. Verification of Papers.
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4050. Disposal of Fees.
4051. Investment Commission Fund Abolished.
4052. Transfer of Funds.
4053. Creation of the Office of Investment Commissioner.
4054. Invalidity of Part of Act—Effect.
4055. Provisions of Act, When Effective.

4026. "Investment company" defined—To whom law applicable. The name "investment company," as used in this act, shall include:

Every corporation, company, copartnership, or association, whether incorporated or unincorporated, except as otherwise provided in this act, which shall hereafter engage in the business of selling or reselling or negotiating for the sale of, or of taking subscriptions for any stock, bonds, or other securities of any kind or character issued by any other corporation, company, copartnership, or association (other than bonds of the United States, state, county, or municipal bonds or warrants, stock of state or national banks located in the state of Montana, building and loan associations, corporations not organized for profit, by notes secured by mortgages for real estate located in the state of Montana), to any person or persons in the state of Montana.

History: En. Sec. 1, Ch. 85, L. 1913.

Act cited or applied as chapter 85, Laws of 1913, p. 367, in Buhler v. Loftus, 53 Mont. 546, 554, 165 Pac. 601.

Validity and construction of blue sky laws, see notes in Ann. Cas. 1916A, 706; Ann. Cas. 1917C, 650; L. R. A. 1917F, 524.

4027. Same. Every corporation, company, copartnership, or association which shall, outside of the county in which such land is located, sell, offer, or negotiate for the sale of any contract for deed, bonds for deed, or other papers, by whatsoever names such instruments may be designated, not originally issued by such corporation, company, copartnership, or association, providing that when certain payments are made or certain

conditions fulfilled a deed or title will be delivered to certain parts or parcels of land.

History: En. Sec. 1, Ch. 85, L. 1913.

4028. Exceptions. This act shall not apply to any person, bank, corporation, copartnership, or association of Montana selling stock or securities actually owed by said person, corporation, copartnership, or association, provided that they shall not be engaged in the brokerage business of buying and selling stocks for securities; nor shall this be construed so as to prevent any corporation, either foreign or domestic from selling its own stock, bonds, or securities through an officer or agent of such corporation, providing that two-thirds or more of the assets of said corporations shall consist of property situated within the state of Montana.

History: En. Sec. 1, Ch. 85, L. 1913.

4029. "Stock-broker" defined. The name "stock-broker" as used in this act shall include every person, set of persons, associations, companies, copartnership, or corporation, who shall, in the state of Montana, engage in the business of dealing in stocks, bonds, or other securities covered by this act, selling or offering or negotiating for the sale thereof, or underwriting or purchasing such securities and reselling them to any person or persons, at a commission or profit.

History: En. Sec. 2, Ch. 85, L. 1913.

4030. Definition of terms "domestic" and "foreign." The name "domestic" as used in this act shall apply to those investment companies or stock-brokers incorporated under the laws of Montana, or having their principal office in the state of Montana, and the word "foreign" shall apply to those incorporated under the laws of another state or foreign country, or having their principal office outside of the state of Montana.

History: En. Sec. 3, Ch. 85, L. 1913.

4031. Definition of "agent." The name "agent" as used in this act shall include any person who shall act for any investment company or stock-broker in offering for sale, taking subscriptions for, or negotiating for the sale, or selling any securities for any investment company or stock-broker, either as an employee on a salary basis, or for a commission.

History: En. Sec. 4, Ch. 85, L. 1913.

4032. Permit to do business. It shall be unlawful for any investment company or stock-broker, or any representative thereof, to sell, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatsoever, of any stocks, bonds, or other securities of any kind or character, other than those exempted from the provisions hereof by the definitions herein provided, without a permit from the state investment commissioner as hereinafter provided.

History: En. Sec. 5, Ch. 85, L. 1913.

4033. Application and fee for permit. Before securing such permit, it shall be necessary for each and every investment company to file in the office of the investment commissioner, together with a filing fee of twenty-five dollars, the following papers, documents, etc., together with such other information and documents as said investment commissioner shall deem necessary in each case, to-wit:

1. An itemized statement of its actual financial condition, and the amount of its properties and liabilities.

2. A copy of all contracts, bonds, or other securities which it proposes to make with or sell to its contributors.

3. Sample copies of all literature or advertising matter used or to be used by such investment company.

4. A copy of its constitution and by-laws or articles of copartnership or association.

5. If it shall be an incorporated investment company it shall also file a copy of its charter, and if it be a foreign investment company, such copy shall bear the certificate of the secretary of state, or other state officer having custody of such records, that it is a true, complete, and correct copy.

History: En. Sec. 6, Ch. 85, L. 1913.

4034. Verification of papers. All of the above-described papers shall be verified by the oath of a duly authorized member of a copartnership or association, if it be a copartnership or association, and by the oath of the president and secretary, if it be incorporated; provided, that the investment commissioner shall have the power to require such officers to make affidavit to such other reports or information as he may call for.

History: En. Sec. 7, Ch. 85, L. 1913.

4035. Consent to service of process by foreign companies. Every foreign investment company shall also file its written consent, in such form as may be approved by the investment commissioner, that actions may be commenced against it, in the proper court of any county in this state in which a cause of action may arise, or in which the plaintiff may reside, by the service of process on the investment commissioner, agreeing that such service of process on the investment commissioner shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the company itself, according to the laws of this or any other state, and such written consent for service of process shall be irrevocable. Such written consent shall be accompanied by a certified copy of an order or resolution of the board of directors, trustees, owners, or managers of such investment company, authorizing the execution of same. When a case shall be brought, the summons shall be directed to the investment commissioner, and shall require the defendant to answer by a certain day, not less than forty days nor more than sixty days from the date thereof. Said summons shall be forthwith forwarded by the clerk of the court to the investment commissioner, who shall immediately forward a copy thereof to the secretary of the corporation sued, by registered mail, and thereupon the investment commissioner shall make return of said summons to the court whence it issued, showing the date of its receipt by him, the date of forwarding such copy, the name and address of the person to whom he forwarded said copy, and the costs of service and return thereof, which in each case shall be two dollars and fifty cents. Such return shall be under his hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to him. The investment commissioner shall keep a suitable record book, in which he shall docket each action commenced against

a foreign investment company as aforesaid. This record shall show the court in which the suit is brought, the title of case, the time when commenced, the date and manner of service, and the date of payment of fee taxed as costs in the case.

History: En. Sec. 8, Ch. 85, L. 1913.

4036. Examination of papers and issuance of statement. It shall be the duty of the investment commissioner to examine the statements and documents so filed, and if said investment commissioner shall deem it advisable, he shall make or have made a detailed examination, audit or investigation of such investment company's affairs; providing, that such investment company may at its option, in writing, refuse to have such investigation made, in which event said investment commissioner shall reject its application. If he finds that such investment company is solvent, that its articles of incorporation or association, its constitution and by-laws, its proposed plan of business, and proposed contracts contain and provide for a fair, just, and equitable plan for the transaction of business, and in his judgment promises a fair return on the stocks, bonds, or other securities by it offered for sale, the investment commission shall issue to such investment company a statement, entitling it to sell such securities in the state of Montana, and reciting that such company has complied with the provisions of this act, that detailed information in regard to the company and its securities is on file in the investment commissioner's office, and that such investment company is permitted to do business in this state; and such statement shall also recite in bold type that the investment commissioner in nowise recommends the securities to be offered for sale by such investment company. Such permit, however, shall be subject to revocation at any time by the investment commissioner for cause to him sufficient. But if said investment commissioner finds that such articles of incorporation or association, charter, constitution, and by-laws, plan of business, or proposed contract contain any provision that is unfair, unjust, inequitable, or oppressive to any class of contributors, or if he decides from his investigation or examination of its affairs that said investment company is not solvent, or does not intend to do a fair and honest business, or in his judgment does not promise a fair return on the stocks, bonds, or other securities by it offered for sale, then he shall not grant such company a permit as herein provided, and shall notify said company in writing of his decision.

History: En. Sec. 9, Ch. 85, L. 1913.

4037. Granting to stock-brokers of permit to do business. The foregoing sections 4033 to 4036, inclusive, shall apply to stock-brokers, providing that stock-brokers shall not be required to file a copy of each stock, bond, or other security it shall handle, and that said investment commissioner shall make special investigation and ascertain the reputation of such stock-broker, especially as to the class of stocks, bonds, and other securities handled by such broker, and that the granting of a permit to such stock-broker shall be further contingent upon such stock-broker having the reputation of handling such stocks, bonds, and other securities as said investment commissioner shall decide to be a good, legitimate investment. Such permit shall entitle such stock-broker to handle such

stocks, bonds, and other securities in the state of Montana as are not objected to by the investment commissioner; providing, that such stock-broker shall file on the first day of each month a list of the stocks, bonds, and other securities on hand for sale, and handled by it during the preceding month; and providing, further, that said investment commissioner shall have authority to prohibit said stock-broker from handling any of such issues at any time, or to cancel said broker's permit at any time he decides that said broker is not handling such securities as he deems good, legitimate investments.

History: En. Sec. 10, Ch. 85, L. 1913.

4038. Appeals to state board of examiners. An appeal may be taken from the decision of the investment commissioner refusing to grant a license to any investment company or stock-broker, to the state board of examiners of this state. Such appeal shall be taken by filing with said state board of examiners an application for a hearing on its case. When such hearing is set, it shall be the duty of the investment commissioner to produce, for the inspection and consideration of the state board of examiners, all papers regarding such company on file in his office, and other information, and such state board of examiners shall have authority to call for any additional information it may desire under oath from the company or stock-broker under consideration. If said state board of examiners shall reverse the decision of the investment commissioner, it shall so notify him in writing, and it shall then become the duty of the investment commissioner to forthwith issue said applicant a permit.

History: En. Sec. 11, Ch. 85, L. 1913.

4039. Amendment of charter or by-laws—Limitations upon companies. No amendment of the charter, articles of incorporation, constitution, or by-laws of any such investment company shall become operative until a copy of the same has been filed with the investment commissioner as provided in regard to the original filing in section 4033 of this code, nor shall it be lawful for such investment company to transact business on any other plan than that set forth in its application, or to make any contracts other than that shown in copy of proposed contract required under section 4033 of this code, until a written statement showing in full detail the proposed new contract shall have been filed with the investment commissioner, in like maner as provided in regard to the original plan of business and proposed contract, and the consent of the investment commissioner obtained as to making such proposed new plan of business or contract.

History: En. Sec. 12, Ch. 85, L. 1913.

4040. Registration of agents and permits to do business. Any investment company or stock-broker may appoint one or more agents, but no such agent shall do any business as provided in this act for said investment company or stock-broker in this state until he shall be registered with the investment commissioner as an agent of such investment company or stock-broker, and for each of such registrations there shall be paid to the investment commissioner the sum of one dollar, and said investment commissioner shall issue to each agent so registered an individual permit, entitling him to represent such investment company or

stock-broker in the state of Montana as its agent until the first day of March following, when it shall be necessary to re-register such agent. Such permit, however, shall be subject to revocation at any time by the investment commissioner for cause appearing to him sufficient.

History: En. Sec. 13, Ch. 85, L. 1913.

4041. Statements of companies and stock-brokers. Every investment company or stock-broker licensed under this act shall file at the close of business December 31st of each year, and such other times as required by the investment commissioner, a statement setting forth, in such form as may be prescribed by said investment commissioner, its financial condition, amount of its properties and liabilities, and such other information concerning its affairs as said investment commissioner may require. Each such statement shall be accompanied by a filing fee of two dollars and fifty cents. Any investment company or stock-broker failing to file its report as herein provided within ten days of the dates herein specified, or failing to file any special report within thirty days after receipt of request from the investment commissioner therefor, shall forfeit its right to do business in this state by reason thereof.

History: En. Sec. 14, Ch. 85, L. 1913.

4042. Accounts and methods of doing business. The general accounts of every investment company, domestic or foreign, doing business in this state, shall be kept in such manner and form as may be prescribed by the investment commissioner, and all books, papers, business, methods and affairs of such investment company shall be at all times subject to inspection and investigation by said investment commissioner, or any person thereto by said commissioner authorized and designated for the purpose of enforcing the provisions of this act. The investment commissioner shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and production of evidence by subpoena, attachment, and punishment, which said power shall extend thoughout the state; said commissioner shall have power to take testimony under deposition either within or without the state.

History: En. Sec. 15, Ch. 85, L. 1913.

4043. Supervisory control and fees of commissioner. The investment commissioner shall have general supervision and control, as provided by this act, over any and all investment companies and stock-brokers, domestic or foreign, licensed under this act, and all such investment companies or stock-brokers shall be subject to examination by the investment commissioner, or his duly authorized agents or deputies, at any time the investment commissioner may deem it advisable, and in the same manner as is now provided for the examination of state banks. The rights, powers, and privileges of the investment commissioner in connection with such examinations shall be the same as is now provided with reference to the examination of state banks. Such investment company or stock-broker shall pay a fee for each examination made by said investment commissioner, or his deputies or agents, of not to exceed ten dollars for each day or fraction thereof, plus the actual traveling and hotel expenses of said commissioner, or his agent or deputy, that he is absent

from the capitol building for the purpose of making such examination, and the failure or refusal of any investment company or stock-broker to pay such fees upon the demand of the investment commissioner, or his deputy or agent, while making such examination, shall work a forfeiture of his or its right to do business in this state.

History: En. Sec. 16, Ch. 85, L. 1913.

4044. Circulars and advertisements, conditions covering. It shall be unlawful for any investment company or stock-broker, or his or its agent, to issue, circulate, or deliver any advertisement, pamphlet, circular, or other document in regard to his or its stocks, bonds, or other securities in the state of Montana, until after such investment company or stock-broker shall have been licensed to sell his or its securities in the state of Montana as provided in this act, and it shall be unlawful for any such licensed investment company or stock-broker, or his or its agent, to issue, circulate, or deliver any such advertisement, pamphlet, circular, or other document, unless the same shall be signed and bear a serial number and a copy thereof first filed with the investment commissioner and the approval of the investment commissioner obtained thereto; nor shall it be lawful for such investment company or stock-broker, or his or its agent, to issue, circulate, or deliver such advertisement, etc., after he or it has been notified of objection thereto by said investment commissioner.

History: En. Sec. 17, Ch. 85, L. 1913.

4045. Revocation of permits and appointment of receiver. Whenever it shall appear to the investment commissioner that the assets of any investment company doing business in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable, or unauthorized manner, or is jeopardizing the interests of its stockholders or the investors in stocks, bonds, or other securities by it offered for sale, or whenever any investment company shall refuse to file any papers, statements, or documents required under this act, or shall refuse to permit an examination by said investment commissioner, or his deputies or agents, as provided in this act, without giving satisfactory reasons therefor, said investment commissioner shall at once cancel its permit, and if he shall deem advisable, shall communicate such facts to the attorney-general, who shall thereupon at once make an investigation, and if the facts as presented to him by the investment commissioner are substantiated, he shall thereupon apply to a court of competent jurisdiction for the appointment of a receiver to take charge of and conclude the business and affairs of such investment company, and if such fact or facts be made to appear, it shall be sufficient evidence to authorize the appointment of a receiver and the making of such orders and decrees in such cases as equity may require.

History: En. Sec. 18, Ch. 85, L. 1913.

4046. Records of commissioners open to inspection. All papers, documents, and other instruments filed with said investment commissioner under this act shall be subject to inspection of any one affected by this act, upon application therefor, except that the investment commissioner may, in his discretion, withhold any information relating to the affairs

of any investment company or stock-broker that, in his judgment, is not required for the best interests of its stockholders and the public welfare.

History: En. Sec. 19, Ch. 85, L. 1913.

4047. Sale or distribution of stocks, bonds, etc. It shall be unlawful for any investment company, after it has been granted a permit under the provisions of this act, to issue, sell, or distribute any stocks, bonds, or other securities for promotion or for any other causes, or on any other conditions than those set forth in its applications, without first securing the approval of the investment commissioner therefor. Neither shall it be lawful for any investment company, after it has been granted a permit under the provisions of this act, to pay any dividends in stocks, bonds, or other securities, without the approval of the investment commissioner.

History: En. Sec. 20, Ch. 85, L. 1913.

4048. False entries or statements—Penalty. Any person who shall knowingly or wilfully subscribe to, or make or cause to be made, any false statements or false entry in any book of such investment company or stock-broker, or exhibit any false paper with the intention of deceiving any person authorized to examine into its affairs, or who shall make or publish any false or misleading statements of its financial condition, or of the stocks, bonds, or other securities by it offered for sale, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than ten thousand dollars, and shall be imprisoned for not less than one year nor more than ten years in the state penitentiary.

History: En. Sec. 21, Ch. 85, L. 1913.

4049. Penalty for violation of act. Any person or persons, agent or agents, investment company, or stock-broker, who shall violate any of the provisions of this act, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined for each offense not less than one hundred dollars nor more than ten thousand dollars, or by imprisonment in the state penitentiary for not less than ninety days nor more than one year, or by both such fine and imprisonment.

History: En. Sec. 22, Ch. 85, L. 1913.

4050. Disposal of fees. All fees herein provided for shall be collected by the investment commissioner, and by him shall be deposited with the state treasurer to the credit of the general fund.

History: En. Sec. 23, Ch. 85, L. 1913; amd. Sec. 1, Ch. 85, L. 1921.

4051. Investment commission fund abolished. The account now carried upon the books of the state treasurer and the state auditor under the name of the "investment commission fund" is hereby abolished.

History: En. Sec. 2, Ch. 85, L. 1921.

4052. Transfer of funds. The state treasurer is hereby directed to transfer to the general fund all moneys now standing to the credit of the said investment commission fund, or hereafter accruing to said investment commission fund.

History: En. Sec. 3, Ch. 85, L. 1921.

4053. Creation of the office of investment commissioner. The office of investment commissioner is hereby created, and the state auditor of Montana is hereby made and constituted ex-officio investment commissioner.

History: En. Sec. 24, Ch. 85, L. 1913.

4054. Invalidity of part of act—Effect. Should the courts declare any section of this act unconstitutional or unauthorized by law, or in conflict with any other section or provision of this act, then such decision shall affect only the section or provision so declared to be unconstitutional or void, and shall not affect any other section or part of this act.

History: En. Sec. 25, Ch. 85, L. 1913.

4055. Provisions of act, when effective. No investment company or stock-broker as defined in this act, now organized or in process of organization in this state, shall be compelled to comply with the provisions of this act until January 1, 1914.

History: En. Sec. 26, Ch. 85, L. 1913.

CHAPTER 265.

REGULATION OF REAL ESTATE BROKERS.

Section 4056. State Real Estate Commissioner—Creation.
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4060. License of Real Estate Broker.
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4075. Proof of License in Actions for Compensation.
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4077. Mailing List Licensed Brokers.
4078. Effect of Partial Invalidity of Act.

4056. State real estate commissioner—Creation. The officer designated by the laws of Montana as commissioner of insurance shall be ex-officio state real estate commissioner, with no additional compensation.

History: En. Sec. 1, Ch. 195, L. 1921.

4057. Powers of commissioner. The state real estate commissioner, hereinafter referred to as the "commissioner," shall have full power to issue licenses to real estate brokers, and to make reasonable rules and regulations respecting the granting and suspension of the same, and to perform all other acts and duties necessary under the provisions of this act.

History: En. Sec. 2, Ch. 195, L. 1921.

4058. Real estate broker defined. A real estate broker, within the meaning of this act, is a person who for a compensation, or promise thereof, sells or offers for sale, buys, or offers to buy, negotiates, or offers to negotiate, either directly or indirectly, whether as the employee of another or otherwise, the purchase, sale, exchange, of real estate, or any interest therein, for others as a whole or partial vocation. The word "person," as used in this act, shall be construed to mean and include a corporation. The provisions of this act shall not apply to any person who purchases property for his own use or account, nor to any person who, being the owner of property, sells, exchanges, or otherwise disposes of the same for his own account, nor to any person who, not representing himself to be, and not following the vocation of real estate broker, as a whole or in part, acts in that capacity for another in connection with a single transaction, nor to any person holding a duly executed power of attorney written in a separate instrument designated as such, from the owner granting power to consummate the sale, exchange, or leasing of real estate, nor to the services rendered by an attorney at law for or on behalf of his client, nor to any receiver, trustee in bankruptcy, guardian, administrator, or executor, nor to any person acting under the order of the court, nor to any person selling under a deed of trust.

History: En. Sec. 3, Ch. 195, L. 1921.

4059. Agreements respecting oil operations. Agreements of every kind respecting prospecting, drilling or operating land for oil, or disposing of the oil or oil mining rights therein, whether upon a royalty basis or otherwise, shall be deemed dealing in real estate.

History: En. Sec. 4, Ch. 195, L. 1921.

4060. License of real estate broker. It shall be unlawful for any person to engage in the business, or act in the capacity of, real estate broker within this state, without first obtaining a license therefor.

History: En. Sec. 5, Ch. 195, L. 1921.

Real estate brokers as subject to license regulations, see note in 129 A. S. R. 280.

Constitutionality of statute requiring real estate broker to procure a license, see note in 8 A. L. R. 424.

Failure of real estate broker to procure statutory license as affecting right to recover commissions, see notes in 5 Ann. Cas. 897; Ann. Cas. 1912D, 378.

4061. Disposal of fees. All fees and collections paid to the commissioner by any person, under the provisions of this act, shall be by him paid to the state treasurer at the end of every calendar month and shall be placed by the state treasurer one-half in the general fund of the state of Montana, and one-half transmitted to the county treasurer of the county from which the license fee originated. All fines paid to or collected by any clerk of the district court under the provisions of this act shall be by him forthwith transmitted to the county treasurer for the school fund.

History: En. Sec. 6, Ch. 195, L. 1921.

4062. Seal of commissioner—Records as evidence. The commissioner shall adopt a seal with the words "real estate commissioner, state of Montana," and such other device as the commissioner shall approve engraved thereon, by which he shall authenticate the proceedings of his office. Copies of all records and papers in the office of the commission certified

to be a true copy under the hand and seal of the commissioner, shall be received in evidence in all cases equally and with like effect as the originals.

History: En. Sec. 7, Ch. 195, L. 1921.

4063. Duties of attorney-general. The attorney-general shall render to the commissioner opinions upon all questions of law relating to the construction or interpretation of this act, or arising in the administration thereof, that may be submitted to him by the commissioner, and shall act as attorney for the commissioner in all actions and proceedings brought by or against him under or pursuant to any of the provisions of this act.

History: En. Sec. 8, Ch. 195, L. 1921.

4064. Scope of licenses. No license issued by the commissioner shall authorize any person other than him to whom the license shall be issued to act as a real estate broker. Whenever a license is issued to a corporation, it shall entitle the corporation officers, not to exceed three, designated in the application for the license, to act in the capacity of real estate broker, in behalf of the corporation; and whenever a license is issued to a co-partnership it shall entitle the members of the co-partnership named by the co-partnership in its application for the license, to act in behalf of the co-partnership in the capacity of real estate broker.

History: En. Sec. 9, Ch. 195, L. 1921.

4065. License — Application — Bond — Issuance — Fee. Any person, co-partnership, or corporation, desiring to carry on the business of real estate broker in this state shall make application for a license so to do upon a form prescribed by the commissioner, and shall file the same with the commissioner; when an individual makes the application, in the application shall be stated the full name of the applicant, and his business address, which shall be the place where he maintains his home office. The applicant shall file with the application a written recommendation, signed by at least five responsible freeholders of the county in which the home office of the applicant is, in which the freeholders must certify that they believe the applicant to be a man of good moral character, and in their judgment well qualified to carry on the business of real estate broker. The applicant shall also file with his application a good and sufficient bond in the sum of one thousand dollars, conditioned that the applicant shall conduct his business as real estate broker in accordance with the requirements of this act.

When a co-partnership makes application for a license it shall state in the application the full names of all the partners, their business addresses, the place where the principal office shall be maintained, and the commissioner shall require a recommendation, signed by at least five responsible freeholders of the county in which the home office of the co-partnership is, in which the freeholders must certify that they believe that each of the members of said co-partnership is a man of good moral character and in their judgment well qualified to carry on the business of real estate broker. The co-partnership shall also file with their application a good and sufficient bond in the sum of one thousand dollars, conditioned that the co-partnership shall conduct their business as real estate brokers in accordance with the requirements of this act.

An unincorporated association shall comply with the rules prescribed for a co-partnership.

When a corporation makes application for a license, it shall state in its application a list of its officers and directors, and their addresses, its principal place of business in this state, which shall be deemed its home office, and the names of the officers for whom a license is asked; the commissioner shall require its filing of a recommendation for each of said officers as in the case of an individual applicant, a good and sufficient bond in the sum of one thousand dollars, conditioned that the corporation shall conduct its business as a real estate broker in accordance with the requirements of this act.

The commissioner may require such other proof as he may deem advisable as to the honesty, truthfulness and good reputation of any applicant for a license, whether an individual or member of a co-partnership or officer of a corporation, before issuing the license; provided, however, that if a real estate broker has once been licensed under this act, upon his application for a renewal of his license, the commissioner may, in his discretion, waive the filing of new recommendations or references.

Upon the filing of the application, if the same be accompanied with a proper recommendation or recommendations, bond or bonds, and fee hereinafter specified, if the commissioner is satisfied with the showing made, he shall forthwith issue the license, which shall continue thenceforward, unless revoked, until the first day of April next ensuing. If the commissioner shall not be satisfied with the showing made by the applicant, or if the necessary bond or bonds, satisfactory to the commissioner be not given, he may refuse to issue the license, in which case the applicant may appeal to the district court within ten days after notice that his application has been rejected.

For every real estate broker's license issued, the commissioner shall require, before issuance, a fee of ten dollars, provided, that if a license be taken out after the first day of October, but one-half the fee shall be required, but the license shall expire on the first day of April following, and in case of licenses issued to co-partnerships, unincorporated associations, and corporations, he shall require such fee for each such co-partnership, unincorporated association, or corporation to whom such license is issued.

History: En. Sec. 10, Ch. 195, L. 1921.

4066. Salesman's license. The commissioner may issue a license to a person who acts as an agent for a duly licensed real estate broker, and who shall be designated as a salesman; the license shall be issued to him as a real estate broker (salesman). An applicant for a salesman's license shall comply in every respect with the rules and regulations provided for real estate brokers, except that he need not himself maintain a fixed place of business, but he must designate as his home office the office of a regularly licensed real estate broker, and must not change his home office without the commissioner's permission. A salesman shall pay an annual fee of five dollars, which shall accompany his application for a license, which license shall also expire on the first of April following.

History: En. Sec. 11, Ch. 195, L. 1921.

4067. Bonds—Approval—Action upon. All bonds given under the provisions of this act shall run to the state of Montana, shall be approved

by the commissioner and be filed in his office. Any person who may be damaged by the wrongful acts of a real estate broker shall, in addition to the other legal remedies, have a right of action on the broker's or salesman's bond.

A person having a right of action against an agent acting in the scope of his authority shall have a right of action not only against the agent but also against the principal, and the principal's bond shall be liable for the acts of his agent.

History: En. Sec. 12, Ch. 195, L. 1921.

4068. Consent to suit by non-resident applicants. If an applicant be a non-resident of this state, he shall file an irrevocable consent that suits and actions may be commenced against him in any county of this state in which the plaintiff having a cause of action or suit may reside, and that service of any process or pleadings in said suit or action may be made by delivering same to the state insurance commissioner. Such service when so made to be taken and held in all courts to be as valid and binding upon the applicant as if in fact made upon said applicant in this state within the jurisdiction of the court in which said suit or action is filed; said "irrevocable consent" shall be in a form prescribed by the commissioner, shall be acknowledged before a notary public and if the applicant be a corporation, said consent shall be accompanied by a duly certified copy of the resolutions of the board of directors of such corporation authorizing the execution of the same; any process or pleading above mentioned so served upon the state insurance commissioner shall be served in duplicate copies, one of which shall be filed in the office of the state insurance commissioner, and the other immediately forwarded by registered mail to the office of the applicant named in his application and service shall be deemed to have been made upon said applicant on the third day following the deposit in the mail of said copy of said process or pleadings.

History: En. Sec. 13, Ch. 195, L. 1921.

4069. Home office of real estate brokers. Each person, corporation, or co-partnership licensed to act as real estate broker shall be required to maintain a definite place of business in the state of Montana, which shall serve as his or its home office. In the home office shall be displayed constantly, in a conspicuous place, the license, and if a salesman be employed his license shall likewise be displayed. If any person, co-partnership, association or corporation shall establish or maintain any office or place of business in addition to his or its principal place of business, then upon application to the commissioner, he shall, upon the payment of a fee of one dollar for each duplicate, issue a duplicate of said license for each additional office, which duplicate shall at all times be displayed in said additional office in like manner as the original, and each copy shall be plainly marked "duplicate" by the commissioner. Upon the issuance of a license to any real estate broker or to a salesman, the commissioner shall issue to the broker or salesman a pocket card of convenient size reciting that the broker is licensed to act as a real estate broker, or a real estate broker (salesman), for a stated period, showing the business address of the broker, or salesman, which card shall be signed and sealed by the commissioner. Notice in writing shall be given the commissioner of any

change of business location, whereupon the commissioner shall issue a new license and pocket card covering the new business address, without charge; provided that the license previously issued, together with the pocket card shall be taken up by the commissioner before issuing the new one. A change of business location without notification to the commissioner shall automatically cancel the license heretofore issued.

It shall be unlawful for any licensed real estate broker or real estate broker (salesman) to pay any part or share of a commission or other compensation received by him in his capacity as a real estate broker, or real estate broker (salesman) to any person who is not duly licensed under the provisions of this act, except to brokers in other states or countries.

History: En. Sec. 14, Ch. 195, L. 1921.

4070. Suspension or revocation of license. The commissioner may, upon his own motion, and shall, upon verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or salesman within this state, and shall have the power to suspend or revoke licenses issued under the provisions of this act at any time where the holder thereof in performing or attempting to perform any of the acts mentioned in section 4058 of this code is guilty of:

(a) Making any substantial misrepresentations, or

(b) A continued or flagrant course of misrepresentation or making of false promises, whether through agents or salesmen, or otherwise; or

(c) Failure to account for or remit for any property or moneys coming into his possession which belong to another; or

(d) Any other conduct whether of the same or a different character than hereinbefore specified which constitutes dishonest dealing.

History: En. Sec. 15, Ch. 195, L. 1921.

4071. Suspension or revocation—Appeal and bond. If the commissioner shall refuse to grant an application for a license, or shall suspend or revoke a broker's or salesman's license, and the broker or salesman shall feel aggrieved by the decision of the commissioner, he may appeal to the district court of the county in which he has his principal place of business by giving notice of such appeal in writing to the commissioner and filing a bond with the clerk of the district court in the sum of three hundred dollars, to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, said bond and notice to be filed within ten days from the date of the commissioner's decision. The filing of such notice and bond shall supersede the order of the commissioner until the final termination of such appeal. The judge of the court shall summarily hear and determine the questions involved upon said appeal, and shall receive and consider any pertinent evidence whether oral or documentary concerning the matter. If such aggrieved party shall fail to perfect his appeal or file said transcript as herein provided, said stay shall automatically terminate. Appeals from judgment of the district court may be taken to the supreme court in the same manner as appeals are taken in civil actions.

History: En. Sec. 16, Ch. 195, L. 1921.

4072. Power of commissioners concerning oaths, subpoenas, process and witnesses. The commissioner shall have power to administer oaths, certify to all official acts and shall have power to subpoena and bring before him any person in this state as a witness, compel the production of books and papers, and take the testimony of any person by deposition in the same manner as is prescribed by law in the procedure of the district courts of this state in civil cases. Process issued by the commissioner shall extend to all parts of the state and may be served by any person authorized to serve process. Each witness who shall appear by order of the commissioner shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases appearing in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commissioner, his fees and mileage shall be paid in the same manner as other expenses of said department are paid.

History: En. Sec. 17, Ch. 195, L. 1921.

4073. Complaints for violation of act—Duty county attorney. The commissioner may prefer a complaint for violation of any section of this act before any court of competent jurisdiction. It shall be the duty of the county attorney of each county in the state to prosecute all violations of the aforesaid provisions of this act in their respective counties in which such violations occur.

History: En. Sec. 18, Ch. 195, L. 1921.

4074. Penalty for acting without license. Any person or corporation acting as a real estate broker or real estate broker (salesman) within the meaning of this act without a license as herein provided, shall, upon conviction thereof, be punished by a fine of not to exceed six hundred dollars.

History: En. Sec. 19, Ch. 195, L. 1921.

4075. Proof of license in actions for compensation. No person, co-partnership, association, or corporation, engaged in the business of, or acting in the capacity of a real estate broker, or salesman within this state shall maintain any action in any of the courts of this state to recover compensation for his services alleged to be earned as a real estate broker, or salesman, without alleging and proving that such person, co-partnership, association, or corporation was duly licensed under the provisions of this act at the time the alleged cause of action arose.

History: En. Sec. 20, Ch. 195, L. 1921.

4076. Notice termination employment of broker. Upon the termination of the employment of any real estate broker acting in the capacity of a salesman, a written statement of the facts, in reference thereto, shall be filed forthwith, by the employer, with the commissioner.

History: En. Sec. 21, Ch. 195, L. 1921.

4077. Mailing list licensed brokers. The commissioner shall at least annually mail to each person licensed under the provisions of this act, a list of the names and addresses of all licensed brokers in this state.

History: En. Sec. 22, Ch. 195, L. 1921.

4078. Effect of partial invalidity of act. If any section, sub-section, sentence, clause or phrase of this act is for any reason held to be unconstitutional or inoperative, such decision shall not affect the validity of the remaining portions of this act.

History: En. Sec. 23, Ch. 195, L. 1921.

CHAPTER 266.

REGULATION OF WAREHOUSEMEN (UNIFORM WAREHOUSE RECEIPTS ACT)

Section 4079. Warehouseman May Issue Receipts.
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4079. Warehouseman may issue receipts. Warehouse receipts may be issued by any warehouseman.

History: En. Sec. 1, Ch. 154, L. 1917. Construction of Uniform Warehouse Receipts Act, see note in Ann. Cas. 1917E, 29.

4080. Warehouse receipts—Terms—Liability for omission of terms. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored;

(b) The date of issue of the receipt;

(c) The consecutive number of the receipt;

(d) A statement whether the goods received will be delivered to bearer, to a specified person, or to a specified person or his order;

(e) The rate of storage charges;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouseman, which may be made by his authorized agent;

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damages caused by the omission from a negotiable receipt of any of the terms herein required.

History: En. Sec. 2, Ch. 154, L. 1917.

4081. Insertion of other conditions—Effect. A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to the provisions of this act;

(b) In any wise impair his obligation to exercise that degree of care

in safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

History: En. Sec. 3, Ch. 154, L. 1917.

4082. Non-negotiable receipt—Definition. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

History: En. Sec. 4, Ch. 154, L. 1917.

4083. Negotiable receipt—Definition. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provisions shall be inserted in a negotiable receipt that is non-negotiable. Such provisions, if inserted, shall be void.

History: En. Sec. 5, Ch. 154, L. 1917.

4084. Duplicate receipts, how marked—Liability for failure to mark. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

History: En. Sec. 6, Ch. 154, L. 1917.

4085. Non-negotiable receipts, how marked—Option of holder when not properly designated. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

History: En. Sec. 7, Ch. 154, L. 1917.

4086. Delivery of goods upon demand. A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien;

(b) An offer to surrender the receipt if negotiable with such indorsements as would be necessary for the negotiation of the receipt, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

History: En. Sec. 8, Ch. 154, L. 1917.

4087. To whom goods may be delivered. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent;

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate endorsee.

History: En. Sec. 9, Ch. 154, L. 1917.

4088. Warehouseman when liable for conversion. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

History: En. Sec. 10, Ch. 154, L. 1917.

Liability of warehouseman without notice of transfer of warehouse receipt for delivery of goods to original bailor, see note in Ann. Cas. 1914D, 1305.

Removal of goods in storage to another place of storage as in the nature of conversion, see note in 3 Ann. Cas. 470.

4089. Liability of warehouseman for failure to take up negotiable receipt. Except as provided in section 4114 of this code, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

History: En. Sec. 11, Ch. 154, L. 1917.

4090. Same—Liability when portion of goods delivered. Except as provided in section 4114 of this code, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser

acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

History: En. Sec. 12, Ch. 154, L. 1917.

4091. Alteration of receipt—When not an excuse from liability. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

(a) Immaterial;

(b) Authorized, or

(c) Made with fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

History: En. Sec. 13, Ch. 154, L. 1917.

4092. Court may order delivery when receipt has been lost or destroyed—Bond and costs. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also, in its discretion, order the payment of the warehouseman's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

History: En. Sec. 14, Ch. 154, L. 1917.

4093. Duplicate receipt—Warranty of what. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

History: En. Sec. 15, Ch. 154, L. 1917.

4094. Delivery of goods by warehouseman—When excused by title or right of possession. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or

subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

History: En. Sec. 16, Ch. 154, L. 1917.

4095. Procedure on suit when goods are claimed by more than one person. If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

History: En. Sec. 17, Ch. 154, L. 1917.

4096. When warehouseman may retain goods in case of adverse claim. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

History: En. Sec. 18, Ch. 154, L. 1917.

4097. Claim of third person not a defense to action for failure to deliver. Except as provided in the two preceding sections and in sections 4087 and 4114 of this code, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

History: En. Sec. 19, Ch. 154, L. 1917.

4098. Liability of warehouseman for non-existence of goods or failure to correspond to description. A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

History: En. Sec. 20, Ch. 154, L. 1917.

4099. Liability for want of care. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

History: En. Sec. 21, Ch. 154, L. 1917.

Liability of warehouseman for loss of goods by fire, see notes in 19 Ann. Cas. 243; Ann. Cas. 1914A, 1123; 24 L. R. A. (N. S.) 1117.

Effect of stipulation exempting warehouseman from loss by fire, see note in 23 L. R. A. (N. S.) 1205.

Duty of warehouseman to protect goods against high water, see note in L. R. A. 1915D, 726.

Liability of warehouseman for injury to agricultural products by weevil, see note in 26 L. R. A. (N. S.) 1114.

4100. Goods to be kept separately to permit identification. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited.

History: En. Sec. 22, Ch. 154, L. 1917.

4101. When interchangeable goods may be commingled. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

History: En. Sec. 23, Ch. 154, L. 1917.

Confusion of goods with consent of owners, see note in Ann. Cas. 1913E, 692.

4102. Liability of warehouseman to depositors of commingled goods. The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

History: En. Sec. 24, Ch. 154, L. 1917.

4103. When goods cannot be attached or levied on in warehouseman's possession—Surrender of receipt. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon by an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

History: En. Sec. 25, Ch. 154, L. 1917.

4104. Remedies of creditors. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

History: En. Sec. 26, Ch. 154, L. 1917.

4105. Warehouseman's lien. Subject to the provisions of section 4108 of this code, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced,

interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; also for all reasonable charges and the expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

History: En. Sec. 27, Ch. 154, L. 1917.

Right of lien for private storage of goods in absence of agreement for lien or of statute authorizing it, see note in Ann. Cas. 1913D, 1300.

Constitutionality of statute regulating storage charges of warehousemen, see note in 1 Ann. Cas. 433.

Power of equity to regulate charges of public warehouseman, see note in 24 L. R. A. (N. S.) 399.

Legislative power to fix tolls, rates or prices of warehousemen, see note in 33 L. R. A. 178.

4106. Enforcement of warehouseman's lien. Subject to the provisions of section 4108 of this code, a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which lien is asserted, and

(b) Against all goods belonging to other which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

History: En. Sec. 28, Ch. 154, L. 1917.

4107. How lien is lost. A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

History: En. Sec. 29, Ch. 154, L. 1917.

Waiver by warehouseman of lien by filing claim against decedent's estate as an unsecured one, see note in 2 A. L. R. 1132.

4108. Lien in case negotiable receipt is issued. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerate other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 4105 of this code, although the amount of the charges so enumerated is not stated in the receipt.

History: En. Sec. 30, Ch. 154, L. 1917.

4109. Warehouseman may refuse delivery until lien is satisfied. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

History: En. Sec. 31, Ch. 154, L. 1917.

4110. Warehouseman entitled to charges and advances in all cases. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which

the depositor has expressly or impliedly contracted with the warehouseman to pay.

History: En. Sec. 32, Ch. 154, L. 1917.

4111. Satisfaction of warehouseman's lien—Advertisement and sale of goods and disposition of proceeds. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized account of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver

goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

History: En. Sec. 33, Ch. 154, L. 1917.

4112. Notice to pay charges and remove perishable and other goods—Sale and disposition. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time specified, the warehousman may sell the goods at public or private sale without advertising. If the warehouseman, after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

History: En. Sec. 34, Ch. 154, L. 1917.

4113. Remedy for enforcing lien not exclusive. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

History: En. Sec. 35, Ch. 154, L. 1917.

4114. Liability of warehouseman after goods have been sold to satisfy lien. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

History: En. Sec. 36, Ch. 154, L. 1917.

4115. Negotiation of receipts—By delivery—When receipt is indorsed. A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other speci-

fied person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

History: En. Sec. 37, Ch. 154, L. 1917.

Transfer and negotiability of warehouse receipts, see notes in 84 Am. Dec. 752; 17 Ann. Cas. 670.

4116. Negotiation by indorsement. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

History: En. Sec. 38, Ch. 154, L. 1917.

4117. Transfer of non-negotiable receipts. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such receipt gives the transferee no additional right.

History: En. Sec. 39, Ch. 154, L. 1917.

4118. Who may negotiate a receipt. A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery.

History: En. Sec. 40, Ch. 154, L. 1917.

4119. Rights of transferee when receipt has been negotiated. A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

History: En. Sec. 41, Ch. 154, L. 1917.

Delivery of warehouse receipt as passing title to goods sold from mass without necessity of separation, see note in 9 Ann. Cas. 31.

4120. Rights of transferee when receipt has not been negotiated—Notice to warehouseman—When and how rights may be defeated. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title of the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and

thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or by a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

History: En. Sec. 42, Ch. 154, L. 1917.

4121. When transferee of negotiable receipt may enforce indorsement. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

History: En. Sec. 43, Ch. 154, L. 1917.

4122. Warranty in case of negotiation or transfer of receipt for value. A person who, for value, negotiates or transfers a receipt by indorsement or delivery, including one who assigns, for value, a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine;

(b) That he has a legal right to negotiate or transfer it;

(c) That he has a knowledge of no fact which would impair the validity or worth of the receipt, and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

History: En. Sec. 44, Ch. 154, L. 1917.

4123. Indorser of receipt not liable for what. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfil their respective obligations.

History: En. Sec. 45, Ch. 154, L. 1917.

4124. Mortgagee or pledgee when debt is paid not deemed to warrant what. A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

History: En. Sec. 46, Ch. 154, L. 1917.

4125. Non-impairment of the validity of negotiation of a receipt. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated,

or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

History: En. Sec. 47, Ch. 154, L. 1917.

4126. Negotiations for value of a receipt not affected by what. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized a subsequent negotiation.

History: En. Sec. 48, Ch. 154, L. 1917.

4127. Rights of purchaser for value of a receipt not defeated by seller's lien or stoppage in transit—Unpaid seller to surrender receipt to warehouseman. Where a negotiable receipt has been issued for goods, no seller's liens or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

History: En. Sec. 49, Ch. 154, L. 1917.

4128. Penalty for warehouseman to issue receipt when goods have not been delivered. A warehouseman or any officer, agent, or servant of a warehouseman who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.

History: En. Sec. 50, Ch. 154, L. 1917.

4129. Penalty for warehouseman to fraudulently issue receipt. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

History: En. Sec. 51, Ch. 154, L. 1917.

4130. Penalty for warehouseman to issue duplicate negotiable receipt when original is outstanding without marking the same "duplicate." A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon

the face thereof the word "duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 4092 of this code, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.

History: En. Sec. 52, Ch. 154, L. 1917.

4131. Penalty for issuing negotiable receipt for goods of which warehouseman is owner. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

History: En. Sec. 53, Ch. 154, L. 1917.

4132. Penalty for delivering goods against which negotiable receipt is outstanding without obtaining possession of same. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods if outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 4092 and 4114 of this code, be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

History: En. Sec. 54, Ch. 154, L. 1917.

4133. Penalty for negotiating receipt for deposited goods with defective title. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

History: En. Sec. 55, Ch. 154, L. 1917.

4134. What laws applicable in cases where this act does not prescribe rule. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

History: En. Sec. 56, Ch. 154, L. 1917.

4135. How act shall be interpreted and construed. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 57, Ch. 154, L. 1917.

4136. Definitions. (1) In this act, unless the context or subject-matter otherwise requires—

"Action" includes counter-claim, set-off, and suit in equity.

"Delivery" means a voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortagagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as a mortgagee or as a pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing done "in good faith," within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

History: En. Sec. 58, Ch. 154, L. 1917.

4137. To what receipts act does not apply. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

History: En. Sec. 59, Ch. 154, L. 1917.

4138. Act, how cited. This act may be cited as the Uniform Warehouse Receipts Act.

History: En. Sec. 62, Ch. 154, L. 1917.

CHAPTER 267.

REGULATION OF TITLE ABSTRACTOR.

Section 4139. Abstractor to Furnish Bond.
4140. Certificate From State Treasurer to Abstractor.
4141. Compensation of Abstractors.
4142. Abstract Prima Facie Evidence of Its Contents.
4143. Renewal of Bond Annually—Additional Bond.
4144. Complaint Against Abstractor—Hearing and Costs.
4145. Seal of Abstractor.
4146. Penalty for Violation of Law.

4139. Abstractor to furnish bond. It shall be a misdemeanor for any person, firm, or corporation to engage or continue in the business of making or compiling abstracts of title to real estate in the state of Montana, for compensation or hire, without first filing with the state treasurer a bond or undertaking, in the penal sum of five thousand dollars, running to the state of Montana, for the use of any person aggrieved, with suf-

ficient sureties, to be approved by the judge of the district court; such sureties shall be at least two in number if personal sureties are furnished; such bond or undertaking shall be conditioned for the faithful performance of duty by such abstractor, and the payment of any and all damages that any person may suffer by reason of any error, deficiency, or mistake in any abstract or certificate of title, or any continuation thereof, made or issued by such abstractor.

History: En. Sec. 1, Ch. 43, L. 1915.

Liability of abstractors of title, see notes in 72 A. S. R. 315; 12 Ann. Cas. 410; Ann. Cas. 1912B, 840; Ann. Cas. 1915D, 448; Ann. Cas. 1918E, 93.

Title insurance company as abstractor of titles, see note in Ann. Cas. 1914D, 646.

4140. Certificate from state treasurer to abstractor. When any abstractor shall have filed a bond or undertaking as herein provided, he or it, shall be entitled to receive from the state treasurer a certificate reciting that he or it is entitled to engage in the business of making and compiling abstracts of title to real estate in the state of Montana, which certificate shall be valid so long as the bond given by such abstractor shall remain unimpaired, and no longer. The state treasurer shall be entitled to receive a fee of one dollar for issuing such certificate.

History: En. Sec. 2, Ch. 43, L. 1915.

4141. Compensation of abstractors. The compensation to be charged and received by abstractors of title shall be and remain a matter of contract between the parties.

History: En. Sec. 3, Ch. 43, L. 1915.

4142. Abstract prima facie evidence of its contents. Any abstract of title to real estate, certified to be true and correct by any abstractor holding a valid and subsisting certificate of authority from the state treasurer, as herein provided, shall be received by the courts of this state as prima facie evidence of its contents, under such rules and regulations as to procedure as such courts may promulgate.

History: En. Sec. 4, Ch. 43, L. 1915.

4143. Renewal of bond annually—Additional bond. The bond or undertaking herein provided for shall be in full force and effect for a period of one year, and shall be renewed annually; but the attorney-general may, upon complaint of any reputable citizen, require such abstractor, upon ten days' written notice, to furnish a new or additional bond, or to show cause before the state treasurer why he or it has not done so, and if within said ten days no new or additional bond has been filed, with approved sureties, and not any sufficient reason is shown to the state treasurer why a new bond should not be required, then the state treasurer shall, in writing, annul the certificate of authority of such abstractor.

History: En. Sec. 5, Ch. 43, L. 1915.

4144. Complaint against abstractor—Hearing and costs. It is the duty of the attorney-general to appear before the state treasurer in behalf of the complainant, and to cause a transcript of any testimony taken to be made by a stenographer: Either the abstractor or the complainant may appeal to the district court of the county in which the complainant resides from the decision of the state treasurer, who shall certify the record, including the testimony, to said court; the district court shall hear the appeal in a summary way, on such record, and the costs of such

appeal, including the furnishing of the testimony, shall be taxed against either the abstractor or the complainant, whichever is defeated on such appeal.

History: En. Sec. 6, Ch. 43, L. 1915.

4145. Seal of abstractor. Any abstractor qualifying under the provisions of this act shall procure a seal, which seal shall have stamped thereon the name and location of such abstractor; and shall deposit with the state treasurer an impression of such seal, before a certificate shall issue; which said seal shall be affixed to every abstract, or certificate of title issued by such abstractor.

History: En. Sec. 7, Ch. 43, L. 1915.

4146. Penalty for violation of law. Any person, firm, or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for each offense.

History: En. Sec. 8, Ch. 43, L. 1915.

CHAPTER 268.

REGULATION OF AUCTIONEERS.

Section 4147. Auctioneer—Authority and Bond.
4148. The Bond—Sureties, Approval, and Filing.
4149. Auctioneers Ex-Officio.
4150. Assistant—Who May Act and When.
4151. Auctioneers to Designate Places of Business.
4152. To Sell at No Other Place.
4153. Power of City Authorities.
4154. Book for Livestock.
4155. Book of Sales.
4156. Commissions, and Penalty for Overcharge.

4147. Auctioneer—Authority and bond. Any citizen of this state may become an auctioneer, and be authorized to sell real or personal property at public auction in any county in this state, on giving a bond in accordance with the provisions of this chapter for the faithful performance of his duties.

History: En. Sec. 3400, Pol. C. 1895; re-en. Sec. 2119, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1921. Cal. Pol. C. Sec. 3284.

Effect of insertion of unauthorized provisions in auctioneer's bond, see note in L. R. A. (N. S.) 1917B, 1013.

Validity of license tax imposed on auctioneers, see notes in 129 A. S. R. 280; Ann. Cas. 1915B, 815; 51 L. R. A. (N. S.) 40.

4148. The bond—Sureties, approval, and filing. The bond must be conditioned to be paid to the state of Montana, with one or more sureties, in the sum of five thousand dollars, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907. Cal. Pol. C. Sec. 3285.

4149. Auctioneers ex-officio. In any city or town where there is no auctioneer, the sheriff or a constable thereof is ex-officio auctioneer, and is permitted to sell any property, real or personal, at public auction; and for any delinquency as such ex-officio auctioneer he is liable on his official bond.

History: En. Sec. 3407, Pol. C. 1895; re-en. Sec. 2126, Rev. C. 1907. Cal. Pol. C. Sec. 3291.

4150. Assistant—Who may act and when. Every auctioneer, in case of inability to attend an auction by reason of sickness, or the performance of any duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ a copartner or clerk to hold such auction in his name and behalf, such employee to take and file with the county clerk of the county an affidavit faithfully to perform the duties of auctioneer. But any auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

History: En. Sec. 3408, Pol. C. 1895; re-en. Sec. 2127, Rev. C. 1907. Cal. Pol. C. Sec. 3292.

4151. Auctioneers to designate places of business. No auctioneer in any city of this state must have at one time more than one place for holding auction; and every such auctioneer, before acting as such, must file with the clerk of the county in which said city is situated a writing signed by him, designating such place, and naming therein the partners, if any, engaged with him in business.

History: En. Sec. 3420, Pol. C. 1895; re-en. Sec. 2128, Rev. C. 1907. Cal. Pol. C. Sec. 3302.

4152. To sell at no other place. No auctioneer must expose to sale any articles at any other place than that so designated, except goods sold in original packages as imported, household furniture, and such bulky articles as have been usually sold in warehouses, or in the public streets, or on the wharves.

History: En. Sec. 3421, Pol. C. 1895; re-en. Sec. 2129, Rev. C. 1907. Cal. Pol. C. Sec. 3303.

4153. Power of city authorities. The city council or other corresponding authority of each city may designate such place or places therein for the sale by auction of horses, carriages, and household furniture, as they deem expedient.

History: En. Sec. 3422, Pol. C. 1895; re-en. Sec. 2130, Rev. C. 1907. Cal Pol. C. Sec. 3304.

4154. Book for livestock. Every auctioneer who sells any animal of the horse kind, or any mules, must keep a book, in which he must register the name of each and every person bringing or offering any horse or mule to be sold, together with the marks and brands. The book is a public record, subject to the inspection of any person desiring to inspect the same.

History: En. Sec. 3423, Pol. C. 1895; re-en. Sec. 2131, Rev. C. 1907. Note.—Earlier acts were Secs. 1 and 2, p. 372, Cod. Stat. 1871; Secs. 2 and 3, 5th Div. Rev. Stat. 1879; Secs. 25 and 26, 5th Div. Comp. Stat. 1887. Cal. Pol. C. Sec. 3305.

4155. Book of sales. Each auctioneer must keep a book, in which he must enter all sales, showing the name of the owner of the goods sold, to whom sold, and the amount paid, and the date of each sale, which book must at all times be open for the inspection of any person interested therein.

History: En. Sec. 3424, Pol. C. 1895; re-en. Sec. 2132, Rev. C. 1907. Cal. Pol. C. Sec. 3306.

4156. Commissions, and penalty for overcharge. No auctioneer must demand or receive a higher compensation for his services than a commis-

sion of one per cent. on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this section, in addition to the criminal penalty, forfeits to the party aggrieved two hundred and fifty dollars, and must refund the excess of charge.

History: En. Sec. 3425, Pol. C. 1895; re-en. Sec. 2133, Rev. C. 1907. Cal. Pol. C. Sec. 3309.

Compensation and lien of auctioneer, see note in 131 A. S. R. 501.

CHAPTER 269.

REGULATION OF EMPLOYMENT AGENCIES—LICENSES.

Section 4157. Definition of Terms Used in Act.
4158. License to Conduct Employment Agency—Fee.
4159. Contents of License.
4160. Application for License.
4161. Bond of Applicant.
4162. Action Upon Bond.
4163. Registers to Be Kept by Licensed Persons.
4164. Fees Which May Be Charged Applicants—Repayment of Fees.
4165. Receipts to Be Delivered to Applicants for Employment and Help.
4166. Gifts or Other Things of Value in Lieu of Fees Prohibited.
4167. Applicants for Employment Entitled to Card—Contents of Card.
4168. Copies of Act to Be Posted Where.
4169. Duty of Licensed Persons When Sending Contract Laborers Outside of County.
4170. Female Applicants Not to Be Sent to Questionable Places.
4171. False and Fraudulent Advertising—Name and Address of Agency to Appear on Advertising Matter.
4172. Violation of Act a Misdemeanor—Penalty.

4157. Definition of terms used in act. The term "person," when used in this act, means and includes any individual, company, association, or corporation, or their agents, and the term "employment agency" means and includes the business of keeping an intelligence office, employment bureau, or other agency or office for procuring work or employment for persons seeking employment, where a fee or privilege is exacted, charged, or received, directly or indirectly, for procuring or assisting to procure employment, work, or a situation of any kind, or for procuring or providing help for any person, whether such fee is collected from the applicant for employment or the applicant for help, excepting agencies for procuring employment for school teachers exclusively. The term "fee" as used in this act means money or other thing of value, or a promise to pay money or thing of value.

History: En. Sec. 1, Ch. 225, L. 1919.

Validity of statutory regulation of employment agencies, see notes in 5 Ann. Cas. 326; Ann. Cas. 1914B, 739; Ann. Cas. 1917C, 523; Ann. Cas. 1917D, 684, 984; L. R. A. 1917B, 1280.

Police power to license employment agencies, see notes in 2 L. R. A. (N. S.) 859; 21 L. R. A. (N. S.) 263; L. R. A. 1916E, 1150.

4158. License to conduct employment agency—Fee. No person shall open, keep, or carry on any such employment agency in the state of Montana, unless every such person shall procure a license therefor from the county treasurer of the county in which such person intends to conduct such agency. Such license shall be granted upon the payment to said county treasurer of a fee of five dollars annually for such employment agencies.

History: En. Sec. 2, Ch. 225, L. 1919.

4159. Contents of license. Every license shall contain the name of the person licensed, a designation of the city, street, and number of the house in which the person licensed is authorized to carry on said employment agency, and the number and date of such license.

History: En. Sec. 3, Ch. 225, L. 1919.

4160. Application for license. The application for such license shall be filed not less than one month prior to the granting of said license, and shall be accompanied by the affidavits of two or more persons who have known the applicant or the chief officer thereof, if the applicant is a corporation, for five years, stating that the said applicant or officer thereof is a person of good moral character.

History: En. Sec. 4, Ch. 225, L. 1919.

4161. Bond of applicant. The county treasurer of each county shall require such person to file with his application for a license a bond in due form to the state of Montana, in the penal sum of three thousand dollars, with two or more sufficient sureties, and conditioned that the obligor will not violate any of the duties, terms, conditions, provisions, or requirements of this act.

History: En. Sec. 5, Ch. 225, L. 1919.

4162. Action upon bond. If any person shall be aggrieved by the misconduct of any such licensed person, such person may maintain an action in his own name upon the bond of said employment agent in any court having jurisdiction of the amount claimed.

History: En. Sec. 6, Ch. 225, L. 1919.

4163. Registers to be kept by licensed persons. It shall be the duty of every such licensed person to keep a register, approved by the county treasurer, in which shall be entered the date of every application for employment; the name and address of the applicant; the amount of the fee received. Such licensed person shall also enter in a separate register approved by the county treasurer the name and address of every applicant for help, the date of such application, the kind of help requested, the names of the persons sent, with the designation of the one employed, the amount of the fee received, and the rate of wages agreed upon. The aforesaid registers of applicants for employment and for help shall be open during office hours to inspection by the county treasurer.

History: En. Sec. 7, Ch. 225, L. 1919.

4164. Fees which may be charged applicants—Repayment of fees. The fees charged applicants for any employment shall not exceed the sum of three dollars. In case the applicant, through no fault, neglect, or refusal of his own, shall not obtain help or employment through such agency, then such licensed person shall, on demand, repay the full amount of the said fee, allowing five days' time to determine the fact of the applicant's failure to obtain help or employment.

History: En. Sec. 8, Ch. 225, L. 1917.

4165. Receipts to be delivered to applicants for employment and help. It shall be the duty of such licensed person to give to every applicant for employment from whom a fee shall be received a receipt in which shall be

stated the name of said applicant, the date and amount of the fee, and the purpose for which it is paid, and to every applicant for help a receipt stating the name and address of said applicant, the date and amount of the fee, and the kind of help to be provided. Every such receipt shall have printed on the back thereof a copy of this section.

History: En. Sec. 9, Ch. 225, L. 1919.

4166. Gifts or other things of value in lieu of fees prohibited. No such licensed person shall receive or accept any valuable thing or gift as a fee in lieu thereof, and no fee shall be accepted by such licensed person for any other purpose, directly or indirectly, by any pretense or subterfuge employed to evade the interest or purpose of this section, except as herein provided. No such licensed person shall divide fees with contractors or other employers to whom applicants for employment are sent.

History: En. Sec. 10, Ch. 225, L. 1919.

4167. Applicants for employment entitled to card—Contents of card. Every such licensed person shall give to each applicant for employment a card containing the name and address of such employment agency, and the written name and address of the person to whom the applicant is sent for employment.

History: En. Sec. 11, Ch. 225, L. 1919.

4168. Copies of act to be posted where. Every such licensed person shall post in a conspicuous place in each room of such agency a plain and legible copy of this act.

History: En. Sec. 12, Ch. 225, L. 1919.

4169. Duty of licensed persons when sending contract laborers outside of county. Whenever such licensed person or any other acting for him agrees to send one or more persons to work as contract laborers in any one place outside the county in which such agency is located, the said licensed person shall file with the county treasurer, within five days after the contract is made, a statement containing the following items: Name and address of the employer, name and address of the employee, nature of work to be performed, hours of labor, wages offered, designation of the persons employed, and terms of transportation.

History: En. Sec. 13, Ch. 225, L. 1919.

4170. Female applicants not to be sent to questionable places. No such licensed person shall send or cause to be sent any female help as servants or inmates to any questionable place, or place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, the character of which such licensed person could have ascertained upon reasonable inquiry.

History: En. Sec. 14, Ch. 225, L. 1919.

4171. False and fraudulent advertising—Name and address of agency to appear on advertising matter. No such licensed person shall publish or cause to be published any false or fraudulent notice or advertisement; all advertisements of such employment agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall contain the name and address of such employ-

ment agency, and no such licensed person shall give any false information, or make any false promise concerning employment to any applicant who shall register for employment or help.

History: En. Sec. 15, Ch. 225, L. 1919.

4172. Violation of act a misdemeanor—Penalty. Any violation of the provisions of this act shall constitute a misdemeanor punishable by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a period of not more than ninety days, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 225, L. 1919.

CHAPTER 270.

REGULATION OF WAGE BROKERS.

Section 4173. Wage Brokers to Procure License and Give Bond.
4174. Issuance of License—Terms and Amount Thereof.
4175. Wage Broker Defined.
4176. Restrictions Upon Assignment of Wages or Salary.
4177. Interest on Loan—Amount and Computation.
4178. Wife Must Join in Assignment of Wages—Acknowledgment.
4179. Assignments Invalid Without Notice to Employer—Filing Assignments.
4180. Assignments to Be Considered a Loan.
4181. Violation of Act a Misdemeanor—Penalty.
4182. Note, Instrument, or Assignment Contrary to Act Void.

4173. Wage brokers to procure license and give bond. From and after the passage of this act, no person, company, corporation, or association shall establish or conduct the business of wage broker within the state of Montana, unless such person, company, corporation, or association shall have first procured a license from the proper authorities as hereinafter provided, and shall have executed a bond in such sum as said authorities may require for the faithful carrying out of the provisions of this act, and of the ordinances of any town or city in which such business may be carried on.

History: En. Sec. 1, Ch. 56, L. 1911.

4174. Issuance of license—Terms and amount thereof. The board of county commissioners of any county in this state, or, in case said business be carried on in any incorporated city or town, the city council or board of trustees of said city or town, may in their discretion, from time to time, grant licenses to any person or persons, company, corporation, or association to conduct or carry on the business of wage broker upon payment of such sum therefor, and upon such terms and conditions as the said board of county commissioners or city council or board of trustees shall by resolution or ordinance require.

History: En. Sec. 2, Ch. 56, L. 1911.

4175. Wage broker defined. Any person, company, corporation, or association parting with, giving, or loaning money, either directly or indirectly to any employee or wage-earner, upon the security of or in consideration of any assignment or transfer of wages or salary of such employee or wage-earner, shall be deemed to be a wage broker within the meaning of this act.

History: En. Sec. 3, Ch. 56, L. 1911.

4176. Restrictions upon assignment of wages or salary. No assignment of his or her wages or salary by any employee or wage-earner to any wage broker for his or her benefit shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part or all of the wages or salary theretofore earned.

History: En. Sec. 4, Ch. 56, L. 1911.

Validity of statute making assignment of wages invalid except under prescribed conditions, see notes in Ann. Cas. 1913B, 531; Ann. Cas. 1915C, 691; Ann. Cas. 1917A, 760.

Constitutionality of statute restricting right to assign salary or wages, see notes in 28 L. R. A. (N. S.) 1108; 43 L. R. A. (N. S.) 746; 139 A. S. R. 875.

4177. Interest on loan—Amount and computation. No wage broker shall ask, demand, or receive, either as compensation or interest, or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by him to any employee or wage-earner in excess of twelve per cent. per annum, and said compensation or rate of interest shall be computed upon the amount actually advanced to and received by the employee or wage-earner, and shall include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring said loan.

History: En. Sec. 5, Ch. 56, L. 1911.

4178. Wife must join in assignment of wages—Acknowledgment. No assignments of his wages or salary to a wage broker by a married man, who shall have a wife residing in this state, shall be valid or enforceable without the consent of his wife, evidenced by her signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments, and no wage broker or person connected with him, directly or indirectly, shall be authorized to take any such acknowledgements.

History: En. Sec. 6, Ch. 56, L. 1911.

4179. Assignments invalid without notice to employer—Filing assignments. No assignment of wages or salary to a wage broker shall be valid or enforceable unless notice in writing of the same, accompanied by a copy of the assignment, shall be given to the employer within one day from the date of its execution; and all assignments shall be filed in the office of the county clerk of the county where the assignor resides, and no assignment shall be valid unless so filed.

History: En. Sec. 7, Ch. 56, L. 1911.

4180. Assignment to be considered a loan. Every purchase by a wage broker of an assignment of the wages or salary of any employee or wage-earner shall be held and considered a loan, in the sum of the amount actually paid to and received by such employee or wage-earner, and shall be subject to all the provisions of this act.

History: En. Sec. 8, Ch. 56, L. 1911.

4181. Violation of act a misdemeanor—Penalty. Any person, company, corporation, or association, and any officer, member, agent, or employee thereof, violating any or either of the provisions of this act,

shall be deemed guilty of a misdemeanor, and, upon conviction, shall be liable to a fine in the sum of not less than one hundred dollars, nor more than five hundred dollars for each offense, or to imprisonment in the county jail for a period of not to exceed ninety days, or both.

History: En. Sec. 9, Ch. 56, L. 1911.

4182. Note, instrument, or assignment contrary to act void. Any note, bill, or other evidence of indebtedness, and any assignment of wages or salary given to or received by any wage broker in violation of any of the provisions of this act, shall be void as against the creditors of the assignor or transferer.

History: En. Sec. 10, Ch. 56, L. 1911.

CHAPTER 271.

REGULATION OF COMMISSION MERCHANTS.

Section 4183. Commission Merchants to Acknowledge Receipt of Property.
4184. Statement to Consignor on Sale of Property.
4185. Penalty for Violation of Act.

4183. Commission merchants to acknowledge receipt of property. Any person or persons doing business in this state as commission merchants, or who shall receive from any person of this state, agricultural or horticultural products or farm produce raised in this state to sell on commission, shall immediately, upon receipt of such goods, send to the consignor or consignors a statement in writing showing what property has been received.

History: En. Sec. 1, Ch. 2, L. 1909.

Validity of state regulation of commission merchants, see note in Ann. Cas. 1917B, 631.

4184. Statement to consignor on sale of property. Whenever any commission merchant or person receiving any property as mentioned in the preceding section, shall sell the same or twenty-five per centum thereof, such commission merchant or person shall immediately render a true statement to the consignor, showing what portion of such consignment has been sold, to whom sold and the price received therefor.

History: En. Sec. 2, Ch. 2, L. 1909.

4185. Penalties for violation of act. Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of this act, or who shall make a false report or statement of the matters herein required, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 2, L. 1909.

CHAPTER 272.

REGULATION OF PAWNBROKERS AND JUNK DEALERS.

Section 4186. Interest Pawnbrokers May Receive.
4187. Search Warrant May Issue.
4188. Service of.
4189. Delivery of Property to Claimant—Bond.
4190. Conditions of Bond.
4191. Must Keep Register.
4192. Penalties.

4186. Interest pawnbrokers may receive. No person must carry on the business of pawnbroker or junk dealer by receiving goods pawned, or in pledge for loans, at any rate of interest above ten per cent. per annum, without first obtaining a license. There must be no other or greater amount received by any pawnbroker or junk dealer, his employees or agents, for interest, commission, discount, storage, or caring for property pledged, than the rate of three per cent. per month.

History: Secs. 4186 to 4192 were first enacted in substance as Secs. 1 to 8, pp. 206-207, L. 1889; amd. Secs. 3310 to 3316, Pol. C. 1895, and appeared as Secs. 2105 to 2111, Rev. C. 1907. See also Secs. 11184 to 11187, Pen. C.

Validity of state regulation of pawnbrokers, see note in Ann. Cas. 1913D, 1281.

4187. Search warrant may issue. Whenever any person makes oath before a magistrate that any property belonging to him has been embezzled or taken without his consent, and that he has reason to believe or suspect, and does suspect, that such property has been pledged with any pawnbroker or junk dealer, such magistrate, if satisfied, must issue his warrant to search for the property so taken, and if found, to seize and bring the same before him.

History: Sec. 2106, Rev. C. 1907. See also history of Sec. 4186.

4188. Service of. The officer to whom said warrant is directed and delivered must execute the same, and proceed in the same manner as in case of other search-warrant.

History: Sec. 2107, Rev. C. 1907. See also history of Sec. 4186.

4189. Delivery of property to claimant—Bond. Upon any property seized by virtue of such warrant being brought before the magistrate who issued the same, he must cause such property to be delivered to the person so claiming to be the owner thereof, on whose application the warrant was issued, on his executing a bond as hereinafter directed; and if such bond be not executed within forty-eight hours, the magistrate must cause the said property to be delivered to the person from whose possession it was taken.

History: Sec. 2108, Rev. C. 1907. See also history of Sec. 4186.

4190. Conditions of bond. The bond must be in a penal sum equal to double the value of the property claimed, with two sureties approved by the magistrate in favor of the person from whose possession the property was taken, with a condition that the claimant will, on demand, pay all damage that may be recovered against him in any suit to be brought within twenty days from the date of such bond, by the pawnbroker or junk dealer from whose possession the property was taken.

History: Sec. 2109, Rev. C. 1907. See also history of Sec. 4186.

4191. Must keep register. Every pawnbroker or junk dealer must keep a register, in which must be entered a description of every article pawned to him or purchased by him, with the date of the pawning or purchasing, date when the article must be redeemed, with the name of the person by whom the same was pawned, or by whom purchased, and the amount loaned thereon or paid therefor; and in case of the sale of any

article pawned or pledged, the pawnbroker or junk dealer must enter upon said register the name of the purchaser, the time of the sale, and the price paid therefor; and the register must always be open to inspection and examination of any peace officer or other persons.

History: Sec. 2110, Rev. C. 1907. See also history of Sec. 4186.

4192. Penalties. The penalties for a violation of any of the provisions of this chapter are provided for in sections 11184 to 11187 of the Penal Code.

History: Sec. 2111, Rev. C. 1907. See also history of Sec. 4186.

CHAPTER 273.

REGULATION OF SALE OF GASOLINE, KEROSENE, AND OILS.

Section 4193. Sale of Adulterated or Misbranded Gasoline, Kerosene, etc., Prohibited.
4194. State Sealer of Weights and Measures to Be Ex-Officio State Oil Inspector—Powers and Duties—Compensation—Deputies.
4195. Inspector to Be Under Supervision of State Board of Examiners.
4196. Oil and Grease to Be Sold under True Name and Grade—Marking Container.
4197. Right of Entry and Inspection—Resistance a Misdemeanor.
4198. Standard Specifications for Gasoline.
4199. Kerosene Standards.
4200. State Chemist—Designation, Powers, and Duties—Unofficial Samples.
4201. Manufacture of Distillates of Lower Specific Gravity Permitted—Marking Container.
4202. Misrepresentation and Substitution of Product.
4203. "Adulterated Gasoline" Defined.
4204. Analyses by Assistant to State Chemist—Method of Appointing Assistant.
4205. State Chemist and Assistants as Witnesses—Mileage.
4206. "Misbranded" Defined.
4207. Violation of Act a Misdemeanor—Penalty.
4208. State Gasoline Inspection Fund—Creation and Expenditure.

4193. Sale of adulterated or misbranded gasoline, kerosene, etc., prohibited. It shall hereafter be unlawful for any person, firm, or corporation to manufacture, sell, keep for sale, or offer for sale within the state of Montana, any gasoline, kerosene, lubricating-oil or grease, road oil, fuel oil for boilers and internal combustion engines, which is adulterated or misbranded, within the meaning of this act, or which does not conform to standard specifications herein prescribed.

History: En. Sec. 1, Ch. 203, L. 1919.

Note.—Earlier acts were sections 3380 to 3382, Political Code 1895, appearing as sections 2112 to 2114, Revised Codes 1907, and chapter 121, Laws of 1907, appearing as sections 2115 to 2118, Revised Codes 1907.

Statutory regulation of sale of petroleum products, see notes in 18 Ann. Cas. 783; Ann. Cas. 1917A, 167; 41 L. R. A. (N. S.) 458.

4194. State sealer of weights and measures to be ex-officio state oil inspector—Powers and duties—Compensation—Deputies. The state sealer of weights and measures of the state of Montana is hereby designated as ex-officio state oil inspector of the state of Montana, subject to the supervision and control of the state board of examiners, and it shall be his duty, in order to secure the proper enforcement of this act, to procure for inspection, and cause to be inspected, suitable samples of the articles enumerated in the preceding section. And said oil inspector is further empowered to make all necessary rules and regulations not inconsistent

with the terms of this act for the procuring and transmission of said samples, and for reporting the results of analyses. The state oil inspector is further empowered and it shall be his duty to publish, from time to time, and in bulletin form, the results of the laboratory investigations of the state chemist relative to oil. It shall likewise be his duty to inform the county attorney of the proper county in all cases where he shall discover violations of this law or shall ascertain that gasoline or kerosene not conforming to the requirements of this act is being sold or offered for sale. The state oil inspector shall receive no extra pay or compensation for the performance of the duties imposed upon him by this act. He shall, however, be entitled to receive his actual and necessary traveling expenses, including hotel accommodations, when engaged in the inspection required by this act. He shall also be authorized to procure the necessary office help, equipment, and supplies to enable him to perform the duties of this act required. He may likewise, for the purpose of enforcing this act, employ one deputy oil inspector at a salary of not to exceed two thousand dollars per year, to be paid out of the fund hereinafter created. He may likewise, to perform the duties imposed upon him by this act, employ all deputy sealers of weights and measures under his jurisdiction, and such deputies shall be entitled to the same traveling expenses as are herein provided for the state oil inspector, but shall receive no extra compensation for the performance of the duties aforesaid.

History: En. Sec. 2, Ch. 203, L. 1919.

4195. Inspector to be under supervision of state board of examiners. That for the purpose of enforcing the terms of this act, the state board of examiners of the state of Montana is hereby given full supervision and control over the state oil inspector and state chemist. It shall be the duty of the state board of examiners to supervise all acts of the state oil inspector and state chemist, and to co-operate with them to the end that the provisions of this act may be enforced.

History: En. Sec. 3, Ch. 203, L. 1919.

4196. Oil and grease to be sold under true name and grade—Marking container. Lubricating oil and grease, road oil, and fuel oil must be sold under their true names and grades, respectively, and such names and grades must be impressed or otherwise plainly marked upon the barrel, can, vessel, or other container in which the same are stored, sold, offered, or exposed for sale, respectively, or upon a label conspicuously and securely fastened thereto, giving the true name and grade of the product, and the name and address of manufacturer or dealer who sells the same.

History: En. Sec. 4, Ch. 203, L. 1919.

4197. Right of entry and inspection—Resistance a misdemeanor. For the purpose of obtaining information regarding suspected violation of this act, the state oil inspector shall have access to all places where the above-named articles are sold, offered for sale, or kept for sale, manufactured, or transported, or stored, and may take samples therefrom for analysis, tendering payment therefor. Any person obstructing such entry or inspection, or failing upon request to assist therein, shall be guilty of a misdemeanor, and shall be punished as provided in section 4208 of this code.

History: En. Sec. 5, Ch. 209, L. 1919.

4198. Standard specifications for gasoline. The standards of quality and strength for gasoline kept for sale or offered for sale within the state of Montana shall be as follows: That all gasoline kept or offered for sale within the state of Montana shall conform to the following standard specifications:

1. It shall be free from water and other foreign matter, and deodorized.

2. It shall not contain any acid in sufficient quantity to be disclosed by the official litmus test.

3. Its volatility as determined by the standard distillation method shall meet the following requirements:

(a) The temperature read on the thermometer when the first drop falls into the receiver shall not be below ninety-five degrees Fahrenheit nor above one hundred and forty degrees Fahrenheit.

(b) The temperature read when twenty per cent. has distilled shall not be below one hundred and fifty-eight degrees Fahrenheit nor above two hundred and twenty-one degrees Fahrenheit.

(c) The temperature read when fifty per cent. has distilled shall not be above two hundred and seventy-five degrees Fahrenheit.

(d) The temperature read when ninety per cent. has distilled shall not be above three hundred and ninety degrees Fahrenheit.

(e) The dry point shall not be above four hundred and sixty degrees Fahrenheit.

(f) Tolerance: If either the twenty per cent. or the ninety per cent. temperature mark is above the required limit, by an amount not exceeding eighteen degrees Fahrenheit, the gasoline may be considred acceptable if the sum of the two temperatures read for the twenty per cent. and the ninety per cent. marks does not exceed the sum of the adopted limits; provided, however, that the state board of examiners shall be authorized to change or modify the standard specifications herein prescribed, whenever in its judgment such change is necessary in order to conform to changing conditions of supply and demand or improvements in motor design; and providing further, that whenever the bureau of mines of the department of the interior of the United States shall hereafter prescribe for the several states uniform standard specifications for motor gasoline, such specifications shall supersede those in this act provided.

History: En. Sec. 6, Ch. 203, L. 1919.

4199. Kerosene standards. The standards of quality, purity, and strength for all kerosene kept or offered for sale within the state of Montana shall be as follows: The flash-point of all kerosene shall not be less than one hundred ten degrees Fahrenheit, measured in the Tagliabue open cup, and said kerosene shall contain no water or other foreign matter.

History: En. Sec. 7, Ch. 203, L. 1919.

4200. State chemist—Designation, powers, and duties—Unofficial samples. The head or chairman of the department of chemistry of the state college of agriculture and mechanic arts of the state of Montana is hereby designated as state chemist, and is authorized, and it shall be his duty, to make all analyses and tests of articles inspected under the terms of this act, and to employ in such analyses and tests the standard methods of analysis. The state chemist shall receive no compensation for his serv-

ices, nor shall he charge any fee for testing or analyzing any samples required to be analyzed by him under the terms of this act; provided, however, that neither the state chemist nor the department of chemistry of the state college of agriculture and mechanic arts shall be required to receive for analysis any unofficial samples submitted by any person other than the state oil inspector.

History: En. Sec. 8, Ch. 203, L. 1919.

4201. Manufacture of distillates of lower specific gravity permitted—Marking container. Nothing in this act contained shall prevent the manufacture or sale of engine distillates, power distillates, or kerosene distillates of a lower specific gravity on the Beaumé scale than gasoline, and which do not conform to the standards of quality, purity, and strength prescribed by this act; provided, however, that the package or other container in which the same are sold, or offered for sale, shall be plainly labeled in such a manner as to indicate the name and character thereof.

History: En. Sec. 9, Ch. 203, L. 1919.

4202. Misrepresentation and substitution of product. It shall hereafter be unlawful for any person, firm, or corporation in the state of Montana, selling or dealing in lubricating-oils, to misrepresent the quality or brand of any lubricating-oils sold by him or to substitute, without the knowledge and consent of the purchaser, a different quality or brand of lubricating-oils from that ordered by such purchaser.

History: En. Sec. 10, Ch. 203, L. 1919.

4203. "Adulterated gasoline" defined. For the purpose of this act, the term "adulterated gasoline" shall mean gasoline to which kerosene or any other foreign substance has been added.

History: En. Sec. 11, Ch. 203, L. 1919.

4204. Analyses by assistant to state chemist—Method of appointing assistant. All analyses herein directed to be made by the state chemist may, in the discretion of such state chemist, be made by any competent assistant acting under his supervision; provided, however, that such assistant shall be appointed under the rules and regulations of the state board of education.

History: En. Sec. 12, Ch. 203, L. 1919.

4205. State chemist and assistants as witnesses—Mileage. It shall be the duty of the state chemist or his assistants to attend and give evidence in all prosecutions instituted for the enforcement of this act, and such chemist or assistant shall receive the same fees and mileage for attendance in such cases as are prescribed by the laws of the state of Montana to be paid to witnesses in courts of record.

History: En. Sec. 13, Ch. 203, L. 1919.

4206. "Misbranded" defined. For the purpose of this act, the term "misbranded" shall be construed as follows: All articles, the package or labels of which shall bear any statement, design, or device regarding the same, or regarding ingredients or substances therein, or regarding the

properties of such articles, which are false or misleading in any particular whatsoever, shall be deemed misbranded.

History: En. Sec. 14, Ch. 203, L. 1919.

4207. Violation of act a misdemeanor—Penalty. Any person, firm, or corporation, who shall manufacture, keep for sale, or offer for sale any adulterated or misbranded gasoline or kerosene as defined by this act, or who shall in any manner violate any of the other provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars and costs of prosecution, and each and every sale in violation of any of the provisions of this act shall be deemed a separate offense.

History: En. Sec. 15, Ch. 203, L. 1919.

4208. State gasoline inspection fund—Creation and expenditure. For the purpose of enforcing the provisions of this act, a fund to be known as the state gasoline inspection fund is hereby created; that all of the expenses incurred by the state oil inspector in enforcing the terms of this act, the salary, and all of the necessary traveling expenses of the deputy oil inspector, and all necessary laboratory and traveling expenses of the state chemist, shall be paid out of the fund created by this act, in the following proportions, to-wit: Two-thirds of the fund hereby created shall be expended in payment of salary, traveling, and other expenses of the state oil inspector and his deputies, including office help and equipment; one-third of said fund shall be expended in the payment of the necessary expenses incurred by the state chemist. All bills for payment out of said fund shall be presented and audited in the same manner as other claims against the state of Montana.

History: En. Sec. 16, Ch. 203, L. 1919.

CHAPTER 274.

REGULATION OF SALE OF ENGINES AND MACHINERY.

Section 4209. Computation of Capacity of Traction Engines—Marking on Engine.
4210. Inspection by State Boiler Inspectors—Fees.
4211. Penalty for Non-Compliance With Law.

4209. Computation of capacity of traction-engines—Marking on engine. The capacity or initial power of all traction-engines or machinery propelled or operated by gas, oil, or any product of oil, when sold or offered for sale within this state, must be computed and determined by the draw-bar horsepower; that is, the initial pulling power of such engines or machinery, and not otherwise; and such power or capacity shall be plainly engraved in figures with the letters "H. P." on a metallic templet or plate, which templet or plate shall, before such engine or machine is sold or offered for sale, be securely fastened thereto, in such manner and place and of sufficient size as to be easily seen and read. And all new engines or machinery named herein must be engraved or branded with the shop number, which shall be in some place easily observed.

History: En. Sec. 1, Ch. 125, L. 1913.

4210. Inspection by state boiler inspectors—Fees. Any owner or lessee of any of the engines or machinery named in the preceding section shall

have the right to call upon the state boiler inspector to inspect and determine the power and capacity of such engine or machinery, and it is the duty of the inspector to make such inspection when so requested. The fee for such inspection shall be five dollars when such engine or machinery is located within any incorporated city or town, and ten dollars when not located within any incorporated city or town, which fees shall be demanded and paid in advance; provided, that the inspector may select and determine the time of such inspection. When such inspection is completed, the inspector shall deliver to the party a certificate, showing the date of inspection, the description of the engine or machinery inspected, which may be by shop number and make, and the draw-bar horsepower thereof; provided, that the provisions of this act shall not apply to automobiles nor to railroad locomotives.

History: En. Sec. 2, Ch. 125, L. 1913.

4211. Penalty for non-compliance with law. Any person, firm or corporation, or copartnership or agent, who shall sell or offer for sale, or shall authorize or induce any other person to sell or offer for sale any of the engines or machinery named in section 4209 of this code, without having the same marked or labeled as provided in said section, or who shall misrepresent the capacity or initial horsepower or draw-bar horsepower of such engines or machinery, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five dollars nor more than five hundred dollars, or imprisoned in the county jail not more than six months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 125, L. 1913.

CHAPTER 275.

STANDARD WEIGHTS AND MEASURES—STATE SEALER OF WEIGHTS AND MEASURES.

Section 4212. What are Standards.
4213. Unit of Extension.
4214. Division of the Yard.
4215. Rod, Mile and Chain.
4216. Acre.
4217. Unit of Weights.
4218. Division of a Pound.
4219. Unit of Liquid Measure.
4220. Barrel and Hogshead.
4221. Unit of Solid Measure.
4222. Division of the Half Bushel.
4223. Division of Capacity for Commodities Sold by Heap Measure.
4224. Heap Measure.
4225. Contracts Construed.
4226. Standard Ton and Bushel.
4227. Penalty for Disregarding Standard Weights.
4228. Measurement of Hay in the Stack.
4229. Standard Grades for Hay.
4230. Sale of Other Than Standard Hay Forbidden.
4231. Rules for Inspection.
4232. Penalty for Violation of Act.
4233. Weights and Measures Inspected by County Sealer.
4234. Penalties.
4235. State Sealer of Weights and Measures—Deputies.
4236. Supervision of Inspection—Maintenance of Standards—County Auditors Appointed.
4237. Bills and Expenses, How Allowed.

4238. Duties of Sealer of Weights and Measures as to Inspection.
4239. Inspection and Certificates.
4240. Penalty for Using Scales Not Inspected and Certified.
4241. Duty of Tradesmen and Public Weighers to Have Scales Adjusted.
4242. Inspection of Hay Scales and Other Scales Used for Public Weighing.
4243. Authority to Inspect Measuring Devices.
4244. Authority to Inspect Weight of Commodities Offered for Sale.
4245. Inspection of Track Scales Used by Common Carriers—Penalty for Short Weights.
4246. Weight of Commodities Offered for Sale to Be Indicated on Container—Penalty for Selling Short Weight Merchandise.
4247. Record of Inspection.
4248. Penalty for False Certificates by Sealers of Weights and Measures.
4249. Denomination of Weights to Be Marked Thereon.
4250. Prohibition Against Using Weights Pending Adjustment.
4251. Condemnation of Weights Not Standard.
4252. Weights May Be Seized as Evidence Without a Warrant.
4253. Scales of Itinerant Peddlers to Be Adjusted Before Use—Penalty for Violation.
4254. Regulation of Containers of Milk—Penalty for Violation.
4255. Contents of Milk Bottles to Be Indicated Thereon—Penalty for Violation.
4256. Penalty for Using False Weights.
4257. Weights Stamped by State Sealer to Be Legal Weights.
4258. Penalty for Selling Less Quantity Than Represented.
4259. State Sealer to Establish Legal Tolerances.
4260. Penalty for Refusing to Permit Examination by State Sealer or Deputies.
4261. State Sealer Authorized to Promulgate Rules.
4262. Penalty for Violation of Act.
4263. Sealers Ex-Officio Deputy Sheriffs—Powers.
4264. Disposition of Fines.

4212. What are standards. The weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, are the lawful standard weights and measures of the state.

History: En. Sec. 3120, Pol. C. 1895; re-en. Sec. 2009, Rev. C. 1907.

See California Political Code, section 3209, Kerr's edition, for note on the metric system.

Validity of legislation for prevention of fraud in weights and measures, see notes in Ann. Cas. 1912C, 251; Ann. Cas. 1914C, 679; Ann. Cas. 1915D, 1073; Ann. Cas. 1917E, 877; Ann. Cas. 1918D, 156.

4213. Unit of extension. The standard yard is the unit or standard measure of length and surface from which all other measures of extension, whether lineal, superficial, or solid, are derived and ascertained.

History: En. Sec. 3121, Pol. C. 1895; re-en. Sec. 2010, Rev. C. 1907. Cal. Pol. C. Sec. 3210.

4214. Division of the yard. The yard is divided into three equal parts, called feet, and each foot into twelve equal parts, called inches; for measures of cloths and other commodities commonly sold by the yard it may be divided into halves, quarters, eighths, and sixteenths.

History: En. Sec. 3122, Pol. C. 1895; re-en. Sec. 2011, Rev. C. 1907. Cal. Pol. C. Sec. 3211.

4215. Rod, mile, and chain. The rod, pole, or perch contains five and a half yards, and the mile one thousand seven hundred and sixty yards; the chain for measuring land is twenty-two yards long, and divided into one hundred equal parts, called links.

History: En. Sec. 3123, Pol. C. 1895; re-en. Sec. 2012, Rev. C. 1907. Cal. Pol. C. Sec. 3212.

4216. Acre. The acre for land measure must be measured horizontally, and contains ten square chains, and is equivalent in area to a rectangle

sixteen rods in length and ten in breadth; six hundred and forty acres being contained in a square mile.

History: En. Sec. 3124, Pol. C. 1895; re-en. Sec. 2013, Rev. C. 1907. Cal. Pol. C. Sec. 3213.

4217. Unit of weights. The standard avoirdupois and troy weights are the units of standards of weight from which all other weights are derived and ascertained.

History: En. Sec. 3125, Pol. C. 1895; re-en. Sec. 2014, Rev. C. 1907. Cal. Pol. C. Sec. 3214.

4218. Division of a pound. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, is divided into sixteen equal parts, called ounces; the hundredweight consists of one hundred avoirdupois pounds and twenty hundredweight constitute a ton. The troy ounce is equal to the twelfth part of the troy pound.

History: En. Sec. 3126, Pol. C. 1895; re-en. Sec. 2015, Rev. C. 1907. Cal. Pol. C. Sec. 3215.

4219. Unit of liquid measure. The standard gallon and its parts are the units or standards of measure of capacity for liquids, from which all other measures of liquids are derived and ascertained.

History: En. Sec. 3127, Pol. C. 1895; re-en. Sec. 2016, Rev. C. 1907. Cal. Pol. C. Sec. 3216.

4220. Barrel and hogshead. The barrel is equal to thirty-one and a half gallons, and two barrels constitute a hogshead.

History: En. Sec. 3128, Pol. C. 1895; re-en. Sec. 2017, Rev. C. 1907. Cal. Pol. C. Sec. 3217.

4221. Unit of solid measure. The standard half-bushel is the unit or standard measure of capacity for substances other than liquids, from which all other measures of such substances are derived and ascertained.

History: En. Sec. 3129, Pol. C. 1895; re-en. Sec. 2018, Rev. C. 1907. Cal. Pol. C. Sec. 3218.

4222. Division of the half-bushel. The peck, half-peck, quarter-peck, quart, and pint measure for measuring commodities other than liquid are derived from the half-bushel by successively dividing that measure by two.

History: En. Sec. 3130, Pol. C. 1895; re-en. Sec. 2019, Rev. C. 1907. Cal. Pol. C. Sec. 3219.

4223. Division of capacity for commodities sold by heap measure. The measures of capacity for charcoal, ashes, marl, manure, Indian corn in the ear, fruit, and roots of every kind, and for all other commodities commonly sold by heap measure, are the half-bushel and its multiples and subdivisions; and the measures used to measure such commodities must be made cylindrical, with plane and even bottom, and must be of the following diameters from outside to outside: The bushel, nineteen and a half inches; half-bushel, fifteen and a half inches, and the peck, twelve and a third inches.

History: En. Sec. 3131, Pol. C. 1895; re-en. Sec. 2020, Rev. C. 1907. Cal. Pol. C. Sec. 3220.

4224. Heap measure. All commodities sold by heap measure must be duly heaped up in the form of a cone; the outside of the measure, by

which the same are measured, to be the limit of the case of the cone, and said cone to be as high as the article will admit.

History: En. Sec. 3132, Pol. C. 1895; re-en. Sec. 2021, Rev. C. 1907. Cal. Pol. C. Sec. 3221.

4225. Contracts construed. Contracts made within this state for work to be done, or for anything to be sold or delivered by weight or measure, must be construed according to the foregoing standards.

History: En. Sec. 3133, Pol. C. 1895; re-en. Sec. 2022, Rev. C. 1907. Cal. Pol. C. Sec. 3222.

4226. Standard ton and bushel. The standard ton consists of twenty hundred pounds, but a ton of mineral coal is expressed by the conventional quantity of twenty-six and one-third bushels of seventy-six pounds each. A bushel of the articles hereinafter named consists of the number of pounds affixed to each, to-wit:

	Pounds
Apples and pears	45
Beans	60
Bran	20
Carrots	50
Barley	48
Beets	50
Buckwheat	52
Coal, mineral	76
Corn, in the ear	70
Cornmeal	50
Lime, unslacked	80
Oats	32
Parsnips	50
Peas	60
Salt	50
Corn, shelled	56
Hay, per ton	2000
Malt	30
Onions	57
Potatoes	60
Rye	56
Seeds	
Blue-grass	14
Timothy	45
Hemp	44
Turnips	50
Clover	60
Hungarian grass	50
Flax	56
Wheat	60

History: En. Sec. 3134, Pol. C. 1895; amd. Sec. 1, p. 137, L. 1901; re-en. Sec. 2023, Pol. C. 1907; rep. Sec. 105, Ch. 120, L. 1911; re-en. Sec. 1, Ch. 14, L. 1921. Cal. Pol. C. Sec. 3223.

Validity of statute requiring food or commodities to be sold in a specified quantity or weight, see notes in 6 A. L. R. 429.

4227. Penalty for disregarding standard weights. Any person, persons, company, or corporation who shall demand, exact, or take more than the prescribed number of pounds per bushel or per ton as fixed by the provisions of the preceding section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

History: En. Sec. 3134, Pol. C. 1895; 2023, Rev. C. 1907; rep. Sec. 105, Ch. 120, amd. Sec. 1, p. 137, L. 1901; re-en. Sec. L. 1911; re-en. Sec. 2, Ch. 14, L. 1921.

4228. Measurement of hay in the stack. Hereafter unless otherwise agreed to between the contracting parties, the following shall constitute the legal measurement for hay in stack in the state of Montana: Four hundred twenty-two cubic feet shall constitute a ton of clean, native, blue joint hay, after thirty days and up to three months settlement in stack; when the same shall have been in the stack three months, or over, three hundred and forty cubic feet shall be considered a ton. Five hundred twelve cubic feet shall constitute a ton of alfalfa or rough slough grass, after the same shall have been in the stack thirty days or more and up to one year. Four hundred and fifty cubic feet shall constitute a ton of clean timothy and clover, after the same shall have been in the stack thirty days or more and up to one year. As to all other kinds of hay, five hundred and twelve cubic feet shall constitute a ton after the same shall have been in the stack sixty days or more and up to one year. For making measurements of hay in stack, the following is hereby made the legal method of measurement, to-wit: The width and length of the stack shall be measured, and the distance from the ground against one side of the stack, to the ground against the other side of the stack, directly over and opposite, shall be taken in linear feet and inches, and then the width shall be subtracted from the measurement over the stack, as above indicated, the result divided by two, and the result so obtained multiplied by the width, and the result thus obtained multiplied by the length, which will give the number of cubic feet contained in the stack, and the tonnage shall thereupon be determined by dividing the total number of cubic feet by the number of cubic feet allowed under the provisions of this act for a ton.

History: En. Sec. 1, Ch. 91, L. 1907; re-en. Sec. 2024, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1921.

4229. Standard grades for hay. There is hereby created, fixed and established a standard grade for certain species of hay sold or offered for sale within the state of Montana; the standard grade of the hereinafter enumerated species of hay shall be as follows, provided, however, that if the federal grades on hay are established in conflict with any of the following grades, then the federal grade shall govern and become the Montana standard grade:

No. 1 timothy hay—Shall be timothy with not more than one-eighth (1/8th) mixed with clover or other tame grasses, may contain some brown blades, properly cured, good color and sound.

No. 2 timothy hay—Shall be timothy not good enough for No. 1, not

over one-fourth (1/4th) mixed with clover or other tame grasses, fair color and sound.

No. 3 timothy hay—Shall include all timothy not good enough for other grades, and sound.

Light clover mixed hay—Shall be timothy mixed with clover. The clover mixture not over one-third (1/3rd), properly cured, sound and of good color.

No. 1 clover mixed hay—Shall be timothy and clover mixed with at least one-half (1/2) timothy, good color, and sound.

No. 2 clover mixed hay—Shall be timothy and clover mixed, with at least one-fourth (1/4th) timothy, and reasonably sound.

No. 1 clover hay—Shall be medium clover, not over one-twentieth (1/20th) other grasses, properly cured, and sound.

No. 2 clover hay—Shall be clover, and sound and not good enough for No. 1.

Sample hay—Shall be sound, mixed, grassy, threshed, or hay not covered by other grades.

No grade hay—Shall include all hay, musty or in any way unsound.

Choice prairie hay—Shall be upland hay of bright, natural color, well cured, sweet, sound and may contain three per cent. weeds.

No. 1 prairie hay—Shall be upland and may contain one-quarter (1/4) midland, both of good color, well cured, sweet, sound and may contain eight (8) per cent. weeds.

No. 2 prairie hay—Shall be upland, of fair color, and may contain one-half (1/2) midland, both of good color, well cured, sweet, sound and may contain twelve and one-half (12 1/2) per cent. of weeds.

No. 3 prairie hay—Shall include hay not good enough for other grades, and not caked.

No. 1 midland hay—Shall be midland hay of good color, well cured, sweet, sound and may contain three (3) per cent. weeds.

No. 2 midland hay—Shall be of fair color or slough hay of good color, and may contain twelve and one-half (12 1/2) per cent. of weeds.

No. 1 mixed hay—Shall be hay of the different grasses, of good color, properly cured, sweet and sound.

No. 2 mixed hay—Shall be hay of the different grasses, not good enough for No. 1, of fair color, properly cured, sweet and sound.

No. 3 mixed hay—Shall be hay of the different grasses not good enough for the other grades, properly cured, sweet and sound.

Packing hay—Shall include all wild hay not good enough for other grades and not caked.

Sample prairie hay—Shall include all hay not good enough for other grades.

Choice alfalfa—Shall be reasonably fine, leafy alfalfa, of bright green color, properly cured, sound and sweet.

No. 1 alfalfa—Shall be reasonably coarse alfalfa, of a bright green color, or reasonably fine leafy alfalfa of a good color and may contain two (2) per cent. of foreign grasses, and if baled, five (5) per cent. of air-bleached hay on outside of bale allowed, but must be sound.

Standard alfalfa—May be of green color of coarse or medium texture, and may contain five (5) per cent. foreign matter; or it may be of green

color, of coarse or medium texture, twenty (20) per cent. bleached, and two (2) per cent. foreign matter; or it may be of greenish cast, of fine stem and clinging foliage, and may contain five (5) per cent. foreign matter. All to be sound and sweet.

No. 2 alfalfa—Shall be any sound and sweet alfalfa, not good enough for standard, and may contain ten (10) per cent. foreign matter.

No. 3 alfalfa—May contain twenty-five (25) per cent. stack spotted hay, but must be dry and not contain more than eight (8) per cent. of foreign matter; or it may be of a green color and may contain fifty (50) per cent. of foreign matter; or it may be set alfalfa and may contain five (5) per cent. foreign matter.

No grade alfalfa—Shall include all alfalfa not good enough for No. 3.

Choice blue joint hay—Shall be reasonably fine, of bright green color, properly cured, with not more than one-eighth (1/8th) of bright, sound timothy, well baled.

No. 1 blue joint hay—Shall be blue joint, with not more than one-eighth (1/8th) of foreign grasses, bright green color, sound and well baled.

No. 2 blue joint hay—Shall be blue joint, not good enough for either choice or No. 1, may contain one-fourth (1/4th) foreign grasses, and may contain twenty-five (25) per cent. stack spotted hay.

No. 1 millet hay—Shall be millet of good color, not over-ripe, properly cured and shall be sweet, sound and well baled.

No. 2 millet hay—Shall be millet of fair color, properly cured, sweet and well baled.

No. 3 millet hay—Shall be millet not good enough for the other grades, properly cured and well baled.

History: En. Sec. 1, Ch. 140, L. 1921.

4230. Sale of other than standard hay forbidden. It shall be unlawful for any person, firm or corporation to sell or offer for sale within the state of Montana any of the species of hay, the standard grade of which is created, fixed and established by the preceding section, unless such species of hay meets the requirements provided for in said section.

History: En. Sec. 2, Ch. 140, L. 1921.

4231. Rules for inspection. The commissioner of agriculture, labor and industry may, at the request of the owner of hay, provide rules and regulations for the inspection thereof at the market destination, and provide for the expense of such inspection, to be paid by the owner of hay.

History: En. Sec. 3-A, Ch. 140, L. 1921.

Note.—The commissioner of agriculture, labor and industry was abolished by chapter 216, Laws of 1921.

4232. Penalty for violation of act. Any person, firm or corporation who shall violate the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount not less than ten dollars nor more than five hundred dollars.

History: En. Sec. 3, Ch. 140, L. 1921.

4233. Weights and measures inspected by county sealer. All vendors and traders in goods and merchandise, gold-dust, and other articles of traffic, must have their balances, weights, and measures compared with the standard of their respective counties, and approved and marked by

the county sealer, and if the same are found to be correct, to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect and marked "condemned."

History: En. Sec. 3135, Pol. C. 1895; re-en. Sec. 2025, Rev. C. 1907.

4234. Penalties. The penalties for using, marking, or stamping false weights and measures, or selling therewith, is provided for in sections 11428 to 11431 of the Penal Code.

History: En. Sec. 3136, Pol. C. 1895; re-en. Sec. 2026, Rev. C. 1907.

4235. State sealer of weights and measures—Deputies. The secretary of state is hereby declared to be and is the ex-officio state sealer of weights and measures. The sealers of weights and measures of each municipal corporation are hereby declared to be deputy sealers of weights and measures of their respective municipal corporations. All deputy sealers of weights and measures shall receive no compensation other than such as may be provided by law, and shall be paid by the municipal corporation of which they are such officers.

History: En. Sec. 1, Ch. 34, L. 1911; amd. Sec. 1, Ch. 83, L. 1913.

Note.—Section 3454 of this code makes the state coal mine inspector ex-officio sealer of weights and measures.

4236. Supervision of inspection—Maintenance of standards—County auditors appointed. (1) The state sealer of weights and measures shall have full authority and supervision over the inspectors of weights and measures, hereinafter provided for, and all deputy sealers of weights and measures appointed as such by any municipal corporation within the state. Said state sealer of weights and measures shall have general supervision over the weights and measures of the state. He shall take charge of the standards of weights and measures and shall procure at the expense of the state any weights and measures that may be necessary, and shall cause them to be kept and in no case removed from a fireproof vault in his office, except for the purpose of certification or repairs. He shall maintain said standards in good order and submit them once in ten years to the national bureau of standards for certification. He shall correct the standards of the several counties, cities, and towns as often as he may deem necessary, and at least as often as once in five years, and where not otherwise provided by law he shall have general supervision of the weights and measures, or weighing and measuring devices of the state in use in the state.

(2) The county auditors, in counties of the first, second, third, fourth, and fifth class, and county clerks, in counties of the sixth, seventh, and eighth class, are hereby declared to be inspectors of weights and measures in their respective counties.

History: En. Sec. 2, Ch. 34, L. 1911; amd. Sec. 2, Ch. 83, L. 1913; amd. Sec. 1, Ch. 19, L. 1917.

4237. Bills and expenses, how allowed. The secretary of state, as ex-officio state sealer of weights and measures, shall be authorized to do and perform any and all acts by this act authorized. All bills and accounts of expense incurred by the state sealer of weights and measures shall be presented to and allowed by the state board of examiners, in the

same manner as provided for other claims contracted for and in behalf of the state of Montana.

History: En. Sec. 3, Ch. 34, L. 1911; amd. Sec. 3, Ch. 83, L. 1913; amd. Sec. 2, Ch. 19, L. 1917.

4238. Duties of sealer of weights and measures as to inspection. Said state sealer of weights and measures, or his inspectors, shall visit the various counties, cities, and towns in the state, and in the performance of his duties, he, or his inspectors, may inspect weights and measures and balances which are used for buying or selling goods, wares, merchandise, or other commodities, and for public weighing, and shall, upon a written request of any citizen, first, or corporation, or educational institution of the state, test or calibrate weights and measures, weighing devices, or apparatus used as test standards in the state. He or his inspectors shall at least once annually test all scales, weights and measures used in checking the receipts or disbursements of supplies of every state institution, and he shall report in writing his findings to the executive officer of the institution concerned.

History: En. Sec. 4, Ch. 34, L. 1911; amd. Sec. 4, Ch. 83, L. 1913.

4239. Inspection and certificates. The state sealer of weights and measures, or the state deputy sealer of weights and measures, or inspectors of weights and measures, may, in the discharge of their duties, inspect weights and measures. It is hereby made the duty of the state sealer of weights and measures, or his inspectors, or the state deputy sealer of weights and measures, to at least once each year inspect all weights and measures, balances, measuring or weighing devices of different kinds throughout the state of Montana. The state sealer of weights and measures shall prepare a certificate of suitable size to be attached or affixed to all weights or measures or measuring devices so tested. Said certificate shall bear a facsimile signature of the state sealer of weights and measures, and shall be countersigned by the inspectors of weights and measures, or the state deputy sealer of weights and measures, or such inspectors of weights and measures as may be designated by any municipal corporation. The certificate as prepared by the state sealer of weights and measures shall be numbered in consecutive order, and shall have printed or stamped upon such certificate the year, and shall be furnished to the inspector of weights and measures and to the sealer of weights and measures of any municipal corporation of the state, upon application therefor. The inspector of weights and measures of any municipal corporation shall pay to the state sealer of weights and measures for all such certificates so issued to him the sum equal to the actual cost of the number of certificates so received.

History: En. Sec. 5, Ch. 34, L. 1911; amd. Sec. 5, Ch. 83, L. 1913.

4240. Penalty for using scales not inspected and certified. From and after the passage and approval of this act it shall be unlawful for any person or persons, firm, or copartnership, corporation, or association of persons engaged in the trade of buying or selling, purchasing or disposing of, or dealing in any merchandise or commodities to any person or persons in the state of Montana, to sell or purchase by weight or by measure, without first having had the weights and measures, scales, or measuring

devices used by them for the purpose of determining the amount or quantity of any article or articles of merchandise, tested and a certification attached thereto by the state sealer of weights and measures, or by inspectors of weights and measures, or by sealers of weights and measures appointed by any municipal corporation in the state of Montana. Such certificate shall be attached or placed in a conspicuous place upon such weighing or measuring device. Any person or persons using any weight or measure, or scale or other measuring device after the passage and approval of this act, or annually thereafter, which has not been tested as provided by this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor and fined in the sum of not less than twenty-five dollars, nor more than three hundred dollars. Any person or persons who shall be deemed guilty of a second offense, as provided in this act, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and each and every successive day any person or persons shall so use any weights and measures, scales, or other measuring devices shall be and is hereby declared to be a separate and distinct offense.

History: En. Sec. 6, Ch. 34, L. 1911; amd. Sec. 6, Ch. 83, L. 1913.

4241. Duty of tradesmen and public weighers to have scales adjusted. Every person or persons, firm, co-partnership, or corporation engaged in the trade of buying and selling, or as a public weigher or user of weights and measures, shall, between the first day of January and the first day of March of each year, have his weights, measures, balances, and scales adjusted and sealed, and it is hereby made the duty of the inspector of weights and measures of the various districts of the state to examine and adjust all measures, balances, and scales used by persons within district engaged in buying, selling, or as public weighers or users of weights and measures.

History: En. Sec. 7, Ch. 34, L. 1911; amd. Sec. 7, Ch. 83, L. 1913.

Validity of legislation requiring use of public scales, see notes in Ann. Cas. 1912C, 255; Ann. Cas. 1918D, 159.

4242. Inspection of hay scales and other scales used for public weighing. After the first day of March of each year, the sealer of weights and measures, or his inspectors, or the deputy sealer of weights and measures, shall visit the places of business and enter upon the carts, wagons, or vehicles then in use for the business of all persons engaged in the trade of buying and selling, or selling who have weights, measures, or balances which have not been sealed during the current year, and try, adjust, and seal the same. He shall at least once every six months try, adjust, and seal every hay scale, wagon scale, railroad track scale, or platform scale or balances used in the trade of buying and selling, or selling or for public weighing.

History: En. Sec. 8, Ch. 34, L. 1911; amd. Sec. 8, Ch. 83, L. 1913.

4243. Authority to inspect measuring devices. The state sealer of weights and measures, the deputy state sealer, or his inspectors of weights and measures, or municipal sealer of weights and measures, shall have power to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of any kind, instruments or mechanical devices

for measurement, and the tools, appliances, or accessories connected with any or all of such instruments or measurements, used or employed within the state by a proprietor, agent, lessee, or employee in determining the size, quantity, extent, area, or measurement of quantities, things, produce, articles for distribution or consumption, offered or submitted by such person or persons for sale, hire, or award. Provided, also, that the state sealer of weights and measures, or his deputy, or his inspectors, or any municipal sealer of weights and measures, shall, at least once a year and as often as may be deemed necessary, try and prove all computing scales and other devices having a device for indicating or registering the price as well as the weight of the commodity offered for sale. Computing devices, which may be used by any person at any place within this state, shall be tested as to the correctness of both weight and arithmetical values indicated by them.

History: En. Sec. 9, Ch. 34, L. 1911; amd. Sec. 9, Ch. 83, L. 1913.

4244. Authority to inspect weight of commodities offered for sale. The sealer of weights and measures, his deputy, or his inspectors, or municipal sealer of weights and measures, may, at irregular intervals, examine all commodities sold and offered for sale and test them for correct weight, measure, or count. He, his deputy, or his inspectors, or municipal sealers may, for the purposes above mentioned, and in the general performance of their official duties, enter or go into or upon, with or without formal warrant, any stand, place, building, or premises, or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon, or any dealer whatsoever, for the purpose of making the proper tests; and in the exercise of such duties they shall have full police power to enforce any and all reasonable measures for testing such weights and measures, and also in ascertaining whether false or short weights and measures are being given in any scales or transfer of articles of merchandise taking place within the state. Whenever the state sealer of weights and measures, or his inspectors or deputies, have reason to believe that any person or persons or corporation is violating the provisions of this act, or any act relating to weights and measures, they shall submit the evidence to the properly constituted authority in the county in which such violation occurs, who shall thereupon prosecute the persons alleged to have violated the provisions of this act, or any act relating to weight and measures, or such evidence may be submitted direct to the attorney-general of the state, who shall have authority to prosecute such persons in the proper county.

History: En. Sec. 10, Ch. 34, L. 1911; amd. Sec. 10, Ch. 83, L. 1913.

4245. Inspection of track scales used by common carriers—Penalty for short weights. (a) All track scales used by common carriers for the purpose of weighing freight in carload lots within this state shall be under the control and direction and jurisdiction of the state sealer of weights and measures, and subject to inspection by him, his inspectors, or deputy sealers of weights and measures.

(b) The state sealer of weights and measures, his inspectors, or his deputy sealers of weights and measures, shall have power either on their own motion or on complaint being made, to determine whether any such track scales are defective or inefficient, or whether the time, manner, or

method of using same is unreasonable, ineffective, or unjust, and shall have power to condemn any such scale found to be defective or inefficient, and prohibit the use of the same while in that condition, and to render such decision and to make such order, rule, or regulation as may be deemed necessary or advisable.

(c) Any person or persons who shall knowingly and wilfully sell, or direct or permit any person or persons in his or their employ to sell any commodity or article of merchandise, and make or give any false or short weight or measure, or any person or persons owning or keeping, or having charge of any scales or steel-yards for the purpose of weighing live-stock, hay, grain, coal, or other articles, who shall knowingly and wilfully report any false or untrue weight, whereby any other person or persons may be defrauded or injured, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the jail of the county not exceeding thirty days, at the discretion of the court, and also be answerable to the party defrauded or injured in double damages.

History: En. Sec. 11, Ch. 83, L. 1913.

4246. Weight of commodities offered for sale to be indicated on container—Penalty for selling short weight merchandise. From and after January 1, 1914, it shall be unlawful for any person or persons, association, or corporation, to sell or offer for sale in this state any commodity or article of merchandise in a package or container, without having such package or container labeled in plain, intelligible words and figures, with a correct statement of the net weight, measure, or numerical count of its contents; provided, that nothing in this section shall prevent the putting up of commodities or articles of merchandise which have been previously sold by net weight, measure, or numerical count, into packages or containers for the purpose of delivering or transporting such commodities or articles of merchandise; provided, further, that nothing in this section shall apply to commodities or articles of merchandise, except milk and cream, offered for sale or sold in packages or containers at a price of ten cents or less per such package.

1. It shall be unlawful for any person to sell or offer for sale in this state any commodity or article of merchandise, except by true net weight, measure, or numerical count, except where the parties otherwise agree. Contracts for work done, or for anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid.

2. It shall be unlawful for any person, in buying or selling any commodity or article of merchandise, to make or give false or short weight or measure, or to sell or offer for sale any commodity or article of merchandise less in weight or measure than he represents, or to use a weight, measure, balance, or measuring device that is false and does not conform to the authorized standard for determining the quantity of any commodity or article of merchandise, or to have a weight, measure, balance,

or measuring device adjusted for the purpose of giving false or short weight or measure, or to use in buying or selling of any commodity or article of merchandise a computing scale or device indicating the weight and price of such commodity or article of merchandise, upon which scale or device the graduations or indications are falsely or inaccurately placed either as to weight or price, or to use any computing scale having a horizontal registering bar with a barrel computing device, unless such scale is adjusted to register the correct weight from all angles of vision.

3. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court having jurisdiction of the offense shall be fined in a sum not to exceed two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment, and any weight, measure, balance, or measuring device which shall have been used by him in such violation shall be ordered confiscated and destroyed. He shall also be liable in damages to the party injured by his violation in treble the amount of the property wrongfully taken or not given, and twenty dollars in addition thereto, to be recovered in a court of competent jurisdiction. The selling and delivery of any commodity or article of merchandise shall be prima facie evidence of the representation on the part of the vendor that the quantity sold and delivered was the quantity bought by the vendee. There shall be taken into consideration the usual and ordinary leakage, evaporation, or waste that there may be from the time a package or container is filled by a vendor until he sells the same. A slight variation from the stated weight, measure, or quantity for individual packages not to exceed three per cent. is permissible; provided, that the variation is as often above as below the weight, measure or quantity stated.

History: En. Sec. 12, Ch. 83, L. 1913.

Validity and construction of statutes regulating net weight of food packages, see notes in Ann. Cas. 1916B, 1169; Ann. Cas. 1916D, 551.

Power to require weight of package to be indicated on it, see note in 17 L. R. A. (N. S.) 684.

Validity of statute as to "containers," see note in 5 A. L. R. 1068.

4247. Record of inspection. The state sealer of weights and measures shall keep a complete record of all work done under his direction, and shall make an annual report not later than the first day of January of each year preceding the meeting of the legislative assembly. The inspectors of weights and measures, and all municipal sealers of weights and measures, shall keep a complete record of all work done by them under and by direction of the state sealer of weights and measures, and shall report to the state sealer of weights and measures, not later than the fifth of each month, all work done by them for the preceding month. The state sealer of weights and measures shall provide a system of records, to be kept by all inspectors of weights and measures and municipal sealers of weights and measures, together with blank reports, upon which all reports of said inspectors and sealers of weights and measures are to be made. The form of record provided by the state sealer of weights and measures for all inspectors and municipal sealers of weights and measures shall be the form to be observed and kept by them, and after the said state sealer of weights and measures shall have prescribed the form of said records, said records so

kept by any municipal sealer shall be filed in the office of the city clerk of the municipal corporation and become a record of said state.

History: En. Sec. 11, Ch. 34, L. 1911; amd. Sec. 13, Ch. 83, L. 1913.

4248. Penalty for false certificates by sealers of weights and measures. Any person authorized to seal weights and measures in accordance with this act who shall, without duly verifying the weights and measures of any person by comparison with the standard of weights and measures, stamp a weight or measure, or attach thereto a certificate that said weight or measure has been duly tested, is hereby declared, upon conviction thereof, to be guilty of a misdemeanor, and shall be subject to a penalty of a fine of not less than fifty dollars, nor more than three hundred dollars.

History: En. Sec. 14, Ch. 83, L. 1913.

4249. Denomination of weights to be marked thereon. Every weight for use in trade, except when the small size of the weight renders it impracticable, shall have the denomination of such weight permanently marked on the top side thereof in legible figures or letters; and every measure of capacity for use in trade shall have the denomination and kind thereof permanently marked on the outside of such measures in legible figures or letters. A weight or measure not in conformity with this section shall not be stamped by the state sealer of weights and measures, or inspector of weights and measures, or deputy sealers of weights and measures.

(a) Apothecaries and all other persons dealing in drugs, medicine, and merchandise, commonly sold by apothecaries' weight or by apothecaries' liquid measure, shall at least once in two years cause such weights and measures so used to be tested and sealed by officers authorized under this act to inspect weights and measures.

History: En. Secs. 13 and 14, Ch. 34, L. 1911; amd. Sec. 15, Ch. 83, L. 1913.

4250. Prohibition against using weights pending adjustment. If any weights, measures, or balances can be readily adjusted by such means as the inspector or sealer of weights and measures may have at hand, he may adjust and seal them, but if they cannot be readily adjusted he shall affix to such weights, measures, or balances a notice forbidding their use until he is satisfied they have been so adjusted as to conform with the standard. Any person or persons who remove said notice, without the consent of the officer affixing the same, shall upon conviction be fined in a sum not to exceed fifty dollars.

History: En. Sec. 15, Ch. 34, L. 1911; amd. Sec. 16, Ch. 83, L. 1913.

4251. Condemnation of weights not standard. All weights, measures, and balances, which cannot be made to conform to the standard weights and measures as herein provided, shall have stamped "condemned" or "C.D." by the sealer of weights and measures.

History: En. Sec. 16, Ch. 34, L. 1911; amd. Sec. 17, Ch. 83, L. 1913.

4252. Weights may be seized as evidence without a warrant. The state sealer of weights and measures, or inspector of weights and measures, or deputy sealer of weights and measures, may seize, without a warrant, such weights, measures, or balance as may be necessary to be used as evidence in case of violation of any act relative to the sealing of

weights and measures. They shall be returned to the owners or forfeited as the court may direct.

History: En. Sec. 18, Ch. 83, L. 1913.

4253. Scales of itinerant peddlers to be adjusted before use—Penalty for violation. All itinerant peddlers and hawkers, using scales, balances, weights, or measures, shall take the same to the office of the state sealer of weights and measures, or inspector of weights and measures or deputy sealer of weights and measures, before any use is made thereof, and have the same sealed and adjusted annually; and any such person failing to comply with the provisions of this section shall be fined not less than five dollars nor more than one hundred dollars for each offense, and every day such person shall use such scales, balances, weights, or measures, without having the same adjusted and sealed as hereinbefore provided for, shall constitute a separate and distinct offense. Any itinerant peddler or hawker found using any false scale shall be subject to a fine of not less than ten dollars, nor more than fifty dollars for each offense.

History: En. Sec. 18, Ch. 34, L. 1911; amd. Sec. 19, Ch. 83, L. 1913.

4254. Regulation of containers of milk—Penalty for violation. All milk, cream, and skimmed milk shall be sold only by standard wine measure, and by or in measures, cans, jars, bottles, or other vessels or receptacles, which shall prior to being used in such scale, be sealed by the sealer of weights and measures of the town where the person so using the same shall usually reside in this state, or of the town where such milk shall be sold for use; and every person selling any of the same contrary to this section, or delivering any of the same sold contrary hereto, shall be fined for the first offense not less than fifty dollars and not exceeding one hundred dollars, and for the subsequent offense not less than one hundred dollars or imprisonment not to exceed ninety days, or both such fine and imprisonment. Any purchaser of milk, cream, or skimmed milk, having reason to believe that any measure, can, jar, bottle, or other vessel or receptacle, in which milk, cream, or skimmed milk is sold and delivered to him, is not of sufficient size or capacity to contain, by standard wine measure, the amount thereof purchased, may apply to the sealer of weights and measures, which sealer shall test the capacity of the same and issue to such purchaser his certificate stating the capacity thereof; and if such capacity, according to such certificate, shall be less than the amount purchased, such purchaser may make complaint and deliver such certificate to any officer authorized to make complaint for the violation of this act.

History: En. Sec. 19, Ch. 34, L. 1911; amd. Sec. 20, Ch. 83, L. 1913.

Validity of regulatory statute as to receptacles used in selling milk, see note in 14 Ann. Cas. 703.

4255. Contents of milk bottles to be indicated thereon—Penalty for violation. No person or corporation shall, after the passage of this act, sell or offer for sale within the state of Montana, any milk or cream in bottles or in glass jars, unless each of said bottles or glass jars in which said milk or cream is sold or offered for sale shall have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner, the capacity thereof, and the state sealer of weights

and measures or inspector of weights and measures, or deputy sealer of weights and measures, shall have the right, at any time, to examine any bottle or glass jar in which milk or cream is sold or offered for sale in the state of Montana, or which is used by any person or corporation for the purpose of containing milk or cream to be sold or offered for sale, in order to ascertain whether such bottle or jar is of a capacity not less than that which it purports to be; and if any such bottle or jar is of less capacity than that which it purports to be, or if any such bottle or jar shall not have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner, its capacity as aforesaid, the person or corporation selling or offering for sale milk or cream in any such bottle or jar, or having in his possession any such bottle or jar, to be used or which has been used for the purpose of containing milk or cream to be sold or offered for sale in said state of Montana shall, upon conviction, be fined not less than five dollars nor more than one hundred dollars for each offense; and each and every bottle or glass jar found in the possession of any person or corporation used or to be used, or which has been used by such person or corporation for the purpose of containing milk or cream to be sold or offered for sale in the state of Montana, which shall be found to be of a less capacity that that blown into the same, or otherwise so indelibly and permanently indicated thereon, or which shall not have blown into it, or otherwise indelibly and permanently indicated thereon in a legible and conspicuous manner the capacity as aforesaid, shall constitute a separate and distinct offense on the part of such person or corporation, and upon conviction such person or corporation shall be fined in a sum not less than ten dollars nor more than three hundred dollars.

History: En. Sec. 20, Ch. 34, L. 1911; amd. Sec. 21, Ch. 83, L. 1913.

4256. Penalty for using false weights. A person who uses, or has in his possession for use in trade, any weight, measure, scale, balance, steel-yard, or weighing machine, which is false or incorrect, shall be fined not more than one hundred dollars, or in case of a second offense, not more than two hundred dollars, and any contract for gain, deal, or dealing made by the same shall be void, and the weight, scale, measure, balance, or steel-yard shall be liable to be forfeited.

History: En. Sec. 21, Ch. 34, L. 1911; re-en. Sec. 22, Ch. 83, L. 1913.

4257. Weights stamped by state sealer to be legal weights. A weight or measure duly stamped by the state sealer of weights and measures, or inspector of weights and measures, or deputy sealer of weights and measures, or by the national bureau of standards, shall be a legal weight or measure throughout the state, unless found to be false or incorrect, and shall not be liable to be re-sealed because used in any other place than that in which it was originally stamped.

History: En. Sec. 22, Ch. 34, L. 1911; re-en. Sec. 23, Ch. 83, L. 1913.

4258. Penalty for selling less quantity than represented. Whoever sells or offers for sale a less quantity than represented, or sells in a manner contrary to law, shall be guilty of fraud, and shall be fined not more than

one hundred dollars, or, in case of a second offense, not more than two hundred dollars.

History: En. Sec. 23, Ch. 34, L. 1911; re-en. Sec. 24, Ch. 83, L. 1913.

4259. State sealer to establish legal tolerances. The state sealer of weights and measures shall, after consultation with, and with the advice of the national bureau of standards, establish tolerances for use in the state of Montana, and said tolerances shall be the legal tolerances in the state of Montana.

History: En. Sec. 24, Ch. 34, L. 1911; re-en. Sec. 25, Ch. 83, L. 1913.

4260. Penalty for refusing to permit examination by state sealer or deputies. A person who neglects or refuses to produce for the state sealer of weights and measures, or inspectors of weights and measures, or deputy sealer of weights and measures, all weights, measures, or balances in his possession and used in trade, or on his premises, or refuses to permit the said officers to examine the same, or obstructs the entry of said officers, or otherwise obstructs or hinders any official under this law, or violates any of the provisions of this act, shall be fined not more than one hundred dollars, and in case of a second offense not more than two hundred dollars.

History: En. Sec. 25, Ch. 34, L. 1911; re-en. Sec. 26, Ch. 83, L. 1913.

4261. State sealer authorized to promulgate rules. The state sealer of weights and measures is hereby authorized to make and promulgate such rules and regulations for the government, guidance, and direction of inspectors of weights and measures, and deputy city sealers of weights and measures, in conformity with this act, as may be necessary to carry out the provisions of this act in a uniform manner. Such rules and regulations, when promulgated by the state sealer of weights and measures, with the approval of the governor of the state of Montana indorsed thereon, shall have the same force and effect as if provided for in this act. Such rules and regulations shall be published at least once in a newspaper of general circulation in each county and city of the state of Montana.

History: En. Sec. 28, Ch. 34, L. 1911; re-en. Sec. 27, Ch. 83, L. 1913.

4262. Penalty for violation of act. Any person or persons violating any of the provisions of this act where no other penalty is provided shall, upon conviction thereof, be fined in a sum not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty nor more than ninety days.

History: En. Sec. 29, Ch. 34, L. 1911; re-en. Sec. 28, Ch. 83, L. 1913.

4263. Sealers ex-officio deputy sheriffs—Powers. The state sealer of weights and measures, inspectors of weights and measures, or sealer of weights and measures of the various cities, towns, and counties throughout the state, shall be, by virtue of their respective offices, deputy sheriffs, and as such shall have power to arrest and detain any person violating the provisions of this act, without warrant.

History: En. Sec. 30, Ch. 34, L. 1911; re-en. Sec. 29, Ch. 83, L. 1913.

4264. Disposition of fines. All fines collected for violation of the provisions of this act shall be paid to the state treasurer for support and maintenance of the department of weights and measures. All justices of the peace and clerks of district courts who may collect any fine imposed for the violation of the provisions of this act must, not later than the fifth day of each month, transmit to the state sealer of weights and measures all moneys so collected, and the state sealer of weights and measures shall pay the same quarterly to the state treasurer, taking his receipt therefor.

History: En. Sec. 31, Ch. 34, L. 1911; re-en. Sec. 30, Ch. 83, L. 1913.

CHAPTER 276.

STANDARD APPLE BOX.

Section 4265. Standard Size of Apple Box.
4266. Short Boxes to Be Marked.
4267. Grade, Number of Apples, and Grower to Be Marked on Box.
4268. Classification and Quality of Apples.
4269. Box May Be Marked "Standard."
4270. Grades and Standards of Apples Defined.
4271. Cull Apples.
4272. Penalty for Violation of Act.

4265. Standard size of apple box. There is hereby created and established a standard size for apple boxes for the state of Montana. The standard size of an apple box shall be of the following dimensions, when measured without distension of its parts: Depth of end, ten and one-half inches; width of end, eleven and one-half inches; length of box, eighteen inches inside measurements; and representing as nearly as possible two thousand one hundred seventy-three and one-half cubic inches.

History: En. Sec. 1, Ch. 113, L. 1913.

4266. Short boxes to be marked. Any box in which apples shall be packed and offered for sale that contains less than the required number of cubical inches, as prescribed in the preceding section, shall be plainly marked on one side and one end with the words "short box," or with the words or figures showing the practical relation which the actual capacity of the box bears to the capacity prescribed by the preceding section. The marking required by this paragraph shall be in black letters of the size of not less than seventy-two point black gothic.

History: En. Sec. 2, Ch. 113, L. 1913.

4267. Grade, number of apples, and grower to be marked on box. The box when packed and offered for sale shall bear upon it or upon the label, and in plain figures, the approximate number of apples in the box, which shall be within five apples of the true count of the number of the style of pack used in the box; also in plain letters the name of the firm, company, or organization who shall have first packed or authorized the packing of the same. Also the name of the locality where the apples were grown; also the correct name of the variety of apples contained in the box; also the grade adopted by the grower, firm, company, or organization that authorized the packing of the fruit.

History: En. Sec. 3, Ch. 113, L. 1913.

4268. Classification and quality of apples. The apples contained within the box, when so packed and offered for sale, shall be reasonably uniform in size, and free from worms, scale, or fungus disease.

History: En. Sec. 4, Ch. 113, L. 1913.

4269. Box may be marked "standard." The boxes in which the apples are packed in accordance with the provisions of this act may be marked "standard."

History: En. Sec. 5, Ch. 113, L. 1913.

4270. Grades and standards of apples defined. Boxes packed with apples and marked "standard" shall be deemed to be misbranded within the meaning of this act:

First. If the size of the box does not conform to the requirements of section 4265 of this code.

Second. If the markings of the box do not conform to the markings required by section 4267 of this code.

Third. If the size and condition of the apples does not conform to the requirements of section 4268 of this code.

Fourth. That the grade of apples contained in the box or boxes shall be as follows, to-wit: "Extra fancy," "fancy," "C," and "orchard run grade."

The extra fancy grade shall consist of sound, smooth, well-formed apples, free from all insect pests, disease, blemishes, and physical injury, and all apples in this grade must show natural color and be characteristic of the variety; the color of apples in this grade shall be for solid red variety at least seventy per cent. of good red color; for striped variety the apples must have at least forty-five per cent. of red color with yellow background; for red cheek or blush variety the apples must have a distinctly colored cheek or blush, and in this grade no box shall contain more than two hundred apples.

The fancy grade shall be composed only of apples having the same physical requirements as the extra fancy, and be free from disease, blemishes, injury, or defects as the extra fancy, but may contain apples that are slightly limb-rubbed or russeted. In solid red variety the fancy grade must have at least thirty-five per cent. of good natural color. Striped or partially red variety must have at least ten per cent. of good red color; red cheek or blush variety must have correct physical qualities without requirements as to color, and no box must contain more than two hundred twenty-five apples.

The "C" grade shall be made up of merchantable apples not included in the extra fancy or fancy grades and must be free from disease, insect pests, worms and physical injury, such as skin puncture, and must be free from rot. The requirements as to color shall be omitted in this grade, and no box shall contain more than two hundred twenty-five apples.

The orchard run grade shall consist and be made up of apples clean and free from disease and inspect pests, ungraded as to size and color, and all requirements as to size and number shall be omitted in this grade; provided, however, that all apples of this grade must be not less than two inches in diameter.

All other apples offered for sale within the state of Montana and not

marked "fancy," "extra fancy," "C grade," or "orchard run grade," shall be plainly stamped and marked "culls."

History: En. Sec. 6, Ch. 113, L. 1913; amd. Sec. 1, Ch. 57, L. 1915; amd. Sec. 1, Ch. 143, L. 1921.

4271. Cull apples. All apples offered for sale in this state in any other manner than in the standard box provided for in this act shall be marked and sold as cull apples.

History: En. Sec. 7, Ch. 113, L. 1913.

4272. Penalty for violation of act. Any person, firm, company or organization who shall knowingly pack, or cause to be packed, apples in boxes, or who shall knowingly sell or offer for sale such boxes, in violation of the provisions of this act, shall be guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not less than ten dollars, nor more than fifty dollars.

History: En. Sec. 8, Ch. 113, L. 1913; amd. Sec. 2, Ch. 143, L. 1921.

CHAPTER 277.

STANDARD WEIGHT OF BREAD.

Section 4273. Weight Requirements for Sale of Bread.
4274. Definitions—Conditions Under Which Bread May Be Sold.
4275. Return or Repurchase of Bread Prohibited.
4276. Penalty for Violation of Law.

4273. Weight requirements for sale of bread. From and after the passage of this act it shall be unlawful for any person or persons, association, co-partnership, or corporation to manufacture for retail or wholesale trade, or to sell bread, unless the same shall be of the following weights, which shall be net weights eight hours after baking: One pound, one and one-half pounds, two pounds, three pounds, four pounds, five pounds, six pounds, or other multiple pound weights; variation at the rate of one ounce per pound over and one ounce per pound under the above specified unit weights are to be permitted in individual loaves, but the average weight of not less than twenty-five loaves of any one unit of any one kind shall be not less than the weight prescribed for such unit, and if twin or multiple loaves are wrapped at the place where baked or sold to the consumer wrapped and undivided, the loaf must conform to the above weight requirements, and if the twin or multiple loaf is unwrapped or divided before being sold to the consumer, each unit of the loaf must conform to the above weight requirements; provided, that this act shall not apply to persons, firms, or corporations who do not hold themselves out to the public, and engaging in a general and established business of manufacturing or selling bread and bread products.

History: En. Sec. 1, Ch. 155, L. 1919.

Validity of statute regulating manufacture or sale of bread, see notes in 17 Ann. Cas. 617; Ann. Cas. 1914B, 287.

Validity of regulations as to weight of loaf of bread, see note in 44 L. R. A. (N. S.) 632.

4274. Definitions—Conditions under which bread may be sold. In construing provisions of the preceding section the following definitions shall be had: A twin or multiple loaf is one that is made of two or more portions of dough baked in one pan; single units weighing less than one pound must not be baked; a manufacturer or seller of loaves of the weights prescribed may cut and sell a portion of a loaf to a consumer;

bread may be sold at any time after baking, and it shall not be required that bread shall remain unwrapped for any specified length of time after baking.

History: En. Sec. 2, Ch. 155, L. 1919.

4275. Return or repurchase of bread prohibited. It shall be unlawful for any person or persons, association, co-partnership, or corporation engaged in the manufacture for sale, or the sale of bread, to directly or indirectly accept return of bread theretofore sold, nor repurchase the same, nor allow credit to any one for the same; nor shall any bread previously sold be exchanged for other bread.

History: En. Sec. 3, Ch. 155, L. 1919.

4276. Penalty for violation of law. Any such manufacturer or seller violating any of the provisions herein contained shall be liable to a fine of not less than ten dollars nor more than one hundred dollars for each and every offense, and each separate sale or violation of any of the provisions of this act shall constitute a separate offense.

History: En. Sec. 4, Ch. 155, L. 1919.

CHAPTER 278.

TIME.

Section 4277. Time, How Computed.
4278. Leap-Year.
4279. The Year and Its Parts.
4280. The Week.
4281. The Day.
4282. "Day-Time" and "Night-Time" Defined.

4277. Time, how computed. Time is computed according to the Gregorian or new style; and the first of January in every year passed since seventeen hundred and fifty-two, or to come, must be reckoned as the first day of the year.

History: En. Sec. 3140, Pol. C. 1895; re-en. Sec. 2027, Rev. C. 1907. Cal. Pol. C. Sec. 3255.

4278. Leap-year. Except the year nineteen hundred, every fourth year, which, by usage in this state, is considered a leap-year, is a leap-year consisting of three hundred and sixty-six days.

History: En. Sec. 3141, Pol. C. 1895; re-en. Sec. 2028, Rev. C. 1907. Cal. Pol. C. Sec. 3256.

4279. The year and its parts. The term "year" means a period of three hundred and sixty-five days; a half-year, one hundred and eighty-two days; a quarter of a year, ninety-one days; and the added day of a leap-year, and the day immediately preceding, if they occur in any such period, must be reckoned together as one day.

History: En. Sec. 3142, Pol. C. 1895; re-en. Sec. 2029, Rev. C. 1907. Cal. Pol. C. Sec. 3257.

Cited or applied as section 2029, Revised Codes, in Kelly v. Independent Publishing Co., 45 Mont. 127, 133, 122 Pac. 735; Ann. Cas. 1913D, 1063; 38 L. R. A. (N. S.) 1160.

Meaning of "month," see note in 12 L. R. A. 770.

4280. The week. A week consists of seven consecutive days.

History: En. Sec. 3143, Pol. C. 1895; re-en. Sec. 2030, Rev. C. 1907. Cal. Pol. C. Sec. 3258.

Cited or applied as section 2030, Revised Codes, in Smith v. Collis, 42 Mont. 350, 359, 112 Pac. 1070; Ann. Cas. 1912A, 1158.

4281. The day. A day is the period of time between any midnight and the midnight following.

History: En. Sec. 3144, Pol. C. 1895; re-en. Sec. 2031, Rev. C. 1907. Cal. Pol. C. Sec. 3259.

Day as measure of time, see note in 6 Ann. Cas. 717.

4282. "Day-time" and "night-time" defined. "Day-time" is the period of time between "sunrise" and "sunset," and "night-time" is the period of time between "sunset" and "sunrise."

History: En. Sec. 3145, Pol. C. 1895; re-en. Sec. 2032, Rev. C. 1907. Cal. Pol. C. Sec. 3260.

CHAPTER 279.

MONEY.

Section 4283. Money of Account.
4284. Limitation on Preceding Section.
4285. Amount, How Stated in Judgments, etc.

4283. Money of account. The money of account in this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

History: En. Sec. 3150, Pol. C. 1895; re-en. Sec. 2033, Rev. C. 1907. Cal. Pol. C. Sec. 3272.

4284. Limitation on preceding section. The provisions of the preceding section do not vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument, expressed in any other money of account; but the same must be reduced to dollars and cents in any action.

History: En. Sec. 3151, Pol. C. 1895; re-en. Sec. 2034, Rev. C. 1907. Cal. Pol. C. Sec. 3273.

4285. Amount, how stated in judgments, etc. In judgments and executions the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

History: En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907. Cal. Pol. C. Sec. 3274.

Fractions of money as falling within doctrine of "de minimis non curat lex," see note in 18 Ann. Cas. 691.

CHAPTER 280.

TRADE-MARKS.

Section 4286. Trade-Mark Defined.
4287. Use of Trade-Mark—How Secured.
4288. Record—Fees.
4289. Who Are Owners of Trade-Marks—How Transferred.
4290. Penalties.
4291. Marks and Devices May Be Filed.
4292. Penalties.

4286. Trade-mark defined. The phrase "trade-mark," as used in this chapter, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description, or the designation or name for any mill, hotel, factory, or other business.

History: En. Sec. 3160, Pol. C. 1895; re-en. Sec. 2036, Rev. C. 1907. Cal. Pol. C. Sec. 3196.

Cited or applied as section 2036, Revised Codes, in Esselstyn v. Holmes, 42 Mont. 507, 514, 114 Pac. 118.

What words may constitute valid trade-mark, see note in 85 A. S. R. 88.

Protection of descriptive word or phrase as trade-mark, see note in L. R. A. 1918A, 961.

Names consisting of mere corruptions of descriptive words as valid trade-marks, see note in 9 Ann. Cas. 763.

Labels as trade-marks, see note in 17 L. R. A. 130.

Right to use geographical name as trade name, see note in 26 L. R. A. (N. S.) 73.

Descriptive word adopted from foreign language as subject of trade-mark, see note in 32 L. R. A. (N. S.) 439.

4287. Use of trade-mark—How secured. Any person may record any trade-mark or name by filing with the secretary of state his claim to the same, and a copy or description of such trade-mark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he, or the firm or corporation of which he is a member, is the exclusive owner, or agent of the owner, of such trade-mark or name.

History: En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2037, Rev. C. 1907. Cal. Pol. C. Sec. 3197.

4288. Record—Fees. The secretary of state must keep for public examination a record of all trade-marks or names filed in his office, with the date when filed and the name of the claimant, and must not record any two like trade-marks or names. He must, at the time of filing and recording a trade-mark or name, collect from the claimant a fee of three dollars.

History: En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2038, Rec. C. 1907. Cal. Pol C. Sec. 3198.

4289. Who are owners of trade-marks—How transferred. Any person who has first adopted and used a trade-mark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any court of competent jurisdiction may restrain, by injunction, any use of trade-marks or names in violation of this chapter.

History: En. Sec. 3163, Pol. C. 1895; re-en. Sec. 2039, Rev. C. 1907. Cal. Pol. C. Sec. 3199.

4290. Penalties. The penalty for forging, counterfeiting, or unlawful using of trade-marks is provided in section 11199 of the Penal Code.

History: En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rec. C. 1907.

Cited or applied as section 2040, Revised Codes, in Esselstyn v. Holmes, 42 Mont. 507, 515, 114 Pac. 118.

4291. Marks and devices may be filed. Any person engaged in manufacturing, bottling, or selling soda, mineral, or aerated waters, cider, ginger ale, or other aerated, non-intoxicating beverages in bottles or siphons with his name or other marks or devices branded, stamped, engraved, etched, blown, impressed, or otherwise produced upon such bottles or siphons, or the boxes used by him, may have a trade-mark for the same as provided in this chapter.

History: En. Sec. 3300, Pol. C. 1895; re-en. Sec. 2103, Rev. C. 1907.

4292. Penalties. Every person who violates the provisions of the preceding section is punishable as provided in sections 11199 and 11203 of the Penal Code.

History: En. Sec. 3301, Pol. C. 1895; re-en. Sec. 2104, Rev. C. 1907.

PART IV.

GOVERNMENT OF COUNTIES, CITIES AND TOWNS.

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CHAPTER 1.

DEFINITIONS, COURSES, AND SURVEYS.

Section 4293. County Defined.
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4302. Previous Surveys Validated—Their Force as Evidence.
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4293. County defined. A county is the largest political division of the state having corporate power.

History: En. Sec. 4100, Pol. C. 1895; re-en. Sec. 2781, Rev. C. 1907. Cal. Pol. C. Sec. 3901.

For text treatment of counties, see 7 R. C. L. 421.

4294. Courses deemed true. In describing courses the words "north," "south," "east," and "west" mean true courses, and refer to the true meridian unless otherwise declared.

History: En. Sec. 4103, Pol. C. 1895; re-en. Sec. 2784, Rev. C. 1907. Cal. Pol. C. Sec. 3903.

4295. Directions deemed due. The words "northerly," "southerly," "easterly," and "westerly" mean due north, due south, due east, and due west, unless controlled by other words, or by lines, monuments, or natural objects.

History: En. Sec. 4104, Pol. C. 1895; re-en. Sec. 2785, Rev. C. 1907. Cal. Pol. C. Sec. 3904.

4296. Meaning of terms. The words "to," "on," "along," "with," or "by" a mountain or ridge, mean summit-point, or summit-line, unless otherwise expressed.

History: En. Sec. 4105, Pol. C. 1895; re-en. Sec. 2786, Rev. C. 1907. Cal. Pol. C. Sec. 3905.

4297. Same. The words "to," "by," "along," "with," "in," "up," or "down" a creek, river, slough, strait, or bay mean the middle of the main channel thereof, unless otherwise expressed.

History: En. Sec. 4106, Pol. C. 1895; re-en. Sec. 2787, Rev. C. 1907. Cal. Pol. C. Sec. 3906.

4298. Surveys to definitely establish unsettled boundaries. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the county surveyors of all the counties affected thereby, and approved by the boards of county commissioners of such counties.

History: En. Sec. 4150, Pol. C. 1895; re-en. Sec. 2844, Rev. C. 1907. Cal. Pol. C. Sec. 3969.

4299. Reports to governor on disagreement of commissioners. If the boards of county commissioners do not agree upon and finally approve the survey, each county surveyor must make a report to the governor, with surveys, maps, notes, and explanations touching disputed points.

History: En. Sec. 4151, Pol. C. 1895; re-en. Sec. 2845, Rev. C. 1907. Cal. Pol. C. Sec. 3970.

4300. Governor to determine boundary thereupon or to order new surveys. Upon such reports the governor must finally determine and establish the common boundaries and corners, if he can collate a satisfactory description therefrom. If the reports are insufficient for such purpose, he must cause surveys to be made, and when approved by him the surveys so made establish such common boundaries and corners.

History: En. Sec. 4152, Pol. C. 1895; re-en. Sec. 2846, Rev. C. 1907. Cal. Pol. C. Sec. 3971.

4301. Approved surveys to be conclusive. All surveys finally approved under the provisions of this chapter are conclusive ascertainments of lines and corners included therein.

History: En. Sec. 4153, Pol. C. 1895; re-en. Sec. 2847, Rev. C. 1907. Cal. Pol. C. Sec. 3972.

4302. Previous surveys validated—Their force as evidence. All surveys and maps of boundary lines heretofore legally made and approved are declared valid and are prima facie evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this code.

History. En. Sec. 4154, Pol. C. 1895; re-en. Sec. 2848, Rev. C. 1907. Cal. Pol. C. Sec. 3973.

4303. Apportionment of cost of survey—Provision for payment thereof. The cost of making such surveys must be apportioned equally among the counties interested, and the board of county commissioners must audit the same, and the amounts must be paid out of the general county fund.

History: En. Sec. 4155, Pol. C. 1895; re-en. Sec. 2849, Rev. C. 1907. Cal. Pol. C. Sec. 3975.

4304. Collection of old taxes when county is divided or boundary altered. When a county is divided or a boundary is altered, all taxes levied before the division was made or boundary changed must be collected by the officers of and belong to the county in which the territory was situated before the division or change.

History: En. Sec. 4156, Pol. C. 1895; re-en. Sec. 2850, Rev. C. 1907. Cal. Pol. C. Sec. 3976.

CHAPTER 2.

COUNTY BOUNDARIES.

Section 4305. County Boundaries—Beaverhead County.
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4307. Blaine County.
4308. Broadwater County.
4309. Carbon County.
4310. Carter County.
4311. Cascade County.
4312. Chouteau County.
4313. Custer County.
4314. Daniels County.
4315. Dawson County.
4316. Deer Lodge County.
4317. Fallon County.
4318. Fergus County.
4319. Flathead County.
4320. Gallatin County.
4321. Garfield County.
4322. Glacier County.
4323. Golden Valley County.
4324. Granite County.
4325. Hill County.
4326. Jefferson County.
4327. Judith Basin County.
4328. Lewis and Clark County.
4329. Liberty County.
4330. Lincoln County.
4331. Madison County.
4332. McCone County.
4333. Meagher County.
4334. Mineral County.
4335. Missoula County.
4336. Musselshell County.
4337. Park County.
4338. Phillips County.
4339. Pondera County.
4340. Powder River County.
4341. Powell County.
4342. Prairie County.
4343. Ravalli County.
4344. Richland County.
4345. Roosevelt County.
4346. Rosebud County.
4347. Sanders County.
4348. Sheridan County.
4349. Silver Bow County.
4350. Stillwater County.
4351. Sweet Grass County.
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4353. Toole County.
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4360. Township and Range Designations.
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4363. Indebtedness—Apportionment and Payment.
4364. Transmission List Delinquent Taxes.
4365. Payment of School Moneys to Teton County.
4366. Contract for Transcribing Records Chouteau County.
4367. Transfer of Actions Affecting Real Estate.
4368. Continuance of Certain Officers.

4305. County boundaries. The boundaries of the several counties of the state of Montana are hereby fixed and defined, as follows:

BEAVERHEAD COUNTY. Beginning at a point on the first standard parallel south at the northwest corner of section three (3), township six (6) south, range seven (7) west; thence south eighteen (18) miles to the northwest corner of section three (3), township nine (9) south, range seven (7) west; thence east six (6) miles, more or less, to the northeast corner of section four (4), township nine (9) south, range six (6) west; thence south six (6) miles, more or less, to the northeast corner of section four (4), township ten (10) south, range six (6) west; thence east seven (7) miles, more or less, to the northeast corner of section three (3), township ten (10) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner of section thirty-four (34), township ten (10) south, range five (5) west; thence east to the northwest corner of section one (1), township eleven (11) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner of section thirty-five (35), township eleven (11) south, range five (5) west; thence east five (5) miles to the northeast corner of section three (3), township twelve (12) south, range four (4) west; thence south three (3) miles to the northeast corner of section twenty-two (22), township twelve (12) south, range four (4) west; thence east fourteen (14) miles, more or less, to the northeast corner of section twenty-four (24), township twelve (12) south, range two (2) west; thence south five (5) miles, more or less, to the northeast corner of section thirteen (13), township thirteen (13) south, range two (2) west; thence east sixteen (16) miles, more or less, following section lines to the point of intersection with the boundary lines between Montana and Idaho at the top of the divide of the main range of the Rocky mountains; thence in a general westerly and northwesterly direction along the top of said divide following the boundary line between the state of Montana and the state of Idaho, where the summit of the main range of the Bitter Root mountains joins said Continental divide; thence following in a general northeasterly direction along the top of said Continental divide to a point on said Continental divide nearest the head of the main drain of Pintler creek; thence along the middle of the channel of said Pintler creek in a southerly direction to a point in the center of the main channel of the Big Hole river directly opposite to the center of the outlet of said Pintler creek; thence following the center of the main channel of the Big Hole river in an easterly and southerly direction to the point where said middle channel of said Big Hole river intersects the west boundary of section thirty-two (32), township four (4) south, range seven (7) west; thence in a general southeasterly direction in a straight line to the southeast corner of section sixteen (16), township five (5) south, range seven (7) west; thence south to the southeast corner of section thirty-three (33), township five (5) south, range seven (7) west; said corner being a monument on the first standard parallel south; thence east along said standard parallel to the northeast corner of section four (4), township six (6) south, range seven (7) west; being the place of beginning. The county seat is Dillon, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529; boundaries established Dec. 10, 1867, L. 1867, p. 102; Sec. 3, Cod. Stat. 1871; territory added Feb. 7, 1874, L. 1874, p. 68; Sec. 325, 5th Div. Rev. Stat. 1879; Sec. 732, 5th Div. Comp.

Stat. 1887; Sec. 4109, Pol. C. 1895; Sec. 2791, Rev. C. 1907; boundaries changed and part of Madison county added by Ch. 73, L. 1911; boundaries defined by Ch. 205, L. 1921.

4306. BIG HORN COUNTY. Beginning at a point where the township line between townships three (3) and four (4) north, range thirty-four (34) east, intersects the mid-channel of Big Horn river; thence west along said township line to the northwest corner of section six (6), township three (3) north, range thirty-three (33) east; thence south to the southwest corner of section nineteen (19), township three (3) north, range thirty-three (33) east; thence west to the northwest corner of section thirty (30), township three (3) north, range thirty-two (32) east; thence south to the northwest corner of section six (6), township two (2) north, range thirty-two (32) east; thence west to the northwest corner of section two (2), township two (2) north, range thirty-one (31) east; thence south to the northwest corner of section fourteen (14), township two (2) north, range thirty-one (31) east; thence west to the northwest corner of section sixteen (16), township two (2) north, range thirty-one (31) east; thence south to the northwest corner of section twenty-eight (28), township two (2) north, range thirty-one (31) east; thence west to the northwest corner of section thirty (30), township two (2) north, range thirty (30) east; thence south to the southwest corner of section thirty-one (31), township one (1) north, range thirty (30) east; thence west to the northwest corner of section six (6), township one (1) south, range thirty (30) east; thence south to the northwest corner section six (6), township four (4) south, range thirty (30) east; thence west to the northwest corner of section six (6), township four (4) south, range twenty-nine (29) east; thence south to the southwest corner of section seven (7), township four (4) south, range twenty-nine (29) east; thence west to the northeast corner of section thirteen (13), township four (4) south, range twenty-seven (27) east; thence south to the southeast corner of section twenty-four (24), township four (4) south, range twenty-seven (27) east; thence west to the southwest corner of section nineteen (19), township four (4) south, range twenty-seven (27) east; thence north to the northeast corner of section twenty-five (25); township four (4) south, range twenty-six (26) east; thence west along section lines to an intersection with the west boundary line of the Crow Indian reservation, in township four (4) south, range twenty-five (25) east; thence in a southwesterly direction along the boundary line of said Crow Indian reservation to the southwest corner of said reservation, in township seven (7) south, range twenty-five (25) east; thence east along the boundary line of the Crow Indian reservation to an intersection with the center of the channel of Big Horn river; thence southwesterly along the center of the channel of said Big Horn river to its intersection with the north boundary line of the state of Wyoming; thence east along the north boundary line of the state of Wyoming to an intersection with the line between ranges forty-four (44), and forty-five (45) east; thence north along the line between ranges forty-four (44), and forty-five (45), east, to the northeast corner of township eight (8) south, range forty-four (44) east; thence west along the south boundary line of township seven (7) south, ranges forty-four (44), forty-three (43), forty-two (42), and forty-one (41) east, to the

northwest corner of township seven and one-half (7½) south, range forty-one (41) east; thence north to the northeast corner of township six (6) south, range forty (40) east; thence east to the southwest corner of township five (5) south, range forty-one (41) east; thence north to the northern line of the Northern Cheyenne Indian reservation, where the same intersects the east line of township two (2) south, range forty (40) east; thence west following the northern boundary line of the Northern Cheyenne Indian reservation to an intersection with the east line produced of section four (4), township two (2) south, range thirty-nine (39) east; thence north to the northeast corner of section four (4), township one (1) south, range thirty-nine (39) east; thence east to the southeast corner of section thirty-three (33), township one (1) north, range thirty-nine (39) east; thence north to the northeast corner of section twenty-one (21), township one (1) north, range thirty-nine (39) east; thence west to the northwest corner of section nineteen (19), township one (1) north, range thirty-nine (39) east; thence north to the northeast corner of section one (1), township one (1) north, range thirty-eight (38) east; thence west to the northwest corner of section six (6), township one (1) north, range thirty-eight (38) east; thence north to the northeast corner of section twenty-four (24), township two (2) north, range thirty-seven (37) east; thence west to the northwest corner of section nineteen (19), township two (2) north, range thirty-seven (37) east; thence north to the northeast corner of section one (1), township two (2) north, range thirty-six (36) east; thence west to the northwest corner of section six (6), township two (2) north, range thirty-five (35) east; thence north to the northeast corner of section one (1), township three (3) north, range thirty-four (34) east; thence west along the township line between townships three (3), and four (4) north, range thirty-four (34) east, to the point of beginning. The county seat is Hardin, Montana.

History: County created Jan. 13, 1913, by petition and election, from portions of Yellowstone and Rosebud counties; boundary with Carbon and Yellowstone fixed by Ch. 83, L. 1919; boundaries defined by Ch. 205, L. 1921.

4307. BLAINE COUNTY. Beginning at the closing corner common to sections three (3) and four (4), township thirty-seven (37) north, range seventeen (17) east, which is on the international boundary line between the United States and the Dominion of Canada; thence south on lines of public surveys to the southeast corner of section thirty-three (33), township thirty-seven (37) north, range seventeen (17) east; thence west along the ninth standard parallel north to the closing corner common to sections three (3) and four (4), township thirty-six (36) north, range seventeen (17) east; thence south about twenty-four (24) miles on a line dividing the east from the west half of townships thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) north, range seventeen (17) east; to the southeast corner of section thirty-three (33), township thirty-three (33) north, range seventeen (17) east; thence east on the eighth standard parallel north to the closing corner common to sections two (2) and three (3), township thirty-two (32) north, range seventeen (17) east; thence south about three (3) miles, following the section lines to the southwest corner of section fourteen (14), township thirty-two (32) north, range seventeen (17) east; thence east about one and one-half

(1½) miles to the quarter corner between sections thirteen (13) and twenty-four (24), township thirty-two (32) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner between sections twelve (12) and thirteen (13), township thirty-one (31) north, range seventeen (17) east; thence west one and one-half (1½) miles to the northwest corner of section fourteen (14), township thirty-one (31) north, range seventeen (17) east; thence south four (4) miles to the southeast corner of section thirty-four (34), township thirty-one (31) north, range seventeen (17) east; thence west about one (1) mile to the southwest corner of said section thirty-four (34); thence south about seven (7) miles to the southwest corner of section three (3), township twenty-nine (29) north, range seventeen (17) east; thence west one and one-half (1½) miles to the quarter corner on the north boundary of section eight, township twenty-nine (29) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner on the south boundary of section thirty-two (32), township twenty-nine (29) north, range seventeen (17) east; thence east about one (1) mile to the northwest corner of section three (3), township twenty-eight (28) north, range seventeen (17) east; thence south on the section line to the southeast corner of section thirty-three (33), township twenty-five (25) north, range seventeen (17) east; thence west on the sixth standard parallel north to the closing corner common to sections three (3) and four (4), township twenty-four (24) north, range seventeen (17) east; thence south on the section line to the center of the main channel of the Missouri river; thence in an easterly direction along the middle of the main channel of the Missouri river to an intersection with a north and south line through the center of township twenty-three (23) north, range twenty-two (22) east; thence north about eight (8) miles through the center of townships twenty-three (23) and twenty-four (24) north, range twenty-two (22) east, to a point where said line intersects the township line between townships twenty-four (24) and twenty-five (25) north; thence east about three-fourths (¾) of a mile on said township line to a point where said township line intersects the north and south line through the center of township twenty-five (25) north, range twenty-two (22) east; thence northerly along said north and south line through the center of township twenty-five (25) north, range twenty-two (22) east, about three and one-half (3½) miles to a point where said line intersects the south boundary line, or said south boundary line produced, of the Fort Belknap Indian reservation; thence easterly along the south boundary line of said Fort Belknap Indian reservation about eleven and one-half (11½) miles to a point where the south boundary of said reservation intersects the west boundary of the Jefferson national forest; thence northerly about five (5) miles along said west boundary line of said Jefferson national forest to the northwest corner thereof; thence easterly about seven and one-half (7½) miles along the north boundary of said Jefferson national forest to a point where said boundary line, or the said boundary line produced intersects the range line between ranges twenty-five (25) and twenty-six (26) east; thence northerly about thirty-two (32) miles observing the offsets and corrections along the line between ranges twenty-five (25) and twenty-six

(26) east, to a point where said line intersects the center of the channel of Milk river; thence easterly along the center of the channel of Milk river about six (6) miles to a point where the same intersects the section line between sections twenty-seven (27) and twenty-eight (28), township thirty-one (31) north, range twenty-six (26) east; thence north about ten (10) miles along the section line through the center of townships thirty-one (31) and thirty-two (32) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-two (32), and thirty-three (33) north; thence east about one (1) mile on said township line to a point where said township line intersects a north and south line through the center of township thirty-three (33) north, range twenty-six (26) east; thence north about twelve (12) miles through the center of townships thirty-three (33) and thirty-four (34) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-four (34) and thirty-five (35) north; thence east along said township line about three (3) miles to a point where the same intersects the range line between ranges twenty-six (26) and twenty-seven (27) east; thence north about eighteen (18) miles along said range line observing the offsets and corrections to a point where said range line joins the international boundary line between the United States and Canada; thence west along the international boundary line a distance of about fifty-seven (57) miles to the point of beginning. The county seat is Chinook, Montana.

History: County created by petition and election, effective Feb. 29, 1912, from portion of Chouteau county; portion detached by creation of Phillips county, Feb. 5, 1915; boundaries defined by Ch. 205, L. 1921.

4308. BROADWATER COUNTY. Beginning at the intersection of the center of the channel of the Jefferson river, with the Montana principal meridian, and running thence down the middle of the Jefferson river to its mouth; thence down the middle of the Missouri river to the intersection with a curve line five hundred (500) feet southeasterly from the main line of the Chicago, Milwaukee & St. Paul railroad, where the same crosses the Missouri river; thence in a general northeasterly direction five hundred (500) feet distant from and parallel to the center line of the Chicago, Milwaukee & St. Paul railroad to the west line of section nine (9), township four (4) north, range three (3) east; thence north along said west line to a point therein five hundred (500) feet distant from, in a northerly direction—the center line of the said Chicago, Milwaukee & St. Paul railroad; thence in a general northeasterly direction parallel to and five hundred (500) feet distant from the center line of the Chicago, Milwaukee & St. Paul railroad to the west line of section three (3), township four (4) north, range three (3) east; thence north along the west boundary of section three (3), to the northwest corner thereof; thence east along the first standard parallel north to the southwest corner of section thirty-four (34), township five (5) north, range three (3) east; thence north along the section line to the west quarter corner of section fifteen (15), township five (5) north, range three (3) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range four (4) east; thence north to what will be, when the same is surveyed, the west quarter corner of section

eighteen (18), township five (5) north, range five (5) east; thence east through what will be, when the same is surveyed, the centers of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), and fourteen (14), township five (5) north, range five (5) east to the center of the main channel of sixteen mile creek; thence in a northwesterly direction following the summit of the Big Belt mountains to the head of Cave gulch; thence in a southwesterly direction down Cave gulch to its intersection with a north and south line one (1) mile east of the Montana principal meridian; thence south running parallel with and one (1) mile distant from the Montana principal meridian to the intersection with the middle of the main channel of the Missouri river; thence in a southeasterly direction following the middle of the main channel of the Missouri river to an intersection with a line extending due east from the north peak of the mountains southeast from Helena, known as Dry Gulch mountains; thence running due west to an intersection with the west line of township nine (9) north, range one (1) west; thence running south along the township line to the southwest corner of township four (4) north, range one (1) west; thence running east along the south line of said township to the Montana principal meridian; thence running south along said Montana principal meridian to the place of beginning. The county seat is Townsend, Montana.

History: County created Feb. 9, 1897, L. 1897, pp. 45-49, effective March 1, 1897; portion added to Lewis and Clark county, March 6, 1897, L. 1897, pp. 53-55; Secs. 2796, 2834, Rev. C. 1907; boundaries changed by Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921.

4309. CARBON COUNTY. Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), township two (2) south, range twenty-four (24) east, intersects the said river, thence south along the west line of section twenty-one (21) and the west line of sections twenty-eight (28) and thirty-three (33), in said township to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point thereon where it is intersected by the west line of section eight (8), township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8), and the west line of sections seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32) of said township to the southwest corner of section thirty-two (32), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along the line between ranges twenty-four (24) and twenty-five (25) east to the southeast corner of section twenty-four (24), township four (4) south, range twenty-four (24) east; thence east along the north line of sections thirty (30) and twenty-nine (29), township four (4) south, range twenty-five (25) east to an intersection with the west boundary line of the Crow Indian reservation, township four (4) south, range twenty-five (25) east; thence in a southwesterly direction along the boundary line of said reservation to the southwest corner of said reservation in township seven (7) south, range twenty-five (25) east; thence east along the south boundary line of said reservation to an intersection with the center of the channel of the Big Horn river; thence southwesterly following the center of the

channel of the Big Horn river to its intersection with the north boundary line of the state of Wyoming; thence west along the boundary line of the state of Wyoming to its intersection with the line between ranges fifteen (15) and sixteen (16) east; thence north along the lines between ranges fifteen (15) and sixteen (16) east to the southwest corner of township seven (7) south, range sixteen (16) east; thence east along the south line of township seven (7) south, range sixteen (16) east to a point which, when surveyed, will be the southeast corner of township seven (7) south, range sixteen (16) east; thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township six (6) south, range seventeen (17) east, to the southeast corner of section thirty-four (34), township six (6) south, range seventeen (17) east; thence north along the east line of sections thirty-four (34), twenty-seven (27) and twenty-two (22) to the northeast corner of section twenty-two (22), township six (6) south, range seventeen (17) east; thence east along the line between sections fourteen (14) and twenty-three (23), township six (6) south, range seventeen (17) east, to the southeast corner of section fourteen (14), township six (6) south, range seventeen (17) east; thence north along the east line of sections fourteen (14) and eleven (11), township six (6) south, range seventeen (17) east, to the northeast corner of section eleven (11), township six (6) south, range seventeen (17) east; thence east along the south line of section one (1), township six (6) south, range seventeen (17) east, to the southeast corner of said section one (1); thence north along the east line of township six (6) south, range seventeen (17) east, to the northeast corner of section one (1); thence east along the first standard parallel south to the southeast corner of section thirty-six (36), township five (5) south, range seventeen (17) east; thence north along the east line of township five (5) south, range seventeen (17) east to the northeast corner of said section thirty-six (36), township five (5) south, range seventeen (17) east; thence east along the line between sections thirty (30) and thirty-one (31), township five (5) south, range eighteen (18) east, to the southeast corner of section thirty (30), township five (5) south, range eighteen (18) east; thence north along the east line of said section thirty (30) to the northeast corner thereof; thence east along the line between sections twenty (20) and twenty-nine (29), township five (5) south, range eighteen (18) east, to the southeast corner of said section twenty (20); thence north along the east line of said section twenty (20), to the northeast corner thereof; thence east along the line between sections sixteen (16) and twenty-one (21), township five (5) south, range eighteen (18) east, to the southeast corner of said section sixteen (16); thence north along the east line of said section sixteen (16), township five (5) south, range eighteen (18) east, to the northeast corner thereof; thence east along the line between sections ten (10) and fifteen (15), township five (5) south, range eighteen (18) east, to the southeast corner of said section ten (10); thence north along the east line of said section ten (10), to the northeast corner thereof; thence east along the south line of sections two (2) and one (1), township five (5) south, range eighteen (18) east, to the southeast corner of said section one (1); thence north along the east line of said section one (1) to the southwest corner of section thirty-one (31), township four (4) south, range

nineteen (19) east; thence east along the south line of said section thirty-one (31), township four (4) south, range nineteen (19) east, to the southeast corner of said section; thence north along the east line of said section thirty-one (31), to the northeast corner thereof; thence east along the south line of sections twenty-nine (29), twenty-eight (28) and twenty-seven (27), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-seven (27); thence north along the east line of said section twenty-seven (27), township four (4) south, range nineteen (19) east, to the northeast corner thereof; thence east along the south line of sections twenty-three (23) and twenty-four (24), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-four (24); thence east along the south line of section nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23) and twenty-four (24), township four (4) south, range twenty (20) east, to the southeast corner of said section twenty-four (24); thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township three (3) south, range twenty-one (21) east, to the southeast corner of section thirty-three (33), township three (3) south, range twenty-one (21) east; thence north along the east line of section thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16) and nine (9), in said township and range, to an intersection with the center of the channel of the Yellowstone river; thence down the center of the channel of the Yellowstone river to the place of beginning. The county seat is Red Lodge, Montana.

History: County created March 4, 1895, L. 1895; pp. 49-54, effective May 1, 1895; Sec. 4133, Pol. C. 1895; Sec. 2831, Rev. C. 1907; Stillwater county created, including part of, March 24, 1913; boundary line between Yellowstone and Carbon fixed by Ch. 75, L. 1919; boundary line with Big Horn fixed by Ch. 83, L. 1919; boundaries defined by Ch. 205, L. 1921.

4310. CARTER COUNTY. Beginning at the northwest corner of township four (4) north, range fifty-five (55) east, and running east along the north boundary line of township four (4) north, to the northwest corner of section three (3), township four (4) north, range fifty-eight (58) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3) township three (3) north, range fifty-eight (58) east; thence east along the north line of township three (3) north to the northwest corner of section three (3), township three (3) north, range fifty-nine (59) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township two (2) north, range fifty-nine (59) east; thence east along the north line of township two (2) north to the northwest corner of section three (3), township two (2) north, range sixty-one (61) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3),

township one (1) north, range sixty-one (61) east; thence east along the north line of township one (1) north, to the intersection of the eastern boundary line of the state of Montana; thence south along said eastern boundary line to the southeast corner of the state of Montana; thence west along the south boundary of the state of Montana to the southwest corner of township nine (9) south, range fifty-five (55) east; thence north along the range line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township six (6) south, range fifty-five (55) east; thence east along the north line of township six (6) south, to the southwest corner of township five (5) south, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township one (1) south, range fifty-five (55) east; thence east along the north line of township one (1) south to the southwest corner of township one (1) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55), to the northwest corner of township four (4) north, range fifty-five (55) east, being the point of beginning. The county seat is Ekalaka, Montana.

History: County created by Ch. 56, L. 1917, effective Feb. 22, 1917, out of portion of Fallon county; boundaries defined by Ch. 205, L. 1921.

4311. CASCADE COUNTY. Beginning at the intersection of the center of the channel of the Missouri river with the north line of township twenty-two (22) north, range six (6) east; thence running west on the line between townships twenty-two (22) and twenty-three (23) north, to the northwest corner of township twenty-two (22) north, range one (1) east; thence south along the Montana principal meridian to the north line of township twenty-one (21) north; thence west along the north line of said township twenty-one (21) north, to the northwest corner of township twenty-one (21) north, range two (2) west; thence south to the middle of the main channel of Sun river; thence westerly up the middle of the main channel of the Sun river to the Helena guide meridian; thence south along the Helena guide meridian to its intersection with the middle of the main channel of Dearborn river; thence down the middle of the main channel of Dearborn river to the middle of the main channel of the Missouri river; thence down the middle of the main channel of the Missouri river to an intersection with the line dividing the north from the south half of section twenty (20), township sixteen (16) north, range two (2) west; thence running east on the half section line to the quarter corner on the east line of section twenty-four (24), township sixteen (16) north, range two (2) west; thence running south to the southwest corner of township fourteen (14) north, range one (1) west; thence running east to the southeast corner of township fourteen (14) north, range one (1) east; thence north to the southeast corner of township fifteen (15) north, range one (1) east; thence east to the southeast corner of township fifteen (15) north, range four (4) east; thence north to the southwest corner of township sixteen (16) north, range five (5) east; thence east along the line dividing townships fifteen (15) and sixteen (16) north, to the summit of the Little Belt mountains; thence following the summit of the Little Belt mountains in a southeasterly direction to an intersection with a line dividing ranges

eight (8) and nine (9) east; thence running north along said line to the northeast corner of township fifteen (15) north, range eight (8) east; thence running west to the southwest corner of township sixteen (16) north, range eight (8) east; thence north along the range line between ranges seven (7) and eight (8) east, as corrected by the United States government survey thereof to the quarter (¼) corner on the east boundary of section thirteen (13), township seventeen (17) north, range seven (7) east; thence west one-half (½) mile to the center of said section thirteen (13); thence north one (1) mile to the center of section twelve (12), township seventeen (17) north, range seven (7) east; thence west one-half (½) mile to the quarter (¼) corner on the west boundary of said section twelve (12); thence north along section lines a distance of four (4) miles to the quarter (¼) corner on the west boundary of section twenty-four (24), township eighteen (18) north, range seven (7) east; thence east a distance of three-fourths (¾) of a mile to the northeast corner of the northwest quarter of the southeast quarter (N. W. ¼ S. E. ¼) of said section twenty-four (24); thence south a distance of three-fourth (¾) of a mile to the southwest corner of the northeast quarter of the northeast quarter (N. E. ¼ N. E. ¼) of section twenty-five (25), township eighteen (18) north, range seven (7) east; thence east a distance of one-fourth (¼) of a mile to the southeast corner of the northeast quarter of the northeast quarter (N. E. ¼ N. E. ¼) of said section twenty-five (25); thence north along the range line between ranges seven (7) and eight (8) east a distance of four and one-fourth (4¼) miles, more or less, to the northwest corner of township eighteen (18) north, range eight (8) east; thence east along the township lines between townships eighteen (18) and nineteenth (19) north, to the northeast corner of said township eighteen (18) north, range eight (8) east; thence north along the range line between ranges eight (8) and nine (9) east to the northeast corner of township nineteen (19) north, range eight (8) east; thence west along the township line to the northwest corner of said township nineteen (19) north, range eight (8) east; thence north to the northeast corner of township twenty (20) north, range seven (7) east; thence west along the fifth standard parallel north to a point in the middle of the main channel of Belt creek; thence in a northwesterly direction following the main channel of Belt creek to the middle of the main channel of the Missouri river; thence along the main channel of the Missouri river to the place of beginning. The county seat is Great Falls, Montana.

History: County created Sept. 12, 1887, Ex. L. 1887, p. 104, effective third Monday of Dec. 1887; Sec. 4122, Pol. C. 1895; boundaries extended March 1, 1897, L. 1897, pp. 50-52; portion added to Lewis and Clark, March 6, 1897, L. 1897, pp. 53-55; portion of Fergus county added Feb. 28, 1899, L. 1899, p. 41; portion of Meagher county added, March 6, 1899, L. 1899, p. 43; portion of Chouteau county added March 3, 1903, Ch. 51, L. 1903; Secs. 2796, 2813, 2814, 2815, 2817, 2818, Rev. C. 1907; Judith Basin county created from portion of, Dec. 10, 1920; boundaries defined by Ch. 205, L. 1921.

4312. CHOUTEAU COUNTY. Beginning at the center of the channel of the Missouri river opposite the mouth of Arrow creek; thence following up the center of Arrow creek to an intersection with the north line of section fifteen (15), township nineteen (19) north, range twelve (12) east; thence running west along the north line of sections fifteen (15), sixteen

(16), seventeen (17) and eighteen (18), township nineteen (19) north, range twelve (12) east, and the north line of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township nineteen (19) north, range eleven (11) east, to the northwest corner of said section eighteen (18); thence running west along the south line of sections twelve (12), eleven (11), ten (10), nine (9), eight (8) and seven (7), township nineteen (19) north, ranges ten (10) and nine (9) east, to the southwest corner of section seven (7), township nineteen (19) north, range nine (9) east; thence running north to the northeast corner of township nineteen (19) north, range eight (8) east; thence running west along the line between townships nineteen (19) and twenty (20) north to the southeast corner of township twenty (20) north, range seven (7) east; thence running north to the northeast corner of said township; thence west along the fifth standard parallel north, to a point in the middle of the main channel of Belt creek; thence in a northwesterly direction following the main channel of Belt creek to the middle of the main channel of the Missouri river; thence along the main channel of the Missouri river to an intersection with the north line of township twenty-two (22) north, range six (6) east; thence running west along the line between townships twenty-two (22) and twenty-three (23) north, to its intersection with the Montana principal meridian; thence running north along the Montana principal meridian to the southwest corner of section nineteen (19), township twenty-six (26) north, range one (1) east; thence east along the section line to the southeast corner of section twenty-four (24), township twenty-six (26) north, range two (2) east; thence north along the line between ranges two (2) and three (3) east, to the northwest corner of township twenty-seven (27) north, range three (3) east; thence running east along the line between townships twenty-seven (27) and twenty-eight (28) north, to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seven (7) east; thence running north along the line dividing the east from the west half of said township to the northwest corner of section three (3), township twenty-eight (28) north, range seven (7) east; thence running east along the line between townships twenty-eight (28) and twenty-nine (29) north to the southeast corner of township twenty-nine (29) north, range eight (8) east; thence running north to the northwest corner of township twenty-nine (29) north, range nine (9) east; thence running east on the line between townships twenty-nine (29) and thirty (30) north, to the northeast corner of township twenty-nine (29) north, range fourteen (14) east; thence running south along the line between ranges fourteen (14) and fifteen (15) east, to the southwest corner of township twenty-nine (29) north, range fifteen (15) east; thence running east along the seventh standard parallel north to the northeast corner of township twenty-eight (28) north, range fifteen (15) east; thence running south along the east line of said township to the southeast corner thereof; thence running east on the line dividing townships twenty-seven (27) and twenty-eight (28) north to the northeast corner of section four (4), township twenty-seven (27) north, range seventeen (17) east; thence south along the line dividing the west from the east half of townships twenty-seven (27), twenty-six (26) and twenty-five (25) north, range seventeen (17) east, to the southeast

corner of section thirty-three (33) township twenty-five (25) north, range seventeen (17) east; thence west on the sixth standard parallel north to the closing corner common to sections three (3) and four (4), township twenty-four (24) north, range seventeen (17) east; thence south on the line dividing the east from the west half of townships twenty-four (24) and twenty-three (23) north, range seventeen (17) east to the center of the main channel of the Missouri river; thence in a westerly direction following the center of said channel to the place of beginning. The county seat is Fort Benton, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 531; Sec. 9, Cod. Stat. 1871, pp. 431-2; territory added Feb. 5, 1876. L. 1876; p. 47, Sec. 331, 5th Div. Rev. Stat. 1879; Sec. 738, 5th Div. Comp. Stat. 1887; Cascade county created, including part of Chouteau, Sept. 12, 1887, Ex. L. 1887, pp. 104-109; Teton created, including part of Chouteau, Feb. 7, 1893, L. 1893, pp. 205-209; Secs. 4115, 4124, 4128, Pol. C. 1895; portion added to Cascade county March 1, 1897, L. 1897, p. 50-2; portion added to Cascade county March 3, 1903, L. 1903, Ch. 51; spelling of name changed to Chouteau by Ch. 74, L. 1903; boundaries of Fergus county extended, Ch. 28, L. 1907; Secs. 2802, 2803, 2819, 2821, and 2826, Rev. C. 1907; Hill county created, including part of Chouteau, Feb. 28, 1912; Blaine county created, including part of Chouteau, Feb. 29, 1912; Pondera county created, April 1, 1919, from part of, by Ch. 22, L. 1919; Liberty county created Feb. 11, 1920, from part of; boundaries defined by Ch. 205, L. 1921; boundary between Chouteau and Teton changed and portion added to Teton by Ch. 174, L. 1921, effective March 5, 1921. See Secs. 4362 to 4368.

4313. CUSTER COUNTY. Beginning at the northwest corner of section nineteen (19), township ten (10) north, range fifty-six (56) east; thence running at right angles due west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20), nineteen (19), township ten (10) north, range fifty-five (55) east, to the northwest corner of section nineteen (19), township ten (10) north, range fifty-five (55) east; thence running at right angles due south to the southwest corner of township ten (10) north, range fifty-five (55) east; thence running due west along the south line of township ten (10) north, range fifty-four (54) east to the northwest corner of township nine (9) north, range fifty-four (54) east; thence due south two (2) miles to the southeast corner of section twelve (12), township nine (9) north, range fifty-three (53) east; thence due west along section lines to the southwest corner of section seven (7), township nine (9) north, range fifty-two (52) east; thence due north along the lines between ranges fifty-one (51) and fifty-two (52), to the southeast corner of township ten (10) north, range fifty-one (51) east; thence due west along the north line of township nine (9) north, to the southwest corner of section thirty-three (33), township ten (10) north, range fifty (50) east; thence at right angles due north two (2) miles to the northeast corner of section twenty-nine (29), township ten (10) north, range fifty (50) east; thence at right angles due west to the northwest corner of section thirty (30), township ten (10) north, range fifty (50) east; thence along the line between ranges forty-nine (49) and fifty (50), to the northeast corner of township ten (10) north, range forty-nine (49) east; thence at right angles due west to the northwest corner of section four (4), township ten (10) north, range forty-nine (49) east; thence north to the northwest corner of section four (4), township eleven (11) north, range forty-nine (49) east; thence west to the southwest corner of township twelve (12) north, range forty-nine (49) east; thence north to the northwest corner of township twelve (12) north, range

forty-nine (49) east; thence west to the southwest corner of township thirteen (13) north, range forty-seven (47) east; thence north along the west line of township thirteen (13) north, range forty-seven (47) east, to the northeast corner of section twenty-five (25), township thirteen (13) north, range forty-six (46) east; thence west along the section line to the southwest corner of section nineteen (19), township thirteen (13) north, range forty-five (45) east; thence south to the southeast corner of township thirteen (13) north, range forty-four (44) east; thence west to the northwest corner of township twelve (12) north, range forty-five (45) east; thence south to the southwest corner of township nine (9) north, range forty-five (45) east; thence west to the northwest corner of township eight (8) north, range forty-five (45) east; thence south to the southwest corner of township five (5) north, range forty-five (45) east; thence west to the northwest corner of township four (4) north, range forty-five (45) east; thence south to the southwest corner of township one (1) north, range forty-five (45) east; thence east along the line between township one (1) north and one (1) south to the southeast corner of township one (1) north, range fifty-four (54) east; thence north to the northeast corner of township four (4) north, range fifty-four (54) east; thence east to the southwest corner of section thirty-one (31), township five (5) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55) east to the northwest corner of township six (6) north, range fifty-five (55) east; thence west along the line between townships six (6) north and seven (7) north to the southwest corner of township seven (7) north, range fifty-five (55) east; thence north along the line between ranges fifty-four (54) and fifty-five (55) east, to the northwest corner of township eight (8) north, range fifty-five (55) east; thence east along the second standard parallel north to the southwest corner of township nine (9) north, range fifty-six (56) east; thence north along the line between ranges fifty-five (55) and fifty-six (56) east, to the place of beginning. The county seat is Miles City, Montana.

History: County created under name of Big Horn, Feb. 2, 1865, Bannack Stat., p. 531; Dawson county created out of, Jan. 15, 1869, L. 1869, p. 102; Sec. 11, p. 432, Cod. Stat. 1871; name changed to Custer, Feb. 16, 1877, L. 1877, p. 425; Sec. 333, 5th Div. Rev. Stat. 1879; boundary changed March 8, 1883, L. 1883, p. 99; Yellowstone created from part of, Feb. 26, 1883, L. 1883, pp. 119-122; Sec. 740, 5th Div. Comp. Stat. 1887; Sec. 4117, Pol. C. 1895; Crow Indian Reservation W. of Big Horn river added to Yellowstone, March 5, 1897, L. 1897, p. 55; Rosebud county created out of, Feb. 11, 1901, L. 1901, pp. 97-101; Sec. 2805, 2809, 2840, Rev. C. 1907; Fallon county created out of, Dec. 9, 1913, Prairie county created, including part of, Feb. 5, 1915; part added to Prairie by Ch. 139, L. 1917; Powder River county created out of part of by Ch. 141, L. 1919, effective April 1, 1919; boundaries defined by Ch. 205, L. 1921.

4314. DANIELS COUNTY. Commencing at the intersection of the range line between ranges forty-two (42) and forty-three (43) east with the international boundary line between the United States and the dominion of Canada; thence east along said boundary line a distance of about forty-eight (48) miles to the point where the range line between ranges fifty (50) and fifty-one (51) east intersects said international boundary line; thence south on said range line between ranges fifty (50) and fifty-one (51) east, a distance of about six (6) miles to the southeast corner of township thirty-seven (37) north, range fifty (50) east; thence east on the township line between townships thirty-seven (37) and thirty-six (36)

north, range fifty-one (51) east, a distance of one (1) mile, more or less, to the line between sections three (3) and four (4), township thirty-six (36) north, range fifty-one (51) east; thence directly south on the section line a distance of about eighteen (18) miles to the southeast corner of section thirty-three (33), township thirty-four (34) north, range fifty-one (51) east; thence east to the township line between townships thirty-there (33) and thirty-four (34) north, range fifty-one (51) east, for a distance of three (3) miles, more or less, to the northeast corner of township thirty-three (33) north, range fifty-one (51) east; thence south on the line between ranges fifty-one (51) and fifty-two (52) east, a distance of six (6) miles to the southeast corner of township thirty-three (33) north, range fifty-one (51) east; thence west on the township line between townships thirty-two (32) and thirty-three (33), a distance of forty-eight (48) miles to the southwest corner of township thirty-three (33) north, range forty-four (44) east; thence north on the range line between ranges forty-three (43) and forty-four (44), a distance of eighteen (18) miles to the southeast corner of township thirty-six (36) north, range forty-three (43) east; thence west a distance of six (6) miles on the township line between townships thirty-five (35) and thirty-six (36) north, to the southwest corner of township thirty-six (36) north, range forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43) east, a distance of six (6) miles, more or less, to the township line between township thirty-six (36) and thirty-seven (37) north; thence east along said township line two (2) miles, more or less, to the southeast corner of township thirty-seven (37) north, range forty-two (42) east; thence north on the range line between ranges forty-two (42) and forty-three (43) east six miles, more or less, to the place of beginning. The county seat is Scoby, Montana.

History: County created by petition and election, effective Aug. 30, 1920, from portions of Sheridan and Valley; boundaries defined by Ch. 205, L. 1921.

4315. DAWSON COUNTY. Beginning at the point of intersection of the center of the channel of the Yellowstone river with a line drawn east and west through the center of section fifteen (15) of township eighteen (18) north, range fifty-seven (57) east; thence east through the center of said section to a point of intersection with the east line of said section; thence south one-half (½) mile along the east line of said section fifteen (15), township eighteen (18) north, range fifty-seven (57) east, to the southeast corner of said section; thence east one-half (½) mile along the south line of section fourteen (14), township eighteen (18) north, range fifty-seven (57) east; thence south one-half (½) mile to the center of section twenty-three (23) township eighteen (18) north, range fifty-seven (57) east; thence east one-half (½) mile to a point of intersection with the east line of said section twenty-three (23); thence south one-half (½) mile along the east line of said section twenty-three (23) to the southeast corner of said section twenty-three (23); thence east one-half (½) mile along the south line of section twenty-four (24), township eighteen (18) north, range fifty-seven (57) east; thence south one-half (½) mile to the center of section twenty-five (25), township eighteen (18) north, range fifty-seven (57) east; thence one-half (½) mile east to the east line of said section twenty-five (25); thence south one (1) mile

along the west line of sections thirty (30) and thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence east one-half (½) mile to the center of section thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence south one (1) mile to the center of section six (6), township seventeen (17) north, range fifty-eight (58) east; thence east one-half (½) mile to the east line of section six (6); thence south one-half (½) mile along the east line of said section six (6); thence east one-half (½) mile along the south line of section five (5), township seventeen (17) north, range fifty-eight (58) east; thence south one-half (½) mile to the center of section eight (8), township seventeen (17) north, range fifty-eight (58) east; thence east one-half (½) mile to the east line of said section eight (8); thence south two (2) miles along the east line of sections eight (8), seventeen (17) and twenty (20), all in township seventeen (17) north, range fifty-eight (58) east; thence east one-half (½) mile to the center of section twenty-one (21), township seventeen (17) north, range fifty-eight (58) east; thence south one (1) and one-half (½) miles through the center of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east, to the south line of said section twenty-eight (28); thence east one-half (½) mile along the south line of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east to the southeast corner of said section twenty-eight (28); thence south one (1) mile along the east line of section thirty-three (33), township seventeen (17) north, range fifty-eight (58) east to the southeast corner of said section thirty-three (33); thence east and along the north line of section one (1), township sixteen (16) north, range fifty-eight (58) east, to the quarter corner on the north line of the said section one (1); thence south three (3) miles through the centers of sections one (1), twelve (12) and thirteen (13), all in township sixteen (16) north, range fifty-eight (58) east, to the south line of said section thirteen (13); thence east one-half (½) mile along the south line of said section thirteen (13), township sixteen (16) north, range fifty-eight (58) east, to the southeast corner of said section thirteen (13); thence south six and one-half (6½) miles along the range line between ranges fifty-eight (58) and fifty-nine (59), to the quarter corner of the east line of section twenty-four (24), township fifteen (15) north, range fifty-eight (58) east; thence west one (1) mile through the center of said section twenty-four (24) to the west line of said section twenty-four (24); thence south two and one-half (2½) miles along the east line of sections twenty-three (23), twenty-six (26) and thirty-five (35), all in township fifteen (15) north, range fifty-eight (58) east, to the southeast corner of said section thirty-five (35); thence west and along the township line one-half (½) mile to the quarter corner on the north line of section two (2), township fourteen (14) north, range fifty-eight (58) east; thence south one mile through the center of said section two (2) to the south line of said section two (2); thence west along the south line of said section two (2) one-half (½) mile to the southwest corner of said section two (2); thence south one (1) mile and along the east line of section ten (10), township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of said section ten (10); thence west one-half (½) mile and along the south line of said section ten (10), to the quarter corner on the

south line of said section ten (10); thence south one (1) mile through the center of section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the south line of the said section fifteen (15); thence west one-half (½) mile and along the south line of said section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the southwest corner of said section fifteen (15) thence south one (1) mile along the west line of section twenty-two (22) of township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of section twenty-one (21), township fourteen (14) north, range fifty-eight (58) east; thence west one-half (½) mile along the south line of said section twenty-one (21); thence south one-half (½) mile to the center of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence west one-half (½) mile to the west line of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence south one-half (½) mile along the west line of said section twenty-eight (28), to the southwest corner of said section twenty-eight (28); thence west one-half (½) mile and along the north line of section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the quarter corner on the north line of said section thirty-two; thence south one (1) mile through the center of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the south line of said section thirty-two (32); thence west one-half (½) mile and along the south line of said section thirty-two (32), to the southwest corner of said section thirty-two (32); thence south one (1) mile and along the east line of section six (6), township thirteen (13) north, range fifty-eight (58) east, to the southeast corner of said section six (6); thence west one (1) mile and along the south line of section six (6), to the southwest corner of the said section six (6); thence south one (1) mile and along the east line of section twelve (12), township thirteen (13) north, range fifty-seven (57) east, to the southeast corner of said section twelve (12); thence west one (1) mile and along the south line of said section twelve (12), to the southwest corner of said section twelve (12); thence south one-half (½) mile and along the east line of section fourteen (14), township thirteen (13) north, range fifty-seven (57) east, to the quarter corner on the east line of the said section fourteen (14); thence west one-half (½) mile to the center of the said section fourteen (14); thence south one-half (½) mile to a point of intersection with the south line of said section fourteen (14); thence at right angels west one (1) mile along the south line of sections fourteen (14) and fifteen (15), all in township thirteen (13) north, range fifty-seven (57) east, to the quarter corner on the south line of said section fifteen (15); thence south one-half (½) mile to the center of section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east; thence west one-half (½) mile to a point on the west line of said section twenty-two (22); thence south one-half (½) mile along the west line of the said section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east, to the southwest corner of said section twenty-two (22); thence west along the south line of sections twenty-one (21), twenty (20) and nineteen (19), township thirteen (13) north, range fifty-seven (57) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and

thirty (30), township thirteen (13) north, range fifty-six (56) east and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township thirteen (13) north, range fifty-five (55) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) of township thirteen (13) north, range fifty-four (54) east, and along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27) and twenty-eight (28) of township thirteen (13) north, range fifty-three (53) east, to the southwest corner of section twenty-one (21) of said township and range; thence north along section lines to the north east corner of section seventeen (17), township thirteen (13) north, range fifty-three (53) east; thence west one (1) mile to the south west corner of section eight (8), township thirteen (13) north, range fifty-three (53) east; thence north one (1) mile to the southeast corner of section six (6), township thirteen (13) north, range fifty-three (53) east; thence west one (1) mile to the southwest corner of said section six (6); thence north one (1) mile to the northeast corner of township thirteen (13) north, range fifty-two (52) east; thence west along the north line of township thirteen (13) north to the southeast corner of township fourteen (14) north, range fifty-one (51) east; thence running north to the northeast corner of section thirteen (13) of said township and range; thence running west to the southwest corner of section seven (7), township fourteen (14) north, range fifty-one (51) east; thence running north along the range line between ranges fifty (50) and fifty-one (51) east to the northeast corner of township sixteen (16) north, range fifty (50) east; thence running west along the fourth standard parallel north to the southeast corner of township seventeen (17) north, range forty-nine (49) east; thence north along the range line between ranges forty-nine (49) and fifty (50) east, to the northwest corner of township twenty (20) north, range fifty (50) east; thence east along the north line of township twenty (20) north, to the southeast corner of township twenty-one (21) north, range forty-nine (49) east; thence north along the line between ranges forty-nine (49) and fifty (50) east, to the northwest corner of township twenty-three (23) north, range fifty (50) east; thence east along the north line of township twenty-three (23) north, to the southeast corner of township twenty-four (24) north, range fifty (50) east; thence south on the line between ranges fifty (50) and fifty-one (51) east, to the southwest corner of township twenty-three (23) north, range fifty-one (51) east; thence east along the south line of township twenty-three (23) north, ranges fifty-one (51) and fifty-two (52) east, to the northwest corner of township twenty-two (22) north, range fifty-three (53) east; thence south along the line between ranges fifty-two (52) and fifty-three (53) east, to the southwest corner of township twenty-two (22) north, range fifty-three (53) east; thence east along the line between townships twenty-one (21) and twenty-two (22) north, to the northwest corner of township twenty-one (21) north, range fifty-six (56) east; thence south on the line between ranges fifty-five (55) and fifty-six (56) east, to the southwest corner of said township twenty-one (21) north, range fifty-six (56) east; thence east along the line between townships twenty (20) and twenty-one (21) north, to the northwest corner of town-

ship twenty (20) north, range fifty-seven (57) east; thence south along the line between ranges fifty-six (56) and fifty-seven (57) east, to the southwest corner of township nineteen (19) north, range fifty-seven (57) east; thence east along the line between townships eighteen (18) and nineteen (19) north, to an intersection with the center of the channel of the Yellowstone river; thence in a southwesterly direction following the center of the channel of the Yellowstone river to the place of beginning. The county seat is Glendive, Montana.

History: County created Jan. 15, 1869, L. 1868-69, p. 102; Cod. Stat. 1871, Sec. 10, p. 432; 5th Div. Rev. Stat. 1879, Sec. 332; southern boundary changed March 8, 1883, L. 1883, p. 99; Sec. 739, 5th Div. Comp. Stat. 1887; Sec. 4116, Pol. C. 1895; Sec. 2804, Rev. C. 1907; Valley county detached Feb. 6, 1893 (p. 202, L. 1893); Sec. 4125, Pol. C. 1895; Sec. 2823, Rev. C. 1907; Richland county detached May 27, 1914; Wibaux county created Aug. 17, 1914, part of Dawson; Prairie county created Feb. 5, 1915, part of Dawson; boundary between Dawson and Rosebud changed by Ch. 36, L. 1917; Garfield county created by Ch. 4, L. 1919, effective April 1, 1919, from part of Dawson; McCone county created by Ch. 33, L. 1919, effective April 1, 1919, from part of Dawson; boundaries defined by Ch. 205, L. 1921.

4316. DEER LODGE COUNTY. Beginning at a point where the line of the divide between the headwaters of Brown's gulch and Dry Cottonwood creek intersects the continental divide which is approximately the quarter corner on the east boundary of section twenty-three (23), township five (5) north, range eight (8) west; running thence southwesterly along said divide between the headwaters of Brown's gulch and Dry Cottonwood creek to an intersection with the first standard parallel north which is the southwest corner of section thirty-six (36), township five (5) north, range nine (9) west; thence running west along said standard parallel to the point where the same intersects the Deer Lodge guide meridian; thence south to the southeast corner of township four (4) north, range ten (10) west; thence west to the south corner common to sections thirty-two (32) and thirty-three (33), township four (4) north, range ten (10) west; thence in a southerly and westerly direction to the top of the divide between Willow creek and Beef strait; thence along the top of said divide to the point where it intersects with the main range of the Rocky mountains; thence following the summit of said main range of the Rocky mountains as it trends in a southerly direction to the point where it is intersected by the divide between Bear creek and Johnson creek; thence following said divide in a southerly direction and continuing south to a point in the center of the channel of the Big Hole river; thence up along the center of the channel of the Big Hole river to the point where it is intersected by Pintler creek; thence up the center of the channel of Pintler creek to the summit of the Rocky mountains; thence in a northeasterly direction along the summit of the Rocky mountains to the line dividing ranges thirteen (13) and fourteen (14) west; thence north along said line to the northeast corner of township five (5) north, range fourteen (14) west; thence running east by township lines to the line dividing ranges eleven (11) and twelve (12) west; thence north to the southwest corner of section eighteen (18), township six (6) north, range eleven (11) west; thence east following section lines to the southeast corner of section fourteen (14), township six (6) north, range eight (8) west; thence north to the northeast corner of section two (2), township six (6) north, range eight (8) west; thence east to the summit of the main

range of the Rocky mountains; thence in a southerly direction along the main range of the Rocky mountains to the place of beginning. The county seat is Anaconda, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529; boundaries established Dec. 10, 1867, L. 1867, p. 102; Sec. 2, Cod. Stat. 1871, p. 429; boundaries changed Feb. 5, 1876, L. 1876, p. 46; Sec. 324, 5th Div. Rev. Stat. 1879; Silver Bow created from portion of, L. 1881, p. 85; Sec. 731, 5th Div. Comp. Stat. 1887; boundary changed March 5, 1891, L. 1891, pp. 224-5; Granite county created from portion of, March 2, 1893, L. 1893, pp. 212-217; Sec. 4108, 4132, Pol. C. 1895; portion added to Lewis and Clark, Feb. 28, 1899, L. 1899, p. 47; portion added to Flathead, March 6, 1899, L. 1899, p. 47; Powell county created out of, Jan. 31, 1901, L. 1901, p. 101; part of Silver Bow added to, Ch. 62, L. 1903, effective June 15, 1903; Secs. 2789, 2798, 2822, 2830, Rev. C. 1907; part added to Silver Bow by Ch. 21, L. 1917, effective May 1, 1917; boundaries defined by Ch. 205, L. 1921.

4317. FALLON COUNTY. Beginning at the northwest corner of township ten (10) north, range fifty-six (56) east; thence running south along the west line of townships ten (10) and nine (9) north, range fifty-six (56) east, to the southwest corner of section thirty-one (31), township nine (9) north, range fifty-six (56) east; thence west along the second standard parallel north to the northwest corner of section six (6), township eight (8) north, range fifty-five (55) east; thence south along the west line of townships eight (8) and seven (7) north, range fifty-five (55) east, to the southwest corner of said township seven (7) north, range fifty-five (55) east; thence east along the south boundary line of township seven (7) north, range fifty-five (55) east, to the northwest corner of section six (6), township six (6) north, range fifty-five (55) east; thence south along the west boundary line of townships six (6) and five (5) north, range fifty-five (55) east, to the southwest corner of section thirty-one (31), township five (5) north, range fifty-five (55) east; thence running east along the north boundary line of township four (4) north, to the northwest corner of section three (3), township four (4) north, range fifty-eight (58) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township three (3) north, range fifty-eight (58) east; thence east along the north line of township three (3) north, to the northwest corner of section three (3), township three (3) north, range fifty-nine (59) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township two (2) north, range fifty-nine (59) east; thence east along the north line of township two (2) north to the northwest corner of section three (3), township two (2) north, range sixty-one (61) east; thence south along the section line between sections three (3) and four (4), nine (9) and ten (10), fifteen (15) and sixteen (16), twenty-one (21) and twenty-two (22), twenty-seven (27) and twenty-eight (28), thirty-three (33) and thirty-four (34), to the northwest corner of section three (3), township one (1) north, range sixty-one (61) east; thence east along the north line of township one (1) north to the intersection of the eastern boundary line of the state

of Montana; thence running north along the boundary line between Montana and North Dakota to an intersection with the south line of section four (4), township ten (10) north, range sixty-one (61) east; thence west along section lines to the southwest corner of section six (6), township ten (10) north, range fifty-nine (59) east; thence north along the line between ranges fifty-eight (58) and fifty-nine (59) east to the southwest corner of section thirty (30), township eleven (11) north, range fifty-nine (59) east; thence west three (3) miles to the southwest corner of section twenty-seven (27), township eleven (11) north, range fifty-eight (58) east; thence north along the west line of said section twenty-seven (27) to the northwest corner thereof; thence west nine (9) miles along section lines to the southwest corner of section nineteen (19), township eleven (11) north, range fifty-seven (57) east; thence south to the southeast corner of township eleven (11) north, range fifty-six (56) east; thence west along the south line of township eleven (11) north, to the northwest corner of township ten (10) north, range fifty-six (56) east, being the place of beginning. The county seat is Baker, Montana.

History: County created by petition and election, effective Dec. 9, 1913, from portion of Custer county; Wibaux county created from portion of, Aug. 7, 1914; Prairie county created from portion of, Feb. 5, 1915; Carter county created from portion of, Ch. 56, L. 1917; boundaries defined by Ch. 205, L. 1921.

4318. FERGUS COUNTY. Beginning at the middle of the main channel of the Missouri river opposite the middle of the main channel of the Musselshell river; running thence up the middle of the main channel of the Musselshell river to its intersection with the township line between townships eleven (11) and twelve (12) north; thence west along said township line to the line between ranges eighteen (18) and nineteen (19) east; thence south along said range line to the northeast corner of section twenty-five (25), township eleven (11) north, range eighteen (18) east; thence west along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township eleven (11) north, ranges eighteen (18) and seventeen (17) and sixteen (16) east, to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7) and six (6) in said township eleven (11) north of range sixteen (16) east, to the northeast corner of the southeast quarter of section six (6) in said township eleven (11) north of range sixteen (16) east; thence west to the northwest corner of said southeast quarter of section six (6), in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23), township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), township twelve

(12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter of section nine (9) in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the southeast quarter of section four (4), township twelve (12) north, range fifteen (15) east; thence east to the southeast corner of the southeast quarter of the northwest quarter of section two (2), township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north to the southeast corner of section thirty-four (34), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east; thence north along said boundary line to the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township eighteen (18) north, range twelve (12) east; thence west to the northwest corner of township eighteen (18) north, range eleven (11) east; thence north to the northwest corner of section eighteen (18), in township nineteen (19) north, range eleven (11) east; thence east to a point at the middle of Arrow creek; thence in a northeasterly direction down the middle of Arrow creek to a point in the center of the main channel of the Missouri river opposite the mouth of Arrow creek; thence down the middle of the main channel of the Missouri river to the point of beginning. The county seat is Lewistown, Montana.

History: County created March 12, 1885, L. 1885, p. 78, effective Dec. 1, 1886; 5th Div. Comp. Stat. 1887, Sec. 743; Cascade county detached Sept. 12, 1887, Ex. L. 1887, p. 104; Pol. C. 1895; Sec. 4120, portion added to Cascade, March 1, 1897, L, 1897, p. 50; also portion added to Cascade, Feb. 28, 1899, L. 1899, p. 41; boundaries extended Feb. 21, 1907, Ch. 28, L. 1907; Sec. 2811, Rev. C. 1907; Musselshell county created from portion of Fergus, Ch. 25, L. 1911, effective March 1, 1911; Judith Basin county created Dec. 10, 1920, from portion of Fergus; boundaries defined by Ch. 205, L. 1921.

4319. FLATHEAD COUNTY. Commencing on the forty-ninth (49th) parallel of latitude at a point where the same is intersected by the sum-

mit of the main range of the Rocky mountins; thence in a southerly direction following the summit of said mountain range to an intersection with the south line of the north tier of sections of township twenty-one (21) north; thence running westerly along said line to the corner common to sections five (5), six (6), seven (7) and eight (8), township twenty-one (21) north, range twenty-three (23) west; thence running north ten (10) miles along the section line situated one (1) mile east of the line dividing range twenty-three (23) west and range twenty-four (24) west to the southeast corner of section eighteen (18), township twenty-three (23) north, range twenty-three (23) west; thence running west along the section line one (1) mile to the southwest corner of said section eighteen (18); thence running north on the range line to the sixth standard parallel north; thence west and along said parallel to the southeast corner of section thirty-one (31), township twenty-five (25) north, range twenty-six (26) west; thence north along said section line to the southeast corner of section eighteen (18), township twenty-six (26) north, range twenty-six (26) west; thence west one (1) mile to the southwest corner of said section eighteen (18); thence north to the northeast corner of township twenty-seven (27) north, range twenty-seven (27) west; thence west to the southwest corner of section thirty-four (34), township twenty-eight (28) north, range twenty-seven (27) west; thence north to the northwest corner of section three (3) in township twenty-eight (28) north, range twenty-seven (27) west; thence east to the southeast corner of township twenty-nine (29) north, range twenty-six (26) west; thence north along the Horse Plains guide meridian to the northeast corner of township thirty-two (32) north, range twenty-six (26) west; thence west to the southeast corner of township thirty-three (33) north, range twenty-six (26) west; thence north along the Horse Plains guide meridian to the northeast corner of township thirty-three (33) north, range twenty-six (26) west; thence east about twelve (12) miles to the summit of the watershed dividing the Stillwater river and White Fish creek; thence in a northwesterly direction along said water shed to its intersection with the forty-ninth parallel of latitude; thence east along said parallel to the place of beginning. The county seat is Kalispell, Montana.

History: County created by act of Feb. 6, 1893, L. 1893, p. 198, effective March 1, 1893, Sec. 4123, Pol. C. 1895; Sec. 2820, Rev. C. 1907; portion of Deer Lodge county added by act of March 6, 1899, L. 1899, p. 47; Sec. 2822, Rev. C. 1907; Lincoln county detached by Ch. 133, L. 1909; boundaries changed by Ch. 42, L. 1913; boundaries defined by Ch. 205, L. 1921.

4320. GALLATIN COUNTY. Beginning at the intersection of the continental divide, the same being the boundary line between the state of Montana and the state of Idaho, with what will be when it is surveyed, a line two (2) miles east of the west line of township thirteen (13) south, range three (3) east; thence northerly along said line to the southwest corner of section thirty-three (33), township nine (9) south, range three (3) east; thence north along the section line to the northwest corner of section four (4), township eight (8) south, range three (3) east; thence along what will be when surveyed, the west line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), nine (9) and four (4), township seven (7) south, range three (3) east, to the southwest corner of section thirty-three (33), township six (6) south, range

three (3) east; thence north along the section lines to the northwest corner of section nine (9), township six (6) south, range three (3) east; thence north to what will be when surveyed, the northwest corner of section four (4), township six (6) south, range three (3) east; thence east along the first standard parallel south to what will be, when surveyed, the southwest corner of section thirty-four (34), township five (5) south, range three (3) east; thence north along what will be, when surveyed, the west line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10) and three (3), to the northwest corner of section three (3), township five (5) south, range three (3) east; thence north along the section line to the southwest corner of section twenty-two (22), township two (2) south, range three (3) east; thence west along the section line to the southwest corner of section nineteen (19), township two (2) south, range two (2) east; thence north to the southeast corner of section thirteen (13); thence west to the southwest corner of section thirteen (13); thence north to the northwest corner of section thirteen (13); thence west to the southwest corner of section eleven (11); thence north to the northwest corner of section eleven (11); thence west to the southwest corner of section three (3); thence north to the northwest corner of section three (3), all in township two (2) south, range one (1) east; thence west to the southwest corner of section thirty-three (33); thence north to the northwest corner of section thirty-three (33); thence west to the southwest corner of section twenty-nine (29); thence north to the northwest corner of section twenty-nine (29); thence west to the southwest corner of section nineteen (19); thence north to the northwest corner of section nineteen (19), all in township one (1) south, range one (1) east; thence west along the section line to the southwest corner of section fifteen (15); thence north along the section line to the northwest corner of section ten (10); thence west along the section line to the southwest corner of section five (5); thence north to the northwest corner of section five (5); thence west along the north line of section six (6) to the northwest corner thereof, all in township one (1) south, range one (1) west; thence west along the south line of section thirty-six (36), township one (1) north, range two (2) west, to the southwest corner thereof; thence north along the west line of said section thirty-six (36) to a point in the center of the main channel of Jefferson river; thence down the middle of the Jefferson river to its mouth; thence down the middle of the Missouri river to the intersection with a curve line 500 feet southeasterly from the main line of the Chicago, Milwaukee and St. Paul railroad where the same crosses the Missouri river; thence in a general northeasterly direction 500 feet distant from and parallel to the center line of the Chicago, Milwaukee and St. Paul railroad to the west line of section nine (9), township four (4) north, range three (3) east; thence north along said west line to a point therein 500 feet distant from, in a northerly direction, the center line of the said Chicago, Milwaukee and St. Paul railroad; thence in a general northeasterly direction parallel to and 500 feet distant from the center line of the Chicago, Milwaukee and St. Paul railroad to the west line of section three (3), township four (4) north, range three (3) east; thence north along the west boundary of section three (3) to the northwest corner thereof; thence east along the

first standard parallel north to the southwest corner of section thirty-four (34), township five (5) north, range three (3) east; thence north along the section line to the west quarter corner of section fifteen (15), township five (5) north, range three (3) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range four (4) east; thence north to what will be, when the same is surveyed, the west quarter corner of section eighteen (18), township five (5) north, range five (5) east; thence east through what will be, when the same is surveyed, the centers of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14) and thirteen (13), township five (5) north, range five (5) east, to the west quarter corner of section eighteen (18), township five (5) north, range six (6) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range seven (7) east; thence south along the township line to the southeast corner of township five (5) north, range seven (7) east; thence west along the first standard parallel north to the northeast corner of township four (4) north, range seven (7) east; thence south along the township line to the southeast corner of township one (1) north, range seven (7) east; thence west along the base line to the northeast corner of township one (1) south, range seven (7) east; thence south along the township line to the east quarter corner of section twelve (12), township three (3) south, range seven (7) east; thence west through the center of sections twelve (12), eleven (11), and ten (10), to the east quarter corner of section nine (9); thence south along the section line to the southeast corner of section thirty-three (33), township three (3) south, range seven (7) east; thence west to the southeast corner of township three (3) south, range six (6) east; thence south to what will be, when the same is surveyed, the southwest corner of township five (5) south, range seven (7) east; thence west to what will be, when the same is surveyed, the northwest corner of township six (6) south, range six (6) east; thence south along what will be the township line, when the same is surveyed, to the north boundary of the Yellowstone national park; thence west along the said north boundary to the northwest corner of the Yellowstone national park; thence south along the west boundary of the Yellowstone national park to its intersection with the Continental divide, the same being the boundary line between the state of Montana and the state of Idaho; thence northwesterly along said Continental divide to the point of beginning. The county seat is Bozeman, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 530; Meagher county created out of, Nov. 16, 1867, L. 1867, p. 99; Sec. 8, Cod. Stat. 1871, p. 431; N. boundary changed, Feb. 13, 1874, p. 67; Sec. 330, 5th Div. Rev. Stat. 1879; boundaries extended Feb. 14, 1881, L. 1881, p. 124; Yellowstone county created out of part of, Feb. 25, 1883, L. 1883, pp. 119-122; Sec. 737, 5th Div. Comp. Stat. 1887; Park county created out of, Feb. 23, 1887, Comp. Stat. 1887, p. 1238; Sec. 4114, Pol. C. 1895; Sec. 2801, Rev. C. 1907; boundaries established, Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921.

4321. GARFIELD COUNTY. Beginning at the point of intersection of the middle of the Missouri river with the north line of township twenty-five (25) north, range forty-one (41) east; thence running east along the north line of said township to the northeast corner thereof;

thence due south along the range line between ranges forty-one (41) and forty-two (42) east, to the southeast corner of township twenty-five (25) north, range forty-one (41) east; thence east along the north line of township twenty-four (24) north, range forty-two (42) east, to the northeast corner thereof; thence south along the range line between ranges forty-two (42) and forty-three (43) east and said range line extended to the point of intersection of said range line extended, with the north line of township twenty (20) north, the same being the southeast corner of unsurveyed township twenty-one (21) north, range forty-two (42) east; thence west along the north line, extended, of township twenty (20) north, to the point of intersection of said extended north line with the range line between ranges forty-two (42) and forty-three (43) east, extended, the same being the northeast corner of unsurveyed township twenty (20) north, range forty-two (42) east; thence due south along the range line between ranges forty-two (42) and forty-three (43) east, to the southeast corner of township nineteen (19) north, range forty-two (42) east; thence due east along the north line of township eighteen (18) north, range forty-three (43) east, to the northeast corner of township eighteen (18) north, range forty-three (43) east; thence due south along the range line between ranges forty-three (43) and forty-four (44) east, to the southeast corner of township seventeen (17) north, range forty-three (43) east; thence due east along the north line of township sixteen (16) north, range forty-four (44) east, to the northeast corner of township sixteen (16), north, range forty-four (44) east; thence due south along the range line between ranges forty-four (44) and forty-five (45) east, to the northeast corner of section thirty-six (36), township thirteen (13) north, range forty-four (44) east; the same being one (1) mile north of the third standard parallel north; thence west following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty-four (44) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty-three (43) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty-two (42) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty-one (41) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range forty (40) east; thence north for a distance of one (1) mile to the northeast corner of section twenty-five (25), township thirteen (13) north, range thirty-nine (39) east, the same being two miles north of the third standard parallel; thence west on the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-nine (39) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-eight (38) east, and the north line of

sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-seven (37) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-six (36) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-five (35) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), township thirteen (13) north, range thirty-four (34) east; thence south to the northeast corner of section thirty-six (36), township thirteen (13) north, range thirty-three (33) east, the same beine one (1) mile north of the third standard parallel; then west, following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range thirty-three (33) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range thirty-two (32) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32), and thirty-one (31), township thirteen (13) north, range thirty-one (31) east, and the north line of sections thirty-six (36), thirty-five (35), and thirty-four (34), township thirteen (13) north, range thirty (30) east, or to a point in the center of the channel of the Musselshell river, where said section line intersects said river, the same being a point one (1) mile north of the third standard parallel; thence following the center of the channel of the Musselshell river in a northerly direction to its confluence with the Missouri river; thence running in a northeasterly direction following the center of the channel of the Missouri river to the place of beginning. The county seat is Jordan, Montana.

History: County created by Ch. 4, L. 1919, effective April 1, 1919, from Dawson county; boundaries defined by Ch. 205, L. 1921.

4322. GLACIER COUNTY. Beginning at the point where the international boundary between the United States and Canada intersects the range line between ranges four (4) and five (5) west; thence west, following said international boundary to its intersection with the summit of the main range of the Rocky mountains; thence meandering in a southeasterly direction and following the summit of the main range of the Rocky mountains to a point which intersects the township line common to townships twenty-nine (29) and thirty (30) north; thence in an easterly direction on the township line common to townships twenty-nine (29) and thirty (30) north, to the southeast corner of section thirty-six (36), township thirty (30) north, range eight (8) west; thence in a northerly direction on the township line between ranges seven (7) and eight (8) west, to the northeast corner of section one (1), township thirty-one (31) north, range eight (8) west; thence in an easterly direction on the township line between townships thirty-one (31) and thirty-two (32), to a point where said township line intersects with the Marias river; thence, following on down the center of the channel of the Marias river to its

intersection with the line between ranges four (4) and five (5) west, thence north following the line between ranges four (4) and five (5) west, to the point of beginning. The county seat is Cut Bank, Montana.

History: County created by Ch. 21, L. 1919, effective April 1, 1919, from portions of Teton county; boundaries defined by Ch. 205, L. 1921.

4323. GOLDEN VALLEY COUNTY. Beginning at the northeast corner of section one (1), in township eleven (11) north, of range twenty-one (21) east, thence south nine (9) miles to the southeast corner of section thirteen (13), in township ten (10) north, range twenty-one (21) east; thence east one (1) mile to the northeast corner of section nineteen (19), in township ten (10) north, range twenty-two (22) east; thence south three (3) miles to the southeast corner of section thirty-one (31), in township ten (10) north, range twenty-two (22) east; thence east four (4) miles to the northeast corner of section two (2), township nine (9) north, range twenty-two (22) east; thence south six (6) miles to the southeast corner of section thirty-five (35), in township nine (9) north, range twenty-two (22) east; thence east along the township line about one (1) mile and twelve (12) chains to the northeast corner of section six (6), township eight (8) north, range twenty-three (23) east; thence south to the southeast corner of section seven (7), in township eight (8) north, of range twenty-three (23) east; thence east one (1) mile to the northeast corner of section seventeen (17), township eight (8) north, range twenty-three (23) east; thence south six (6) miles to the southeast corner of section eight (8), in township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section sixteen (16), in township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section sixteen (16), in township seven (7) north, range twenty-three (23) east; thence east one-half (½) mile to the north quarter (¼) corner of section twenty-two (22), township seven (7) north, range twenty-three (23) east; thence south two (2) miles to the south quarter (¼) corner of section twenty-seven (27), township seven (7) north, range twenty-three (23) east; thence east one-half (½) mile to the northeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section two (2), in township six (6) north, range twenty-three (23) east; thence south two (2) miles to the southeast corner of section eleven (11), in township six (6) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section thirteen (13), township six (6) north, range twenty-three (23) east; thence south ten (10) miles to the southeast corner of section thirty-six (36), township five (5) north, range twenty-three (23) east; thence west along the first standard parallel north thirty (30) miles to the southwest corner of section thirty-one (31), township five (5) north, range nineteen (19) east; thence west to the northeast corner of section one (1) township four (4) north, range eighteen (18) east; thence south six (6) miles along the range line between ranges eighteen (18) and nineteen (19) east, to the southeast corner of section thirty-six (36), township four (4) north, of range eighteen (18) east; thence west nine (9)

miles to the southwest corner of section thirty-four (34), township four (4) north, range seventeen (17) east; thence north six (6) miles to the southwest corner of section thirty-four (34), township five (5) north, range seventeen (17) east; thence west three (3) miles to the southwest corner of section thirty-one (31), township five (5) north, range seventeen (17) east; thence north six (6) miles to the northwest corner of section six (6), township five (5) north, range seventeen (17) east; thence east twelve (12) miles to the northwest corner of section six (6), township five (5) north, range nineteen (19) east; thence north along the range line between ranges eighteen (18) and nineteen (19), thirty-six (36) miles to the northwest corner of township eleven (11) north, range nineteen (19) east; thence east along the township line between townships eleven (11) and twelve (12) north, eighteen (18) miles to the northeast corner of section one (1), township eleven (11) north, range twenty-one (21) east, being the place of beginning. The county seat is Ryegate, Montana.

History: County created by petition and election, effective October 4, 1920, from portions of Musselshell and Sweetgrass; boundaries defined by Ch. 205, L. 1921.

4324. GRANITE COUNTY. Beginning at the northeast corner of township five (5) north, range fourteen (14) west; thence running east to the southeast corner of township six (6) north, range twelve (12) west; thence running north following the lines between ranges eleven (11) and twelve (12) west, to an intersection with the divide between Big Blackfoot and Hell Gate rivers; thence westerly along the summit of said divide to an intersection with a line drawn due north from the summit of Medicine Tree hill, which is in township eleven (11) north, range fifteen (15) west; thence running due south to an intersection with the center of the old original channel of the Hell Gate river as the same existed at the creation of Granite county; thence running in a westerly direction following the center of the old original channel of the Hell Gate river to the mouth of Rock creek; thence running south following the center of the channel of Rock creek to the line between townships ten (10) and eleven (11) north; thence running west along said line to an intersection with the summit of the divide between the Bitter Root river and Rock creek; thence running in a southerly direction following the summit of said divide to its intersection with the Continental divide; thence following the Continental divide in a general northeasterly direction to its intersection with the line between ranges thirteen (13) and fourteen (14) west; thence north following the said line to the place of beginning. The county seat is Philipsburg, Montana.

History: County created March 2, 1893, L. 1893, p. 212; Sec. 4131, Pol. C. 1895; Sec. 2829, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921.

4325. HILL COUNTY. Commencing at the section corner between sections three (3) and four (4), township thirty-seven (37) north, range seventeen (17) east, which is on the international boundary line between the United States and Canada; thence south about six (6) miles to the southeast corner of section thirty-three (33), township thirty-seven (37) north, range seventeen (17) east; thence west along the ninth standard parallel north to the closing corner common to sections three (3) and four (4), township thirty-six (36) north, range seventeen (17) east; thence

south about twenty-four (24) miles on a line dividing the east and west half of townships thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) north, range seventeen (17) east, to the southeast corner of section thirty-three (33), township thirty-three (33) north, range seventeen (17) east; thence east on the eighth standard parallel north to the closing corner common to sections two (2) and three (3), township thirty-two (32) north, range seventeen (17) east; thence south about three (3) miles, following the section line to the southwest corner of section fourteen (14), township thirty-two (32) north, range seventeen (17) east; thence east about one and one (1½) miles to the quarter corner between sections thirteen (13) and twenty-four (24), township thirty-two (32) north, range seventeen (17) east; thence south on the quarter section line, about five (5) miles to the quarter corner between sections twelve (12) and thirteen (13), township thirty-one (31) north, range seventeen (17) east; thence west about one and one-half (1½) miles to the northwest corner of section fourteen (14), township thirty-one (31) north, range seventeen (17) east; thence south about four (4) miles to the southeast corner of section thirty-four (34), township thirty-one (31) north, range seventeen (17) east; thence west about one (1) mile to the southwest corner of said section thirty-four (34); thence south about seven (7) miles to the southwest corner of section three (3), township twenty-nine (29) north, range seventeen (17) east; thence west about one and one-half (1½) miles to the quarter corner on the north boundary of section eight (8), township twenty-nine (29) north, range seventeen (17) east; thence south on the quarter section line about five (5) miles to the quarter corner on the south boundary of section thirty-two (32), township twenty-nine (29) north, range seventeen (17) east; thence east about one (1) mile to the northwest corner of section three (3), township twenty-eight (28) north, range seventeen (17) east; thence south on the section line to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seventeen (17) east; thence running west along the township line between townships twenty-seven (27) and twenty-eight (28), for about nine (9) miles to the point where said township line intersects the range line between ranges fifteen (15) and sixteen (16) east; thence running north along said range line between ranges fifteen (15) and sixteen (16), when surveyed, about six (6) miles to the point where the said range line, when surveyed, will intersect the township line between townships twenty-eight (28) and twenty-nine (29) north, when surveyed; thence running west about six (6) miles along said township line between townships twenty-eight (28) and twenty-nine (29), when surveyed, to the point where the said township line intersects the range line between ranges fourteen and fifteen east; thence running north about six (6) miles along said line between ranges fourteen (14) and fifteen (15), to the point where the said range line intersects the line between townships twenty-nine (29) and thirty (30) north; thence running west about thirty-six (36) miles along the said line between said townships to the intersection of said township line with the line running between ranges eight (8) and nine (9) east; thence running south about six (6) miles along said line between ranges eight (8) and nine (9) to the point where the said line intersects the line running between townships twenty-

eight (28) and twenty-nine (29) north; thence running west about six (6) miles to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range eight (8) east; thence running north about fifty-four (54) miles along the line between ranges seven (7) and eight (8) east, observing the offsets, jogs and corrections to the point where said line between ranges seven (7) and eight (8) east, intersects the Canadian boundary line; thence running east about fifty-seven (57) miles along the Canadian boundary line to the point of beginning. The county seat is Havre, Montana.

History: County created by petition and election, effective Feb. 28, 1912, from portion of Chouteau county; Toole county detached, May 7, 1914; Liberty county detached, Feb. 11, 1920; boundaries defined by Ch. 205, L. 1921.

4326. JEFFERSON COUNTY. Beginning at the southwest corner of township four (4) north, range one (1) west; thence running east along the south line of said township to the Montana principal meridian; thence running south along said meridian to the center of the channel of the Jefferson river; thence in a westerly direction, following the center of the channel of said river to Parson's bridge on said river; thence westerly along Parson's toll-road, leading from Parson's bridge to the city of Butte, to the point where said road crosses Fish creek; thence up Fish creek to the head of Belcher's ditch; thence in a direct line to the forks of Little Pipestone creek, near the site of Parson's old toll-gate; thence up the north fork of Little Pipestone creek to its source; thence in a direct line to the nearest point of the continental divide; thence northerly along said Continental divide to the head of Ten-Mile creek, township eight (8) north, range six (6) west; thence in a northeasterly direction following the divide between Ten-Mile creek and the North Boulder to the divide between Lump gulch and Ten-Mile creek; thence along said divide between the waters of Grizzly gulch and Lump gulch to the divide between the waters that come into Dry gulch above Helena and the waters of Prickly Pear creek to the north peak of the mountains southeasterly from Helena, known as Dry Gulch mountains; thence due east to an intersection with the line between ranges one (1) and two (2) west; thence running south on said line to the place of beginning. The county seat is Boulder, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 530 (See Ch. XIX of Second Ter. Ses.); boundaries established Dec. 2, 1867, L. 1867, p. 104; Sec. 5, Cod. Stat. 1871, p. 430; Sec. 327, 5th Div. Rev. Stat. 1879; boundaries changed March 7, 1883, L. 1883, p. 97; Sec. 734, 5th Div. Comp. Stat. 1887; boundaries changed March 5, 1891, L. 1891; pp. 224, 225; Secs. 4108-4111, Pol. C. 1895; Broadwater county created, including part of, Feb. 9, 1897, L. 1897, pp. 45-49; Secs. 2793, 2835, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921.

4327. JUDITH BASIN COUNTY. Beginning at the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), in township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range

twelve (12) east; thence north to the northeast corner of township eighteen (18) north, range twelve (12) east; thence west to the northwest corner of township eighteen (18) north, range eleven (11) east; thence north to the southeast corner of section twelve (12), in township nineteen (19) north, range ten (10) east; thence running west along the south line of sections twelve (12), eleven (11), ten (10), nine (9), eight (8), and seven (7), township nineteen (19) north, ranges ten (10) and nine (9) east, to the southwest corner of section seven (7), township nineteen (19) north, range nine (9) east; thence south to the southeast corner of township nineteen (19) north, range eight (8) east; thence west to the southwest corner of said township nineteen (19) north, range eight (8) east; thence south along the range line between ranges seven (7) and eight (8) east, a distance of four and one-fourth (4¼) miles, more or less, to the southeast corner of the northeast quarter of the northeast quarter (NE¼NE¼) of section twenty-five (25), township eighteen (18) north, range seven (7) east; thence west one-fourth (¼) mile to the southwest corner of said northeast quarter of the northeast quarter (NE¼NE¼) of section twenty-five (25); thence north a distance of three-fourths (¾) of a mile, to the northeast corner of the northwest quarter of the southeast quarter (NW¼SE¼) of section twenty-four (24), township eighteen (18) north, range seven (7) east; thence west a distance of three fourths (¾) of a mile to the quarter (¼) corner on the west boundary of said section twenty-four (24); thence south a distance of four (4) miles, more or less, to the quarter (¼) corner on the west boundary of section twelve (12), township seventeen (17) north, range seven (7) east; thence east a distance of one-half (½) mile to the center of said section twelve (12); thence south one (1) mile to the center of section thirteen (13), township seventeen (17) north, range seven (7) east; thence east one-half (½) mile to the quarter (¼) corner on the east boundary of said section thirteen (13), township seventeen (17) north, range seven (7) east; thence south along the boundary line between ranges seven (7) and eight (8) east, as corrected by the United States government survey thereof, to the southwest corner of township sixteen (16) north, of range eight (8) east; thence east to the southeast corner of said township sixteen (16) north, range eight (8) east; thence south along the boundary line between ranges eight (8) and nine (9) east, as corrected by the United States government survey thereof, the summit of the main range of the Little Belt Mountains; thence in a southeasterly direction along the summit of the main range of said Little Belt mountains to the boundary line between ranges ten (10) and eleven (11) east; thence easterly along the divide between the waters of Musselshell river and Judith river to the most easterly point of the Little Belt mountains at Judith Gap; thence east to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7), and six (6), in said township eleven (11) north, range sixteen (16) east; to the northeast corner of the southeast quarter of section six (6), in said township eleven (11) north, range sixteen (16) east; thence west to the northwest corner of said southeast quarter of said section six (6) in said township and range; thence north to the southwest corner of the south-

east quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter of section nine (9), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the southeast quarter of section four (4), in township twelve (12) north, range fifteen (15) east; thence east to the southeast corner of the southeast quarter of the northwest quarter of section two (2) in township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north, to the southeast corner of section thirty-four (34), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), in township thirteen (13) north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east; thence north along said boundary line to the place of beginning.

History: County created by petition and election, effective December 10, 1920, from portions of Fergus and Cascade; boundaries defined by Ch. 205, L. 1921.

4328. LEWIS AND CLARK COUNTY. Beginning at a point where the Sun river crosses the Helena guide meridian; thence up Sun river on the most northerly branch thereof that heads in the Rocky mountains to the crest of the said Rocky mountains; thence southerly along the crest of the said Rocky mountains to the point where said crest is intersected by the west boundary line of range eleven (11) west; thence south along the west boundary line of townships twenty (20), nineteen (19), eighteen (18), and seventeen (17) north, range eleven (11) west, to the southwest corner of township seventeen (17) north, range eleven (11) west; thence east along the south boundary of township seventeen (17) north, range eleven (11) west, to the northwest corner of township sixteen (16) north, range nine (9) west; thence south along the west boundary line

of townships sixteen (16), fifteen (15), fourteen (14), and thirteen (13) north, range nine (9) west, to the southwest corner of township thirteen (13) north, range nine (9) west; thence east along the south boundary line of township thirteen (13) north, ranges nine (9) and eight (8) west, to the northwest corner of township twelve (12) north, range seven (7) west; thence south along the west boundary line of townships twelve (12) and eleven (11) north, range seven (7) west, to the southwest corner of section eighteen (18), township eleven (11) north, range seven (7) west; thence east along the south boundary lines of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14), and thirteen (13), township eleven (11) north, range seven (7) west, to the southwest corner of section eighteen (18), township eleven (11) north, range six (6) west; thence south along the west boundary line of said township eleven (11) north, range six (6) west to the southwest corner thereof; thence east along the south boundary line of said township eleven (11) north, range six (6) west to the summit of the main range of the Rocky mountains; thence southeasterly along the said crest of the Rocky mountains to the head of Ten Mile creek; thence along the divide between Ten Mile creek and the waters of the North Boulder to the divide between the waters of Lump gulch and Ten Mile creek; thence along said divide between the waters of Grizzly gulch and Lump gulch to the divide between the waters that come into Dry gulch above Helena and the waters of Prickly Pear creek to the north peak of the mountains south easterly from Helena, known as Dry Gulch mountain; thence due east to the center of the channel of the Missouri river; thence along the middle of the main channel of the Missouri river to an intersection with the west boundary line of section thirty-two (32), township ten (10) north, range one (1) east; thence north along said line to its intersection with Cave gulch; thence up the said Cave gulch to the summit of the Big Belt mountains; thence along the summit of the said mountains to the southwest corner of township fourteen (14) north, range one (1) east; thence west along the south line of said township fourteen (14) north, to the southwest corner of township fourteen (14) north, range one (1) west; thence north along the west line of range one (1) west, to a point on said range line directly opposite the confluence of the Dearborn river with the Missouri river; thence due west to the mouth of the said Dearborn river; thence up the middle of the main channel of the Dearborn river to its intersection with the Helena guide meridian; thence along the said Helena guide meridian to its intersection with Sun river, the place of beginning. The county seat is Helena, Montana.

History: Edgerton county created Feb. 2, 1865, Sec. 6, Bannack Stat., p. 530; boundaries established Nov. 21, 1867, L. 1867, p. 101; Lewis & Clark county, Sec. 6, Cod. Stat. 1871, p. 430; 5th Div. Rev. Stat. 1879, Sec. 328; 5th Div. Comp. Stat. 1887, Sec. 735; Cascade county created out of part of, Oct. 12, 1887, L. 1887, pp. 104-109; Sec. 4112, Pol. C. 1895; boundaries extended March 6, 1897, L. 1897, pp. 53-55; portion of Deer Lodge added to, Feb. 28, 1899, L. 1899, pp. 44-47; portion of added to Powell, Ch. 106, L. 1903; spelling of name changed to Lewis and Clark; Ch. 13, L. 1905; Secs. 2794, 2795, 2797, 2799, 2837-2838, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921.

4329. LIBERTY COUNTY. Beginning at a point on the international boundary line between the United States and the Dominion of Canada,

where the range line between ranges three (3) and four (4) east, intersects said international boundary line; thence running south along the range line between said ranges three (3) and four (4) east, observing the offsets, jogs, and corrections, a distance of about fifty-four (54) miles, to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range four (4) east, being the point where the range line between said ranges three (3) east and four (4) east intersects the township line between townships twenty-eight (28) and twenty-nine (29) north, and from said point running due west along the township line between townships twenty-eight (28) and twenty-nine (29) north, a distance of six (6) miles, to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range three (3) east; running thence south along the range line between ranges two (2) and three (3) east, a distance of six (6) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range three (3) east; thence running due east along the range line between townships twenty-seven (27) north, and twenty-eight (28) north, a distance of about twenty-seven (27) miles to the southeast corner of section thirty-three (33), township twenty-eight (28) north, range seven (7) east; running thence north along the section line between the west half and the east half of township twenty-eight (28) north, range seven (7) east, a distance of six (6) miles to the northwest corner of section three (3), township twenty-eight (28) north, range seven (7) east; thence running due east along the township line between townships twenty-eight (28) and twenty-nine (29) north, a distance of three (3) miles to the southeast corner of section thirty-six (36), township twenty-nine (29) north, range seven (7) east, being the point where the township line between townships twenty-eight (28) and twenty-nine (29) north intersects the range line between ranges seven (7) and eight (8) east, and from said point running due north along said line between ranges seven (7) and eight (8) east, observing the offsets, jogs, and corrections, a distance of about fifty-four (54) miles to the point where said range line intersects the international boundary between the United States and the Dominion of Canada; thence running west along said international boundary line, a distance of twenty-four (24) miles to the point of beginning, and which said county shall include townships twenty-nine (29) to thirty-seven (37) north, inclusive of ranges four (4), five (5), six (6), and seven (7) east, inclusive, and townships twenty-eight (28) north, ranges three (3), four (4), five (5), and six (6) east, inclusive, and the west half of township twenty-eight (28) north, range seven (7) east. The county seat is Chester, Montana.

History: County created by petitions and election, effective Feb. 11, 1920, from portions of Hill and Chouteau counties; boundaries defined by Ch. 205, L. 1921.

4330. LINCOLN COUNTY. Beginning at the southeast corner of section twelve (12), township twenty-six (26) north, range twenty-seven (27) west; and running thence west about seven (7) miles on section lines to an intersection with the summit of the watershed dividing the waters flowing into the Kootenai and Clarks Fork of the Columbia river, and commonly designated the Cabinet range of mountains; thence first southerly and thence in a westerly and northerly direction along the crest or

summit of said watershed to the point of intersection with the state boundary line between Montana and Idaho; thence north along said state boundary line to the northwest corner of Montana; thence east along the international boundary line to the point of intersection with the summit of the watershed dividing the Kootenai and Stillwater drainage on the west and the flathead and Whitefish drainage on the east; thence in a southeasterly direction along the summit of said watershed to the point of intersection of said watershed with the north township line of township thirty-three (33) north, extended; thence west along said township line about twelve (12) miles to the northeast corner of township thirty-three (33) north, range twenty-six (26) west; thence south along the Horse Plains guide meridian to the southeast corner of township thirty-three (33) north, range twenty-six (26) west; thence east to the northeast corner of township thirty-two (32) north, range twenty-six (26) west; thence south along the Horse Plains guide meridian to the southeast corner of township twenty-nine (29) north, range twenty-six (26) west; thence west to the northwest corner of section three (3), township twenty-eight (28) north, range twenty-seven (27) west; thence south to the southwest corner of section thirty-four (34), township twenty-eight (28) north, range twenty-seven (27) west; thence east to the northwest corner of section six (6), township twenty-seven (27) north, range twenty-six (26) west; thence south to the place of beginning. The county seat is Libby, Montana.

History: County created from portion of Flathead county by Ch. 133, L. 1909, effective July 1, 1909; boundaries changed by Ch. 46, L. 1913; boundaries defined by Ch. 205, L. 1921.

4331. MADISON COUNTY. Beginning at the southeast corner of section sixteen (16), township five (5), south, range seven (7), west; thence south to the southwest corner of section thirty-four (34), township five (5) south, range seven (7) west, said corner being a monument on the first standard parallel south; thence east on said parallel to the northwest corner of section three (3), township six (6) south, range seven (7) west; thence south eighteen (18) miles to a point which, when surveyed, will be the northwest corner of section three (3), township nine (9) south, range seven (7) west; thence east six (6) miles, more or less, to the northeast corner of section four (4), township nine (9) south, range six (6) west; thence south six (6) miles, more or less, to the northeast corner of section four (4), township ten (10) south, range six (6) west; thence east seven (7) miles, more or less, to the northeast corner section three (3), township ten (10) south, range five (5) west; thence south six (6) miles, more or less, to the southeast corner section thirty-four (34), township ten (10) south, range five (5) west; thence east to the northwest corner of section one (1), township eleven (11) south, range five (5) west; thence south six (6) miles, more or less, to a point which, when surveyed, will be the southeast corner section thirty-five (35), township eleven (11), south, range five (5) west; thence east five (5) miles to a point which, when surveyed, will be the northeast corner section three (3), township twelve (12) south, range four (4) west; thence south three (3) miles, to a point which, when surveyed, will be the northeast corner of section twenty-two (22), township twelve (12) south, range four (4) west; thence east fourteen (14) miles, more or less, to a point which, when surveyed, will be the

northeast corner of section twenty-four (24), township twelve (12), south, range two (2) west; thence south five (5) miles, more or less, to the northeast corner section thirteen (13), township thirteen (13) south, range two (2) west; thence east sixteen (16) miles, more or less, following the section lines to the point of intersection with the boundary line between Montana and Idaho at the top of the divide of the main range of the Rocky mountains; thence in a general northeasterly course five (5) miles, more or less, following along the top of said divide of the main range of the Bitter Root mountains to an intersection of the summit of said divide with what will be, when it is surveyed, a line two (2) miles east of the west line of township thirteen (13) south, range three (3) east; thence northerly along said line to the southwest corner of section thirty-three (33), township nine (9) south, range three (3) east; thence north along the section line to the northwest corner of section four (4), township eight (8) south, range three (3) east; thence along what will be, when surveyed, the west line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), nine (9), and four (4), township seven (7) south, range three (3) east, to the southwest corner of section thirty-three (33), township six (6) south, range three (3) east; thence north along the section lines to the northwest corner of section nine (9), township six (6) south, range three (3) east; thence north to what will be, when surveyed, the northwest corner of section four (4), township six (6) south, range three (3) east; thence east along the first standard parallel south to what will be, when surveyed, the southwest corner of section thirty-four (34), township five (5) south, range three (3) east; thence north along what will be when surveyed, the west line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10), and three (3), to the northwest corner of section three (3), township five (5) south, range three (3) east; thence north along the section line to the southwest corner of section twenty-two (22), township two (2), south, range three (3) east; thence west along the section line to the southwest corner of section nineteen (19), township two (2) south, range two (2) east; thence north to the southeast corner of section thirteen (13); thence west to the southwest corner of section thirteen (13); thence north to the northwest corner of section thirteen (13); thence west to the southwest corner of section eleven (11); thence north to the northwest corner of section eleven (11); thence west to the southwest corner of section three (3); thence north to the northwest corner of section three (3); all in township two (2) south, range one (1) east; thence west to the southwest corner of section thirty-three (33); thence north to the northwest corner of section thirty-three (33); thence west to the southwest corner of section twenty-nine (29); thence north to the northwest corner of section twenty-nine (29); thence west to the southwest corner of section nineteen (19); thence north to the northwest corner of section nineteen (19); all in township one (1) south, range one (1) east; thence west along the section line to the southwest corner of section fifteen (15); thence north along the section line to the northwest corner of section ten (10); thence west along the section line to the southwest corner of section five (5); thence north to the northwest corner of section five (5); thence west along the north line of section six (6) to the northwest corner thereof, all

in township one (1) south, range one (1) west; thence west along the south line of section thirty-six (36), township one (1) north, range two (2) west, to the southwest corner thereof; thence north along the west line of said section thirty-six (36) to a point in the center of the main channel of the Jefferson river; thence following the center of the channel of the Jefferson river in a general westerly direction to the site of Parson's bridge on said Jefferson river; thence in a westerly direction on a straight line to the top of Table mountain; thence in a straight line to the right-hand fork of Camp creek; thence in a southwesterly direction down said Camp creek, following the center of the channel to a point in the center of the channel of the Big Hole river opposite the center of the mouth of Camp creek; thence in a southerly direction following the center of the channel of said Big Hole river to its intersection with the west line of section thirty-two (32), township four (4) south, range seven (7) west; thence southeasterly in a straight line to the southeast corner of section sixteen (16), township five (5) south, range seven (7) west, and place of beginning. The county seat is Virginia City, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 529 (See Ch. XXII of Second Ter. Ses.); boundaries established Dec. 10, 1867, L. 1867, p. 102; N. and N.W. boundary established Jan. 12, 1869, L. 1869 p. 105; Sec. 4, Cod. Stat. 1871, p. 430; territory added Feb. 7, 1874, L. 1874, p. 68; Sec. 636, 5th. Div. Rev. Stat. 1879; Sec. 733, 5th Div. Comp. Stat. 1887; Sec. 4110, Pol. C. 1895; Sec. 2792, Rev. C. 1907; boundaries changed by Ch. 73, L. 1911 and by Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921.

4332. McCONE COUNTY. Beginning at the point of intersection of the range line between ranges fifty (50) and fifty-one (51) east, at the center of the main channel of the Missouri river; running thence south along the range line between ranges fifty (50) and fifty-one (51) east, to the north line of township twenty-four (24) north, range fifty-one (51) east; thence west along the north line of township twenty-four (24) north, to the northeast corner of township twenty-four (24) north, range fifty (50) east; thence south along the range line between ranges fifty (50) and fifty-one (51) east, to the southeast corner of township twenty-four (24) north, range fifty (50) east; thence west along the north line of township twenty-three (23) north, to the northwest corner of township twenty-three (23) north, range fifty (50) east; thence south along the range line between ranges forty-nine (49) and fifty (50) east, to the southeast corner of township twenty-one (21) north, range forty-nine (49) east; thence west along the north line of township twenty (20) north, to the northwest corner of township twenty (20) north, range fifty (50) east; thence south along the range lines between ranges forty-nine (49) and fifty (50) east, to the north line of township sixteen (16) north, being the southeast corner of township seventeen (17) north, range forty-nine (49) east; thence west along the north line of township sixteen (16) north, to the northwest corner of township sixteen (16) north, range forty-seven (47) east; thence south along the range line between ranges forty-six (46) and forty-seven (47), to the southeast corner of township sixteen (16) north, range forty-six (46) east; thence west along the north line of township fifteen (15), to the southeast corner of township sixteen (16) north, range forty-five (45) east; thence north along the range line between ranges forty-five (45) and forty-six (46) east, to the

northeast corner of township sixteen (16) north, range forty-five (45) east; thence west along the north line of township sixteen (16) north, to the southwest corner of township seventeen (17) north, range forty-four (44) east; thence north along the range line between ranges forty-three (43) and forty-four (44) east, to the northeast corner of township eighteen (18) north, range forty-three (43) east; thence west along the north line of township eighteen (18) north, to the southwest corner of township nineteen (19) north, range forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43), to the point of intersection of said range line with the north line of township twenty (20) north; thence east along the north line of township twenty (20) north, to the point of intersection with the range line between ranges forty-two (42) and forty-three (43) east; thence north along the range line between ranges forty-two (42) and forty-three (43) east, to the northeast corner of township twenty-four (24) north, range forty-two (42) east; thence west along the north line of township twenty-four (24) to the southwest corner of township twenty-five (25) north, range forty-two (42) east; thence north along the range line between ranges forty-one (41) and forty-two (42) east, to the southwest corner of township twenty-six (26) north, range forty-two (42) east; thence west along the north line of township twenty-five (25) north, to the point of intersection with the center of the present main channel of the Missouri river; thence in a northerly and easterly direction along the center of the main channel of the Missouri river to the place of beginning. The county seat is Circle, Montana.

History: County created by Ch. 33, L. 1919, effective April 1, 1919, from portions of Dawson and Richland. Boundaries defined by Ch. 205, L. 1921.

4333. MEAGHER COUNTY. Beginning at the northwest corner of section six (6), township thirteen (13) north, range two (2) east; thence west six (6) miles, more or less, to the top of the main divide of the Big Belt mountains; thence on a line following a general southeasterly direction on the crest of the range to the point where said main divide intersects an east and west line dividing the north from the south half of sections thirteen (13), fourteen (14), fifteen (15), township five (5) north, range five (5) east; thence east on said line to the quarter corner of the east line of said section thirteen (13); thence continuing east on the half section line that divides the north from the south half of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14), and thirteen (13), in township five (5) north, ranges six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11) east, to the quarter corner on the east line of section thirteen (13), township five (5) north, range eleven (11) east; thence north on the line between ranges eleven (11) and twelve (12) east, to the second standard parallel north; thence east along said standard parallel to the southeast corner of township nine (9) north, range eleven (11) east; thence north along the line between ranges eleven (11) and twelve (12) east, to the crest of the Little Belt mountains; thence along the crest of the Little Belt mountains in a general northwesterly direction to an intersection with the south line of township sixteen (16) north, range five (5) east; thence west to the southwest corner of township sixteen (16) north, range five (5) east; thence

south to the southeast corner of township fifteen (15) north, range four (4) east; thence west to the northwest corner of section six (6), township fourteen (14) north, range two (2) east; thence south to the northwest corner of section six (6), township thirteen (13) north, range two (2) east, and place of beginning. The county seat is White Sulphur Springs, Montana.

History: County created Nov. 16, 1867, L. 1867, p. 99; Sec. 7, Cod. Stat. 1871, p. 431; boundaries changed Feb. 13, 1874, L. 1874, p. 66; boundaries changed Feb. 9, 1876, L. 1876, p. 48; Sec. 329, 5th Div. Rev. Stat. 1879; boundaries changed Feb. 7, 1883, L. 1883, p. 33, Fergus county created out of, March 12, 1885, L. 1885, pp. 78-83; Sec. 736, 5th Div. Comp. Stat. 1887; Cascade county created out of part of, Sept. 12, 1887, Ex. L. 1887, pp. 104-109; Secs. 4113, 4135, Pol. C. 1895; Sweet Grass county created, including part of, March 5, 1895, L. 1895, pp. 54-58, and portion of added to Yellowstone by Sec. 8, supra; Broadwater county created, including part of, Feb. 9, 1897, L. 1897, pp. 45-49; portion added to Cascade county, March 1, 1897, L. 1897, pp. 50-52; portion added to Lewis and Clark, March 6, 1897, L. 1897, pp. 53-55; T. 15 N., R. 4 E., added to Cascade county, March 6, 1899, L. 1899 p. 43; Secs. 2800, 2796, 2816, 2833, 2835, Rev. C. 1907; boundaries established, Sec. 16, Ch. 25, L. 1911; boundaries changed, Ch. 60, L. 1913; Wheatland county created, including part of, Ch. 55, L. 1917; boundaries defined by Ch. 205, L. 1921.

4334. MINERAL COUNTY. Beginning at the intersection of the divide between the St. Regis and Clarks Fork of the Columbia river with the Idaho-Montana line; thence running in an easterly and southeasterly direction, following said divide to its intersection with the west line of township nineteen (19) north, range twenty-six (26) west, running thence south on the line between ranges twenty-six (26) and twenty-seven (27) west, to the southwest corner of section eighteen (18), township eighteen (18) north, range twenty-six (26) west; running thence east along the section line to the northeast corner of section twenty-one (21), township eighteen (18) north, range twenty-six (26) west; running thence south one (1) mile to the southeast corner of said section twenty-one (21); thence east three (3) miles, following the section line to the northeast corner of section twenty-five (25), township eighteen (18) north, range twenty-six (26) west; thence running south to the southeast corner of section thirty-six (36), said township and range; thence running east to the northeast corner of section five (5), township seventeen (17) north, range twenty-five (25) west; thence running south to the southwest corner of section nine (9), township seventeen (17) north, range twenty-five (25) west; thence running east to the southeast corner of said section nine (9); thence running south to the southwest corner of section fifteen (15), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section twenty-four (24) township seventeen (17) north, range twenty-five (25) west; thence running south to the southeast corner of section thirty-six (36), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section one (1), township sixteen (16) north, range twenty-five (25) west; thence running south to the southeast corner of said section one (1); thence running east to the northeast corner of section eight (8), township sixteen (16) north, range twenty-four (24) west; thence running south to the southeast corner of section seventeen (17), township sixteen (16) north, range twenty-four (24) west; thence running east to the northeast corner of section twenty-one (21), township sixteen (16) north, range twenty-four (24) west; thence running south

to the southeast corner of said section twenty-one (21); thence running east to the northeast corner of section twenty-six (26), township sixteen (16) north, range twenty-four (24) west; thence running south to the southwest corner of section thirty-six (36), township sixteen (16) north, range twenty-four (24) west; thence running east to the southeast corner of said section thirty-six (36); thence running south to the southwest corner of section seven (7), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section fifteen (15), township fifteen (15) north, range twenty-three (23) west; thence running south to the southwest corner of section twenty-six (26), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section thirty-one (31), township fifteen (15) north, range twenty-two (22) west; thence running south to the southeast corner of said section thirty-one (31); thence running west to the quarter corner on the north line of section one (1), township fourteen (14) north, range twenty-three (23) west; thence running south to an intersection with the center of the channel of the Missoula river; thence running in a northwesterly direction, following the center of the channel of the Missoula river, to its intersection with the line dividing townships fourteen (14) and fifteen (15) north; thence running west to the northeast corner of section five (5), township fourteen (14) north, range twenty-three (23) west; thence running south to the southeast corner of said section five (5); thence running west to the southwest corner of said section five (5); thence running south to the southeast corner of section eighteen (18), township fourteen (14) north, range twenty-three (23) west; thence running west to the southwest corner of said section eighteen (18); said point being on the Lo Lo guide meridian; thence running south along the Lo Lo guide meridian to the third standard parallel north; thence running east to the northeast corner of section one (1), township twelve (12) north, range twenty-four (24) west; thence running south to the southeast corner of section thirty-six (36), township twelve (12) north, range twenty-four (24) west; thence running west to the northwest corner of section six (6), township eleven (11) north, range twenty-four (24) west; thence running south to the Montana-Idaho state line; thence running in a northwesterly direction, following the Montana-Idaho state line, to the place of beginning. The county seat is Superior, Montana.

History: County created by petition and election, effective Aug. 7, 1914, from portion of Missoula county; boundaries defined by Ch. 205, L. 1921.

4335. MISSOULA COUNTY. Beginning at the intersection of the center of the channel of the Flathead river with the south line of the north tier of sections of township twenty-one (21) north; running thence southerly along the center of the main channel of the said Flathead or Pend d'Oreille river to its intersection with the south boundary line of township nineteen (19) north, range twenty-one (21) west, said point being approximately two (2) miles east of the southwest corner of said township; thence east on the line between townships eighteen (18) and nineteen (19) north, to the point where said line intersects the line between ranges twenty (20) and twenty-one (21) west; thence south on said line between ranges twenty (20) and twenty-one (21) west, to the summit of the range of mountains commonly called the Coeur d'Alene,

said mountains dividing the waters of the Missoula and Pend d'Oreille or Flathead rivers; thence westerly along said summit of the Coeur d'Alene mountains, to a point where said summit intersects the summit of the watershed dividing the waters of the Missoula and Clarks Fork rivers; thence westerly along said summit dividing the waters of the Missoula and Clarks Fork rivers to the northeast corner of section five (5), township seventeen (17) north, range twenty-five (25) west; thence running south to the southwest corner of section nine (9), township seventeen (17) north, range twenty-five (25) west; thence running east to the southeast corner of said section nine (9); thence running south to the southwest corner of section fifteen (15), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section twenty-four (24); township seventeen (17) north, range twenty-five (25) west; thence running south to the southeast corner of section thirty-six (36), township seventeen (17) north, range twenty-five (25) west; thence running east to the northeast corner of section one (1), township sixteen (16) north, range twenty-five (25) west; thence running south to the southeast corner of said section one (1); thence running east to the northeast corner of section eight (8), township sixteen (16) north, range twenty-four (24) west; thence running south to the southeast corner of section seventeen (17), township sixteen (16) north, range twenty-four (24) west; thence running east to the northeast corner of section twenty-one (21), township sixteen (16) north, range twenty-four (24) west; thence running south to the southeast corner of said section twenty-one (21); thence running east to the northeast corner of section twenty-six (26), township sixteen (16) north, range twenty-four (24) west; thence running south to the southwest corner of section thirty-six (36), township sixteen (16) north, range twenty-four (24) west; thence running east to the southeast corner of said section thirty-six (36); thence running south to the southwest corner of section seven (7), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section fifteen (15), township fifteen (15) north, range twenty-three (23) west; thence running south to the southwest corner of section twenty-six (26), township fifteen (15) north, range twenty-three (23) west; thence running east to the northeast corner of section thirty-one (31), township fifteen (15) north, range twenty-two (22) west; thence running south to the southeast corner of said section thirty-one (31); thence running west to the quarter corner on the north line of section one (1), township fourteen (14) north, range twenty-three (23) west; thence running south to an intersection with the center of the channel of the Missoula river; thence running in a northwesterly direction, following the center of the channel of the Missoula river to its intersection with the line dividing townships fourteen (14) and fifteen (15) north; thence running west to the northeast corner of section five (5), township fourteen (14) north, range twenty-three (23) west; thence running south to the southeast corner of said section five (5); thence running west to the southwest corner of said section five (5); thence running south to the southeast corner of section eighteen (18), township fourteen (14) north, range twenty-three (23) west; thence running west to the southwest corner of said section eighteen (18); said point being on the Lo Lo guide

meridian; thence running south on the Lo Lo guide meridian to the third standard parallel north; thence running east to the northeast corner of section one (1), township twelve (12) north, range twenty-four (24) west; thence running south to the southeast corner of section thirty-six (36), township twelve (12) north, range twenty-four (24) west; thence running west to the northwest corner of section six (6), township eleven (11) north, range twenty-four (24) west; thence running south to the Montana-Idaho state line; thence running in a general southeasterly direction following said line to the intersection with the south line of township eleven (11) north, range twenty-two (22) west; thence running east along the line between townships ten (10) and eleven (11) north, to an intersection with the center of the channel of Rock creek; thence running in a northerly direction following down the center of the channel of Rock creek to the center of the channel of the Hell Gate river; thence running in an easterly direction up the center of the old original channel of said river as the same existed at the time of the creation of Missoula county, to an intersection with a line projected due north from the top of Medicine Tree hill, said natural monument being located in township eleven (11) north, range fifteen (15) west; thence running north along said line to the top of the divide between the Hell Gate and Blackfoot rivers; thence running in an easterly direction following the summit of said divide to its intersection with the east line of township twelve (12) north, range fourteen (14) west; thence running north along the line between ranges thirteen (13) and fourteen (14) west, observing the offsets and corrections thereto to the northeast corner of township sixteen (16) north, range fourteen (14) west; thence running west along the fourth standard parallel north to an intersection with a line heretofore described as being projected due north from the top of Medicine Tree hill; thence running north along said line to an intersection with the south line of the north tier of sections of township twenty-one (21) north, range fifteen (15) west; thence running west along the south line of the north tier of sections of township twenty-one (21) north to the place of beginning. The county seat is Missoula, Montana.

History: County created Feb. 2, 1865, Bannack Stat., p. 528; boundaries established Nov. 20, 1867, L. 1867, p. 105; Sec. 1, Cod. Stat. 1871, p. 428; Sec. 323, 5th Div. Rev. Stat. 1879; Sec. 730, 5th Div. Comp. Stat. 1887; Flathead county created out of, Feb. 6, 1893, L. 1893, pp. 198-201; Teton county created from part of, Feb. 7, 1893, L. 1893, pp. 205-209; Granite county created from part of, March 2, 1893, L. 1893, pp. 212-217; Ravalli county created out of, Feb. 16, 1893, L. 1893, p. 212, Secs. 4107, 4124, 4128, 4130, 4132, Pol. C. 1895; Sanders county created out of, Ch. 9, L. 1905; Secs. 2788, 2821, 2826, 2828, 2830, 2843, Rev. C. 1907; boundaries changed, Ch. 54, L. 1911; boundaries changed, Ch. 42, L. 1913; Mineral county detached, Aug. 7, 1914; part of Powell county added, Feb. 27, 1915, Ch. 46, L. 1915; boundaries defined by Ch. 205, L. 1921.

4336. MUSSELSHELL COUNTY. Beginning at the point where the center of the channel of the Musselshell river intersects the north line of township eleven (11) north, range thirty-one (31) east, and thence west to the northwest corner of township eleven (11) north, range twenty-two (22) east; thence south nine (9) miles to the southeast corner of section thirteen (13) in township ten (10) north, range twenty-one (21 east; thence east one (1) mile to the northeast corner of section nineteen (19), township ten (10) north, range twenty-two (22) east; thence south three

(3) miles to the southeast corner of section thirty-one (31), township ten (10) north, range twenty-two (22) east; thence east four (4) miles to the northeast corner of section two (2), township nine (9) north, range twenty-two (22) east; thence south six (6) miles to the southeast corner of section thirty-five (35), township nine (9) north, range twenty-two (22) east; thence east along the township line about one (1) mile and twelve (12) chains to the northeast corner of section six (6), township eight (8) north, range twenty-three (23) east; thence south to the southeast corner of section seven (7), township eight (8) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section seventeen (17), township eight (8) north, range twenty-three (23) east; thence south six (6) miles to the southeast corner of section eight (8), township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section sixteen (16), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section sixteen (16), township seven (7) north, range twenty-three (23) east; thence east one-half (½) mile to the north quarter (¼) corner of section twenty-two (22), township seven (7) north, range twenty-three (23) east; thence south two miles to the south quarter (¼) corner of section twenty-seven (27), township seven (7) north, range twenty-three (23) east; thence east one-half (½) mile to the northeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence south one (1) mile to the southeast corner of section thirty-four (34), township seven (7) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section two (2), township six (6) north, range twenty-three (23) east; thence south two (2) miles to the southeast corner of section eleven (11), township six (6) north, range twenty-three (23) east; thence east one (1) mile to the northeast corner of section thirteen (13), township six (6) north, range twenty-three (23) east; thence south ten (10) miles to the southeast corner of section thirty-six (36), township five (5) north, range twenty-three (23) east; thence east to the southeast corner of township five (5) north, range twenty-six (26) east; thence north to the southwest corner of section thirty (30), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section twenty-nine (29), township six (6) north, range twenty-seven (27) east; thence north to the southeast corner of section twenty (20), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section twenty-two (22) of township six (6) north, range twenty-seven (27) east; thence north to the northeast corner of section twenty-two (22), township six (6) north, range twenty-seven (27) east; thence east to the southeast corner of section thirteen (13), township six (6) north, range twenty-nine (29) east; thence north to the northeast corner of township six (6) north, range twenty-nine (29) east; thence east to the southeast corner of section thirty-one (31), township seven (7) north, range thirty (30) east; thence north to the southwest corner of section twenty (20), township seven (7) north, range thirty (30) east; thence east to the southeast corner of said section twenty (20); thence north to the northeast corner of said section twenty (20); thence east to the southeast corner of section sixteen (16), township seven (7) north, range thirty (30) east; thence north to the north-

east corner of said section sixteen (16); thence east to the southeast corner of section ten (10), township seven (7) north, range thirty (30) east; thence north to the northeast corner of said section ten (10); thence east to the southeast corner of section two (2), township seven (7) north, range thirty (30) east; thence north to the northeast corner of said section two (2); thence east to the southeast corner of township eight (8) north, range thirty-one (31) east; thence north along the line between ranges thirty-one (31) and thirty-two (32) east to the second standard parallel north; thence west along said standard parallel to the southeast corner of section thirty-four (34), township nine (9) north, range thirty-one (31) east; thence north along the east line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10) and three (3) said township nine (9) north, range thirty-one (31) east, and the east line of section thirty-four (34), township ten (10) north, range thirty-one (31) east to the southwest corner of section twenty-six (26), township ten (10) north, range thirty-one (31) east; thence west along the south line of sections twenty-seven (27) and twenty-eight (28), said township and range, to the center of the channel of the Musselshell river; thence in a northerly direction following the center of the channel of said Musselshell river to the place of beginning. The county seat is Roundup, Montana.

History: County created out of Fergus and Yellowstone, Ch. 25, L. 1911, effective March 1, 1911; boundary line with Rosebud county changed by Ch. 108, L. 1917, effective Feb. 28, 1917; portion detached by creation Golden Valley county, Oct. 4, 1920; boundaries defined by Ch. 205, L. 1921.

4337. PARK COUNTY. Beginning at the southwest corner of section thirty-five (35), township seven (7) south, range twelve (12) east, and running thence north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) of said township seven (7) south, range twelve (12) east, continuing north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) of township six (6) south, range twelve (12) east, to the first standard parallel south; thence east along said first parallel south to the southwest corner of section thirty-five (35), township five (5) south, range twelve (12) east; thence north along the west boundary of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) in each of townships five (5), four (4), three (3), two (2) and one (1), respectively, range twelve (12) east to the northwest corner of section two (2), township one (1) south, range twelve (12) east; thence west along the base line to the line between ranges eleven (11) and twelve (12) east; thence north along the line between ranges eleven (11) and twelve (12) east to the quarter corner on the east line of section thirteen (13), township five (5) north, range eleven (11) east; thence west along the half section line through the center of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township five (5) north, ranges eleven (11), ten (10), nine (9) and eight (8) east to the quarter corner on the west line of section eighteen (18), township five (5) north, range eight (8) east; thence south along the township line to the southeast corner of township five (5) north, range seven (7) east;

thence west along the first standard parallel north to the northeast corner of township four (4) north, range seven (7) east, thence south along the range line between ranges seven (7) and eight (8) east to the southeast corner of township one (1) north, range seven (7) east; thence west along the base line to the northeast corner of township one (1) south, range seven (7) east; thence south along the township line to the east quarter corner of section twelve (12), township three (3) south, range seven (7) east; thence west through the center of sections twelve (12), eleven (11) and ten (10) to the east quarter corner of section nine (9); thence south along the section line to the southeast corner of section thirty-three (33), township three (3) south, range seven (7) east; thence west to the southeast corner of township three (3) south, range six (6) east; thence south to what will be, when the same is surveyed, the southwest corner of township five (5) south, range seven (7) east; thence west to what will be, when the same is surveyed, the northwest corner of township six (6) south, range six (6) east; thence south along what will be the township line, when the same is surveyed, to the north boundary of the Yellowstone national park, and thence east along the north boundary line of the Yellowstone national park to the northeast corner thereof; thence south along the east boundary line of the Yellowstone national park to an intersection with the boundary line between Montana and Wyoming; thence east along said boundary line between Montana and Wyoming to an intersection with the line between ranges fifteen (15) and sixteen (16) east; thence north along the line between ranges fifteen (15) and sixteen (16) east; to the northeast corner of township eight (8) south, range fifteen (15) east; thence west along the line between townships seven (7) and eight (8), south to the place of beginning. The county seat is Livingston, Montana.

History: County created Feb. 23, 1887, Comp. Stat. 1887, p. 1238, effective May 1, 1887; Secs. 4121, 4135, Pol. C. 1895; Carbon county created out of part of, March 4, 1895; L. 1895, pp. 49-54, Sweet Grass county created from part of, March 5, 1895, L. 1895, pp. 54-58; Secs. 2812, 2833, Rev. C. 1907; boundaries changed by Ch. 60, L. 1913; boundaries defined by Ch. 205, L. 1921.

4338. PHILLIPS COUNTY. Commencing at a point where the range line between ranges thirty-four (34) and thirty-five (35) east of the Montana meridian joins the international boundary line between the United States and Canada; thence running south about thirty (30) miles along said range line observing the offsets and corrections, to a point where said range line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east along said township line about three-fourths (¾) of a mile to a point on said township line where said line intersects the section line between sections four (4) and five (5), in township thirty-two (32) north, range thirty-five (35) east; thence south about four and one-half (4½) miles on the section line to a point where said section line intersects the center of the channel of the Milk river; thence westerly about three (3) miles along the center of the channel of Milk river to a point where the same intersects the section line between sections twenty-three (23) and twenty-four (24), in township thirty-two (32) north, range thirty-four (34) east; thence south about two (2) miles along the section line to a point where said section line intersects the township line between townships thirty-one (31) and thirty-

two (32) north; thence west about two (2) miles along said township line to the section corner common to sections three (3) and four (4), in township thirty-one (31) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships thirty (30) and thirty-one (31) north; thence east about two (2) miles on said township line to the northwest corner of section one (1), township thirty (30) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships twenty-nine (29) and thirty (30) north; thence west about five (5) miles along said township line to a point where said township line intersects the range line between ranges thirty-three (33) and thirty-four (34) east; thence south about forty-three (43) miles along said range line, observing the offsets and corrections, to a point where said range line intersects the center of the channel of the Missouri river; thence westerly about one hundred and five (105) miles along the said center of the channel of the Missouri river to a point where the same intersects a north and south line through the center of township twenty-three (23) north, range twenty-two (22) east; thence north about eight (8) miles through the center of townships twenty-three (23) and twenty-four (24) north, range twenty-two (22) east to a point where said line intersects the township line between townships twenty-four (24) and twenty-five (25) north; thence east about three-fourths (¾) of a mile on said township line to a point where said township line intersects the north and south line through the center of township twenty-five (25) north, range twenty-two (22) east; thence northerly along said north and south line through the center of township twenty-five (25) north, range twenty-two (22) east about three and one-half (3½) miles to a point where said line intersects the south boundary line, or said south boundary line produced, of the Fort Belknap Indian reservation; thence easterly along the south boundary line of said reservation about eleven and one-half (11½) miles to a point where the south boundary of said reservation intersects the west boundary of the Jefferson national forest; thence northerly about five (5) miles along said west boundary line of said Jefferson national forest to the northwest corner of said Jefferson national forest; thence easterly about seven and one-half (7½) miles along the north boundary of said Jefferson national forest to a point where said boundary line, of the said boundary line produced, intersects the range line between ranges twenty-five (25) and twenty-six (26) east; thence northerly about thirty-two (32) miles, observing offsets and corrections, along the line between ranges twenty-five (25) and twenty-six (26) east to a point where said line intersects the center of the channel of the Milk river; thence easterly along the center of the channel of Milk river about six (6) miles to a point where the same intersects the section line between sections twenty-seven (27) and twenty-eight (28), in township thirty-one (31) north, range twenty-six (26) east; thence north about ten (10) miles along the section line through the center of township thirty-one (31) and thirty-two (32) north, range twenty-six (26) east to a point where said line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east about one (1) mile on said township line to a point where said township line

intersects a north and south line through the center of township thirty-three (33) north, range twenty-six (26) east; thence north about twelve (12) miles through the center of townships thirty-three (33) and thirty-four (34) north, range twenty-six (26) east, to a point where said line intersects the township line between townships thirty-four (34) and thirty-five (35) north; thence east on said township line about three (3) miles to a point where said township line intersects the range line between ranges twenty-six (26) and twenty-seven (27) east; thence north about eighteen (18) miles along said range line observing the offsets and corrections, to a point where said range line joins the international boundary line between the United States and Canada; thence easterly along said international boundary line about forty-eight (48) miles to the place of beginning. The county seat is Malta, Montana.

History: County created by petition and election, effective Feb. 5, 1915, from portion of Valley and Blaine counties; boundaries defined by Ch. 205, L. 1921.

4339. PONDERA COUNTY. Beginning at a point at the intersection of the line between township twenty-nine (29) and thirty (30) north with the summit of the main divide of the Rocky mountains; thence in an easterly direction on the township line between townships twenty-nine (29) and thirty (30) north, to the southeast corner of section thirty-six (36), township thirty (30) north, range eight (8) west; thence due north on the line between ranges seven (7) and eight (8) west to the northeast corner of section one (1), township thirty-one (31) north, range eight (8) west; thence in an easterly direction on the township line between townships thirty-one (31) and thirty-two (32) to a point where said township line intersects with the Marias river; thence following on down the center of the channel of the Marias river to its intersection with the section line between sections fifteen (15) and sixteen (16), township thirty-one (31) north, range three (3) west; thence south about three (3) miles to the southwest corner of section thirty-four (34), township thirty-one (31) north, range three (3) west; thence east about nine (9) miles to the northwest corner of section six (6), township thirty (30) north, range one (1) west; thence south about three (3) miles to the southwest corner of section eighteen (18), township thirty (30) north, range one (1) west; thence east about six (6) miles to the southeast corner of section thirteen (13), township thirty (30) north, range one (1) west; thence south about nine (9) miles to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range one (1) east; thence due east along the boundary lines between townships twenty-eight (28) north and twenty-nine (29) north, to the northeast corner of township twenty-eight (28) north, range two (2) east; thence south along the boundary line between range two (2) and three (3) east, to the northeast corner of section twenty-five (25), township twenty-six (26) north, range two (2) east; thence due west along the section line to the southwest corner of section twenty-two (22) township twenty-six (26) north, range three (3) west; thence due north along the section line to the southwest corner of section thirty-four (34), township twenty-seven (27) north, range three (3) west; thence due west along the township line three (3) miles, to the southwest corner of section thirty-one (31), township twenty-seven (27) north, range three (3) west; thence due north along the township line

three (3) miles to the southwest corner of section eighteen (18), township twenty-seven (27) north, range three (3) west; thence due west along the section line to the southwest corner of section eighteen (18), township twenty-seven (27) north, range four (4) west, a distance of six (6) miles; thence due north along the township line between ranges four (4) and five (5) west, a distance of three (3) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range four (4) west; thence due west along the line between township twenty-seven (27) north and twenty-eight (28) north, to a point where such line, if extended, would intersect the summit of the main range of the Rocky mountains; thence in a northwesterly direction along the summit of the main range of the Rocky mountains to the point of beginning. The county seat is Conrad, Montana.

History: County created by Ch. 22, L. 1919, effective April 1, 1919, from portions of Teton and Chouteau counties; boundaries defined by Ch. 205, L. 1921.

4340. POWDER RIVER COUNTY. Beginning at the intersection of the Montana base line with the range line between ranges fifty-four (54) and fifty-five (55) east; thence due south along said range line to its intersection with the Montana-Wyoming state line; thence due west along the Montana-Wyoming state line to its intersection with the range line between ranges forty-four (44) and forty-five (45) east; thence due north along the range line between ranges forty-four (44) and forty-five (45) east to the point of intersection with the Montana base line; thence due east along the Montana base line to the point of beginning. The county seat is Broadus, Montana.

History: County created by Ch. 141, L. 1919, effective April 1, 1919, from portion of Custer county; boundaries defined by Ch. 205, L. 1921.

4341. POWELL COUNTY. Beginning at the southeast corner of section fourteen (14) in township six (6) north, range eight (8) west, and running thence west by section lines to an intersection with the line between ranges eleven (11) and twelve (12) west; thence north along said line to the intersection of the divide between the Hell Gate and Big Blackfoot rivers; thence northwesterly along the summit of said divide to an intersection of the line between ranges thirteen (13) and fourteen (14) west; thence due north along said line, observing the offsets and corrections thereto to the northwest corner of township sixteen (16) north, range thirteen (13) west; thence running west along the fourth standard parallel north to its intersection with a line extended due north from the summit of Medicine Tree hill; thence running north along said line to an intersection with the south line of the north tier of sections of township twenty-one (21) north; thence east along the south line of the north tier of sections of said township twenty-one (21) north to the summit of the main range of the Rocky mountains; thence southerly following the summit of the main range of the Rocky mountains to the point where said summit is intersected by the west boundary line of range eleven (11) west; thence south along the west boundary line of townships twenty (20), nineteen (19), eighteen (18) and seventeen (17), north of said range eleven (11) west to the southwest corner of township seventeen (17) north, range eleven (11) west; thence east along the south boundary of township

seventeen (17) north, ranges eleven (11) and ten (10) west, to the northwest corner of township sixteen (16) north, range nine (9) west; thence south along the west line of townships sixteen (16), fifteen (15), fourteen (14) and thirteen (13) north, range nine (9) west to the southwest corner of township thirteen (13) north, range nine (9) west; thence east along the south boundary line of township thirteen (13) north of ranges nine (9) and eight (8) west to the northwest corner of township twelve (12) north, range seven (7) west; thence south along the west boundary line of townships twelve (12) and eleven (11) north, range seven (7) west to the corner between sections eighteen (18) and nineteen (19) of said township eleven (11) north of range seven (7) west; thence east along the south boundary lines of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14) and thirteen (13) of said township eleven (11) north, range seven (7) west to the boundary line between said township eleven (11) north, range seven (7) west and township eleven (11) north, range six (6) west; thence south along the west boundary line of said township eleven (11) north, range six (6) west to the southwest corner of said township eleven (11) north, range six (6); thence east along the south boundary line of said township eleven (11) north, range six (6) west to the point of intersection with the summit of the main range of the Rocky mountains; thence southerly along the summit of the main range of the Rocky mountains to its intersection with the north boundary of township six (6) north, range eight (8) west; thence west to the northeast corner of section two (2) in said township six (6) north, range eight (8) west; thence running south by section lines to the place of beginning. The county seat is Deer Lodge, Montana.

History: County created Jan. 31, 1901, L. 1901, pp. 101-106; part of Lewis and Clark added to, Ch. 106, L. 1903; Secs. 2836, 2837, Rev. C, 1907; part added to Missoula county, Ch. 46, L. 1915; boundaries defined by Ch. 205, L. 1921.

4342. PRAIRIE COUNTY. Beginning at the northeast corner of township sixteen (16) north, range fifty (50) east; thence at right angles due south along the range line between ranges fifty (50) and fifty-one (51) east, to the southwest corner of section seven (7), township fourteen (14) north, range fifty-one (51) east; thence running at right angles due east along section lines to the northeast corner of section thirteen (13), township fourteen (14) north, range fifty-one (51) east; thence running at right angles due south to the southeast corner of township fourteen (14) north, range fifty-one (51) east; thence running at right angles due east along the north line of township thirteen (13) north, to the northeast corner of township thirteen (13) north, range fifty-two (52) east; thence running at right angles due south one (1) mile to the southwest corner of section six (6), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east to the southeast corner of said section six (6), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due south one (1) mile to the southwest corner of section eight (8), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east one (1) mile to the northeast corner of section seventeen (17), township thirteen (13) north, range fifty-three (53) east; thence running at right angles due south along section lines to the southwest corner of section twenty-one (21),

township thirteen (13) north, range fifty-three (53) east; thence running at right angles due east along the north line of section twenty-eight (28), twenty-seven (27), twenty-six (26), twenty-five (25), township thirteen (13) north, range fifty-three (53) east; thence along the north line of sections thirty (30), twenty-nine (29), twenty-eight (28), twenty-seven (27), twenty-six (26), twenty-five (25) of townships thirteen (13) north, fifty-four (54) east and thirteen (13) north, fifty-five (55) east to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifty-six (56) east; thence due south along the east line of sections twenty-seven (27) and thirty-four (34), to the southeast corner of section thirty-four (34), township thirteen (13), north, range fifty-six (56) east; thence west to the northwest corner of section six (6), township twelve (12) north, range fifty-seven (57) east; thence running at right angles due south along the east line of range fifty-six (56) to the southeast corner of township eleven (11) north, range fifty-six (56) east; thence at right angles due west along the south line of township eleven (11) north, to the northwest corner of township ten (10) north, range fifty-six (56) east; thence south to the northwest corner of section nineteen (19), township ten (10) north, range fifty-six (56) east; thence running at right angles due west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township ten (10) north, range fifty-five (55) east to the northwest corner of section nineteen (19), township ten (10) north, range fifty-five (55) east; thence running at right angles due south to the southwest corner of township ten (10) north, range fifty-five (55) east; thence running due west along the south line of township ten (10) north, range fifty-four (54) east, to the northwest corner of township nine (9) north, range fifty-four (54) east; thence due south two (2) miles to the southeast corner of section twelve (12), township nine (9) north, range fifty-three (53) east; thence due west along section lines to the southwest corner of section seven (7), township nine (9) north, range fifty-two (52) east; thence due north along the line between ranges fifty-one (51) and fifty-two (52) to the southeast corner of township ten (10) north, range fifty-one (51) east; thence due west along the north line of township nine (9) north, to the southwest corner of section thirty-three (33), township ten (10) north, range fifty (50) east; thence at right angles due north two (2) miles to the northeast corner of section twenty-nine (29), township ten (10) north, range fifty (50) east; thence at right angles due west to the northwest corner of section thirty (30), township ten (10) north, range fifty (50) east; thence along the line between ranges forty-nine (49) and fifty (50) to the northeast corner of township ten (10) north, range forty-nine (49) east; thence at right angles due west to the northwest corner of section four (4), township ten (10) north, range forty-nine (49) east; thence north to the northwest corner of section four (4), township eleven (11) north, range forty-nine (49) east; thence west to the southwest corner of township twelve (12) north, range forty-nine (49) east; thence north to the northwest corner of township twelve (12) north, range forty-nine (49) east; thence west to the southwest corner of township thirteen (13) north, range forty-seven (47) east; thence north along the west line of township thirteen (13) north to the northeast cor-

ner of section twenty-five (25), township thirteen (13) north, range forty-six (46) east; thence west along the section line to the southwest corner of section nineteen (19), township thirteen (13) north, range forty-five (45) east; thence north along the west line of townships thirteen (13), fourteen (14), fifteen (15) and sixteen (16) north, to the northwest corner of township sixteen (16) north, range forty-five (45) east; thence due east along the north line of township sixteen (16) north to the northeast corner of township sixteen (16) north, range forty-five (45) east; thence due south to the northeast corner of township fifteen (15) north, range forty-five (45) east; thence due east to the northeast corner of township fifteen (15) north, range forty-six (46) east; thence due north to the northwest corner of township sixteen (16) north, range forty-seven (47) east; thence due east along the north line of township sixteen (16) north to the place of beginning. The county seat is Terry, Montana.

History: County created by petition and election, effective Feb. 5, 1915, from parts of Dawson, Custer, and Fallon counties; boundaries extended March 9, 1917; Ch. 139, L. 1917; boundaries defined by Ch. 205, L. 1921.

4343. RAVALLI COUNTY. Beginning at the intersection of the boundary line between Montana and Idaho with the line dividing townships ten (10) and eleven (11) north, range twenty-two (22) west, and running thence in a general southerly direction following said boundary line to an intersection of the summit of the Bitter Root mountains with the continental divide, said intersection being six (6) miles, more or less, northwest of the crossing of the Dehalonega pass; thence running in a general northeasterly direction along the top of the continental divide to an intersection with the summit of the divide between Bitter Root river and Rock creek; thence following the summit of said divide in a northerly direction to its intersection with the north line of township ten (10) north, range eighteen (18) west; thence following the line between township ten (10) north and eleven (11) north, west to the point of beginning. The county seat is Hamilton, Montana.

History: County created, effective April 1, 1893, L. 1893, pp. 209-212; Sec. 1 of act amended by act approved March 2, 1893, L. 1893, p. 212; Sec. 4129, Pol. C. 1895; Sec. 2827, Rev. C. 1907; boundaries defined by Ch. 205, L. 1921.

4344. RICHLAND COUNTY. Beginning at the point of intersection of the range line between ranges fifty (50) and fifty-one (51) east at the center of the main channel of the Missouri river; running thence south along the range line between ranges fifty (50) and fifty-one (51) east to the north line of township twenty-four (24) north, range fifty-one (51) east; thence west along the north line of township twenty-four (24) north to the northeast corner of township twenty-four (24) north, range fifty (50) east; thence south along the range line between ranges fifty (50) and fifty-one (51) east to the southeast corner of township twenty-three (23) north, range fifty-one (51) east; thence east along the south line of township twenty-three (23) north, ranges fifty-one (51) and fifty-two (52) east to the northwest corner of township twenty-two (22) north, range fifty-three (53) east; thence south along the line between ranges fifty-two (52) and fifty-three (53) east to the southwest corner of township twenty-two (22) north, range fifty-three (53) east; thence east along the line between townships twenty-one (21) and twenty-two (22) north to the

northwest corner of township twenty-one (21) north, range fifty-six (56) east; thence south on the line between ranges fifty-five (55) and fifty-six (56) east to the southwest corner of said township twenty-one (21) north, range fifty-six (56) east; thence east along the line between townships twenty (20) and twenty-one (21) north to the northwest corner of township twenty (20) north, range fifty-seven (57) east; thence south to the southwest corner of township nineteen (19) north, range fifty-seven (57) east; thence east along the line between townships eighteen (18) and nineteen (19) north to the southwest corner of township nineteen (19) north, range sixty (60) east; thence north on the line between ranges fifty-nine (59) and sixty (60) east to the southwest corner of section eighteen (18), and township nineteen (19) north, range sixty (60) east; thence east on the section line to the Montana-North Dakota boundary; thence north along said Montana-North Dakota boundary to its intersection with the center of the main channel of the Missouri river; thence in a westerly direction following the center of the said channel to the place of beginning. The county seat is Sidney, Montana.

History: County created by petition and election, effective May 27, 1914, from portion of Dawson county; conflict in southern boundary by creation of Wibaux county, Aug. 17, 1914; southern boundary fixed by Ch. 24, L. 1915, effective Feb. 19, 1915; portion detached by creation of McCone county, Ch. 33, L. 1919; boundaries defined by Ch. 205, L. 1921.

4345. ROOSEVELT COUNTY. Beginning at a point at the northwest corner of township thirty-two (32) north, range forty-six (46) east; thence east along the township line between township thirty-two (32) and thirty-three (33) north, a distance of about forty-eight (48) miles to the northeast corner of township thirty-two (32) north, range fifty-three (53) east; thence south a distance of about six (6) miles along the range line between ranges fifty-three (53) and fifty-four (54) to the southeast corner of township thirty-two (32) north, range fifty-three (53) east; thence east along the township line a distance of about six (6) miles between townships thirty-one (31) and thirty-two (32), to the northeast corner of township thirty-one (31) north, range fifty-four (54) east; thence south a distance of about six (6) miles to the southeast corner of township thirty-one (31) north, range fifty-four (54) east; thence east along the township line between townships thirty (30) and thirty-one (31) north to the boundary line of the states of Montana and North Dakota; thence south to the Missouri river; thence west on a meandering line following the center of the present main channel of the Missouri river so as to include all that portion of sections one (1), two (2), six (6), seven (7), eleven (11), twelve (12) and thirteen (13) in township twenty-seven (27) north, range forty-nine (49) east, which lies north of the present main channel of the Missouri river, to an intersection with the line between ranges forty-five (45) and forty-six (46) east; thence in a northerly direction along said line, observing the offsets and corrections, to the place of beginning. The temporary county seat is Poplar, Montana.

History: County created by Ch. 23, L. 1919, effective Feb. 18, 1919, from portion of Sheridan county; boundaries defined by Ch. 205, L. 1921.

4346. ROSEBUD COUNTY. Beginning at the northeast corner of section thirty-six (36), township thirteen (13) north, range forty-four

(44) east; thence west, following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-four (44) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-three (43) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-two (42) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty-one (41) east and the north line of section thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range forty (40) east; thence north for a distance of one (1) mile to the northeast corner of section twenty-five (25), township thirteen (13) north, range thirty-nine (39) east, the same being two (2) miles north of the third standard parallel; thence west on the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-nine (39) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-eight (38) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-seven (37) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-six (36) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-five (35) east, and the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in township thirteen (13) north, range thirty-four (34) east, to the northwest corner of section thirty (30) township thirteen (13) north, range thirty-four (34) east; thence south to the northeast corner of section thirty-six (36), township thirteen (13) north, range thirty-three (33) east, the same being one (1) mile north of the third standard parallel; thence west, following the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31), in township thirteen (13) north, range thirty-three (33) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31) in township thirteen (13) north, range thirty-two (32) east, and the north line of sections thirty-six (36), thirty-five (35), thirty-four (34), thirty-three (33), thirty-two (32) and thirty-one (31), in township thirteen (13) north, range thirty-one (31) east, and the north line of sections thirty-six (36), thirty-five (35) and thirty-four (34) in township thirteen (13) north, range thirty (30) east, to a point in the center of the channel of the Musselshell river, where said section line intersects said river, the same being a point one (1) mile north of the third stand-

ard parallel; thence in a southerly direction following the center of said channel to the southeast corner of section twenty-nine (29), township ten (10) north, range thirty-one (31) east; running thence east along the south line of sections twenty-eight (28) and twenty-seven (27) to the southwest corner of section twenty-six (26) in township ten (10) north, range thirty-one (31) east; thence south along the east line of section thirty-four (34), township ten (10) north, range thirty-one (31) east and along the east line of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27) and thirty-four (34), township nine (9) north, range thirty-one (31) east to the southeast corner of said section thirty-four (34) in township nine (9) north, range thirty-one (31) east; thence east along the line between townships eight (8) and nine (9) north, to the northeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence south along the section line to the southeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence east to the intersection of the south boundary line of section one (1) with the range line between ranges thirty-six (36) and thirty-seven (37) east; thence south along the range line between ranges thirty-six (36) and thirty-seven (37) east, to the intersection of the north township line of township seven (7) north; thence east along the township line of township seven (7) north to the intersection with the range line between ranges thirty-seven (37) and thirty-eight (38) east; thence south along the line between ranges thirty-seven (37) and thirty-eight (38) east, to the center of the main channel of the Yellowstone river; thence in a southeasterly course along the main channel of the Yellowstone river to the east line of section six (6), township six (6) north, range thirty-eight (38) east; thence due south along the east line of sections six (6), seven (7), eighteen (18), nineteen (19), thirty (30) and thirty-one (31) of townships six (6) and five (5) north, range thirty-eight (38) east, to the southeast corner of section thirty-one (31), township five (5) north, range thirty-eight (38) east; thence along the north line of township four (4) north, range thirty-eight (38) east, to the northeast corner of township four (4) north, range thirty-eight (38) east; thence south to the northwest corner of section nineteen (19), township one (1) north, range thirty-nine (39) east; thence east to the northeast corner of section twenty-one (21), township one (1) north, range thirty-nine (39) east; thence south to the southeast corner of section thirty-three (33), township one (1) north, range thirty-nine (39) east; thence west to the northeast corner of section four (4), township one (1) south, range thirty-nine (39) east; thence south along the east line of sections four (4), nine (9), sixteen (16), twenty-one (21), twenty-eight (28) and thirty-three (33) of township one (1) south, range thirty-nine (39) east and the east line of section four (4) produced, township two (2) south, range thirty-nine (39) east, to an intersection with the northern boundary line of the northern Cheyenne Indian reservation; thence east following the northern boundary line of the said Indian reservation to its intersection with the east line of township two (2) south, range forty (40) east; thence south along the line between ranges forty (40) and forty-one (41) east to the southwest corner of township five (5) south, range forty-one (41) east; thence west along the first standard parallel south to the northeast corner of

township six (6) south, range forty (40) east; thence south on the line between ranges forty (40) and forty-one (41) east to the northwest corner of township eight (8) south, range forty-one (41) east; thence east to the northeast corner of township eight (8) south, range forty-four (44) east; thence north on the line between ranges forty-four (44) and forty-five (45) east, observing all corrections and offsets of the eleventh guide meridian to the northeast corner of township twelve (12) north, range forty-four (44) east; thence east along the third standard parallel north to the southeast corner of section thirty-six (36), township thirteen (13) north, range forty-four (44) east; thence north along the east line of said section thirty-six (36) to the northeast corner thereof, being the place of beginning. The county seat is Forsyth, Montana.

History: County created Feb. 11, 1901, L. 1901, pp. 97-101, effective March 1, 1901; Sec. 2839, Rev. C. 1907; Big Horn county created, including part of, Jan. 13, 1913; boundary line with Dawson county changed, Ch. 36, L. 1917; boundary line with Musselshell changed, Ch. 108, L. 1917; boundary line with Yellowstone county changed, Ch. 159, L. 1917; boundary line with Musselshell changed, Ch. 108, L. 1917; Treasure county detached, Ch. 5, L. 1919; boundaries defined by Ch. 205, L. 1921.

4347. SANDERS COUNTY. Beginning at the intersection of the center of the channel of the Flathead river with the south line of the north tier of sections of township twenty-one (21) north; thence running southerly along the center of the main channel of the said Flathead or Pend d'Oreille river to its intersection with the south boundary line of township nineteen (19) north, range twenty-one (21) west, said point being approximately two (2) miles east of the southwest corner of said township; thence east on the line between townships eighteen (18) and nineteen (19) north, to the point where said line intersects the line between ranges twenty (20) and twenty-one (21) west; thence south on said line between ranges twenty (20) and twenty-one (21) west, to the summit of the range of mountains commonly called the Coeur d'Alene, said mountains dividing the waters of the Missoula and Pend d'Oreille or Flathead rivers; thence westerly along said summit of the Coeur d'Alene mountains to a point where said summit intersects the summit of the watershed dividing the waters of the Missoula and Clark's Fork rivers; thence westerly along said summit dividing the waters of the Missoula and Clark's Fork rivers to the point where said summit intersects the Horse Plains guide meridian; thence due north along said Horse Plains guide meridian to the northeast corner of section twenty-five (25) in township eighteen (18) north, range twenty-six (26) west; thence due west three (3) miles to the southwest corner of section twenty-two (22), in said township and range; thence due north one (1) mile to the northeast corner of section twenty-one (21) in said township and range; thence due west to the line between ranges twenty-six (26) and twenty-seven (27) west; thence north on the line between ranges twenty-six (26) and twenty-seven (27) west, to the summit of the Coeur d'Alene mountains; thence westerly along the summit of said Coeur d'Alene mountains to the boundary line between the state of Montana and the state of Idaho, and northerly along said boundary line to an intersection with the divide between the Clark's Fork of the Columbia and the Kootenai rivers; thence running in an easterly and southeasterly direction following the summit of said divide to an

intersection with the south line, or the south line extended, of section twelve (12), township twenty-six (26) north, range twenty-eight (28) west; thence running east seven (7) miles, more or less, along the south line of said section twelve (12) and the south line of sections seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), township twenty-six (26) north, range twenty-seven (27) west, to the southeast corner of section twelve (12), township twenty-six (26) north, range twenty-seven (27) west; thence south to the southwest corner of section eighteen (18), township twenty-six (26) north, range twenty-six (26) west; thence east one (1) mile to the southeast corner of said section eighteen (18); thence south along the section line to the southeast corner of section thirty-one (31); township twenty-five (25) north, range twenty-six (26) west; thence east along the sixth standard parallel north to the northeast corner of township twenty-four (24) north, range twenty-four (24) west; thence south on the line between ranges twenty-three (23) and twenty-four (24) west to the southwest corner of section eighteen (18), township twenty-three (23) north, range twenty-three (23) west; thence east one (1) mile to the southeast corner of said section eighteen (18); thence south a distance of ten (10) miles more or less following the section line to the southeast corner of section six (6), township twenty-one (21) north, range twenty-three (23) west; thence east following the south line of the north tier of sections of township twenty-one (21) north, to the place of beginning. The county seat is Thompson Falls, Montana.

History: County created from portion of Missoula, March 1, 1906, Ch. 9, L. 1905; Sec. 2841, Rev. C. 1907; boundaries changed Feb. 25, 1911, Ch. 54, L. 1911; boundaries changed Feb. 28, 1913, Ch. 42, L. 1913, defining Flathead; boundaries changed March 1, 1913, Ch. 46, L. 1913, defining Lincoln; boundaries defined by Ch. 205, L. 1921.

4348. SHERIDAN COUNTY. Commencing at a point on the northern boundary line of the state of Montana which is intersected by the range line between ranges fifty (50) and fifty-one (51) east, and running thence south along said range line a distance of six (6) miles more or less to the southeast corner of township thirty-seven (37) north, range fifty (50) east; thence east on the township line between townships thirty-seven (37) and thirty-six (36) north, range fifty-one (51) east a distance of one (1) mile to the line between sections three (3) and four (4), township thirty-six (36), north, range fifty-one (51) east; thence directly south on the section line a distance of about eighteen (18) miles to the southeast corner of section thirty-three (33), township thirty-four (34) north, range fifty-one (51) east; thence east on the township line between townships thirty-three (33) and thirty-four (34) north, range fifty-one (51) east for a distance of three (3) miles to the southeast corner of township thirty-four (34) north, range fifty-one (51) east; thence south on the line between ranges fifty-one (51) and fifty-two (52) east, a distance of six (6) miles to the southeast corner of township thirty-three (33) north, range fifty-one (51) east; thence east along the eighth standard parallel north between townships thirty-two (32) and thirty-three (33) north to the northeast corner of township thirty-two (32) north, range fifty-three (53) east; thence south a distance of about six (6) miles along the line between ranges fifty-three (53) and fifty-four (54) east to the southeast corner of township thirty-two (32) north, range fifty-three (53) east;

thence east along the township line a distance of about six (6) miles between townships thirty-one (31) and thirty-two (32) north, to the northeast corner of township thirty-one (31) north, range fifty-four (54) east; thence south a distance of about six (6) miles to the southeast corner of township thirty-one (31) north, range fifty-four (54) east; thence east along the line between townships thirty (30) and thirty-one (31) north, to its intersection with the boundary line between the state of Montana and the state of North Dakota; thence in a northerly direction along the eastern boundary line of the state of Montana, to the point where said boundary line is intersected by the boundary line between the state of Montana and the Dominion of Canada; thence in a westerly direction along the northern boundary line of the state of Montana to the point of beginning. The county seat is Plentywood, Montana.

History: County created by petition and election, effective March 24, 1913, from portion of Valley county; Roosevelt county detached by Ch. 23, L. 1919, effective Feb. 18, 1919; Daniels county detached, Aug. 30, 1920; boundaries defined by Ch. 205, L. 1921.

4349. SILVER BOW COUNTY. Beginning at a point where the line of the divide between the headwaters of Brown's gulch and Dry Cottonwood creek intersects the continental divide and running thence southwesterly along the line of the said divide between the headwaters of Brown's gulch and Dry Cottonwood creek to the point where said divide intersects the first standard parallel north of the Montana base line; thence running west along said standard parallel to the Deer Lodge guide meridian; thence south to the southeast corner of township four (4) north, range ten (10) west; thence west to the southwest corner of section thirty-three (33), township four (4) north, range ten (10) west; thence in a southerly and westerly direction to the top of the divide between Willow creek and Beef strait; thence along the top of said divide to the point where it intersects the main range of the Rocky mountains; thence following the summit of said main range of the Rocky mountains as it trends in a southerly direction to the point where it is intersected by the divide between Bear creek and Johnson creek; thence following said divide in a southerly direction and continuing south to a point in the center of the channel of the Big Hole river; thence down the center of said river to the mouth of Camp creek; thence up Camp creek to its right-hand fork; thence up said fork to its source; thence in a direct line to the summit of Table mountain; thence in a direct line to Parson's bridge on the Jefferson river; thence westerly along Parson's toll road, leading from Parson's bridge to the city of Butte, to the point where said road crosses Fish creek; thence up Fish creek to the head of Belcher's ditch; thence in a direct line to the forks of Little Pipestone creek, near the site of Parson's old toll gate; thence up the north fork of Little Pipestone creek to its source; thence in a direct line to the nearest point of the continental divide; thence northerly along said continental divide to the place of beginning. The county seat is Butte, Montana.

History: County created Feb. 16, 1881, L. 1881, p. 85; boundaries changed March 7, 1883, L. 1883, p. 97; Sec. 741, 5th Div. Comp. Stat. 1887; Granite county created out of part of, March 2, 1893, L. 1893, p. 212; Sec. 4118, Pol. C. 1895; part added to Deer Lodge county, Ch. 62, L. 1903; Secs. 2806, 2790, Rev. C. 1907; part of Deer Lodge county added to and boundaries defined, Ch. 21, L. 1917, effective May 1, 1917; boundaries defined by Ch. 205, L. 1921.

4350. STILLWATER COUNTY. Beginning on the east line of section thirty-five (35), township two (2) south, range twenty-three (23) east, where same is intersected by the mid-channel of the Yellowstone river; thence north along the east line of section thirty-five (35) and twenty-six (26), to the northeast corner of section twenty-six (26), township two (2) south, range twenty-three (23) east; thence west along the north line of said section twenty-six (26) to the northwest corner thereof; thence north along the east line of section twenty-two (22), township two (2) south, range twenty-three (23) east, to the northeast corner of section twenty-two (22), said township and range; thence west along the north line of said section twenty-two (22) to the northwest corner thereof; thence north along the east line of sections sixteen (16) and nine (9), township two (2) south, range twenty-three (23) east, to the northeast corner of section nine (9), said township and range; thence west along the north line of section nine (9), township two (2) south, range twenty-three (23) east, to the northwest corner of said section nine (9); thence north along the east line of section five (5), said township and range, to the southeast corner of section thirty-two (32), township one (1) south, range twenty-three (23) east; thence north along the east line of sections thirty-two (32), twenty-nine (29), twenty (20), seventeen (17), eight (8) and five (5), township one (1) south, range twenty-three (23) east, to the base line; thence east along the base line to the southeast corner of section thirty-one (31), township one (1) north, range twenty-three (23) east; thence north along the east line of sections thirty-one (31), thirty (30), nineteen (19), eighteen (18), seven (7) and six (6), of townships one (1) and two (2) north, range twenty-three (23) east, to the northeast corner of section six (6), township two (2) north, range twenty-three (23) east; thence west along the north line of section six (6), township two (2) north, range twenty-three (23) east, to the southeast corner of township three (3) north, range twenty-two (22) east; thence north along the east line of townships three (3) and four (4) north, range twenty-two (22) east, to the first standard parallel north; thence west along the first standard parallel north to the northwest corner of section six (6), township four (4) north, range nineteen (19) east; thence south along the west line of townships four (4) and three (3) north, range nineteen (19) east, to the northeast corner of township two (2) north, range eighteen (18) east; thence west along the line between townships two (2) and three (3) north to the northeast corner of section five (5), township two (2) north, range eighteen (18) east; thence south along the east line of sections five (5), eight(8), seventeen (17), twenty (20), twenty-nine (29) and thirty-two (32) to the southeast corner of section thirty-two (32), township two (2) north, range eighteen (18) east; thence west along the north line of sections five (5) and six (6), township one (1) north, range eighteen (18) east, to the northwest corner of said section six (6); thence south along the line between ranges seventeen (17) and eighteen (18) east to the base line; thence west along said base line to the northwest corner of section six (6), township one (1) south, range eighteen (18) east; thence south along the west line of townships one (1) and two (2) south, range eighteen (18) east to the southwest corner of section thirty-one (31), township two (2) south, range eighteen (18) east; thence west along the

north line of township three (3) south, range seventeen (17) east, to the northwest corner of section six (6), township three (3) south, range seventeen (17) east; thence south along the west line of township three (3) south, range seventeen (17) east, to the northeast corner of section twenty-four (24), township three (3) south, range sixteen (16) east; thence west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20) and nineteen (19), township three (3) south, range sixteen (16) east, to the northwest corner of section nineteen (19), in township three (3) south, range sixteen (16) east; thence south along the west line of township three (3) south, range sixteen (16) east, to the northeast corner of section one (1), township four (4) south, range fifteen (15) east; thence west along the north line of township four (4) south, range fifteen (15) east, to the northwest corner of section six (6), township four (4) south, range fifteen (15) east; thence south along the west line of townships four (4) and five (5) south, range fifteen (15) east, to the first standard parallel south; thence west along the first standard parallel south to a point which, when surveyed, will be the northwest corner of township six (6) south, range fourteen (14) east; thence south along the west line of townships six (6) and seven (7) south, range fourteen (14) east, to a point which, when surveyed, will be the southwest corner of section thirty-one (31), township seven (7) south, range fourteen (14) east; thence east along the south line of township seven (7) south, ranges fourteen (14), fifteen (15) and sixteen (16) east, to a point which, when surveyed, will be the southeast corner of township seven (7) south, range sixteen (16) east; thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township six (6) south, range seventeen (17) east, to the southeast corner of section thirty-four (34), township six (6) south, range seventeen (17) east; thence north along the east line of sections thirty-four (34), twenty-seven (27), and twenty-two (22), to the northeast corner of section twenty-two (22), township six (6) south, range seventeen (17) east; thence east along the line between sections fourteen (14) and twenty-three (23), township six (6) south, range seventeen (17) east, to the southeast corner of section fourteen (14), township six (6) south, range seventeen (17) east; thence north along the east line of sections fourteen (14) and eleven (11), township six (6) south, range seventeen (17) east, to the northeast corner of section eleven (11), township six (6) south, range seventeen (17) east; thence east along the south line of section one (1), township six (6) south, range seventeen (17) east, to the southeast corner of said section one (1); thence north along the east line of township six (6) south, range seventeen (17) east, to the northeast corner of section one (1); thence east along the first standard parallel south to the southeast corner of section thirty-six (36), township five (5) south, range seventeen (17) east; thence north along the east line of township five (5) south, range seventeen (17) east, to the northeast corner of said section thirty-six (36), township five (5) south, range seventeen (17) east; thence east along the line between sections thirty (30) and thirty-one (31), township five (5) south, range eighteen (18) east, to the southeast corner of section thirty (30), township five (5) south, range eighteen (18) east; thence north along the east line of said

section thirty (30), to the northeast corner thereof; thence east along the line between sections twenty (20) and twenty-nine (29), township five (5) south, range eighteen (18) east, to the southeast corner of said section twenty (20); thence north along the east line of said section twenty (20), to the northeast corner thereof; thence east along the line between sections sixteen (16) and twenty-one (21), township five (5) south, range eighteen (18) east, to the southeast corner of said section sixteen (16); thence north along the east line of said section sixteen (16), township five (5) south, range eighteen (18) east, to the northeast corner thereof; thence east along the line between sections ten (10) and fifteen (15), township five (5) south, range eighteen (18) east, to the southeast corner of said section ten (10); thence north along the east line of said section ten (10), to the northeast corner thereof; thence east along the south line of sections two (2) and one (1), township five (5) south, range eighteen (18) east, to the southeast corner of said section one (1); thence north along the east line of said section one (1), to the southwest corner of section thirty-one (31), township four (4) south, range nineteen (19) east; thence east along the south line of said section thirty-one (31), township four (4) south, range nineteen (19) east, to the southeast corner of said section; thence north along the east line of said section thirty-one (31), to the northeast corner thereof; thence east along the south line of sections twenty-nine (29), twenty-eight (28), and twenty-seven (27), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-seven (27); thence north along the east line of said section twenty-seven (27), township four (4) south, range nineteen (19) east, to the northeast corner thereof; thence east along the south line of sections twenty-three (23) and twenty-four (24), township four (4) south, range nineteen (19) east, to the southeast corner of said section twenty-four (24); thence east along the south line of sections nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), township four (4) south, range twenty (20) east, to the southeast corner of said section twenty-four (24); thence north along the east line of said township to the northeast corner thereof; thence east along the south line of township three (3) south, range twenty-one (21) east, to the southeast corner of section thirty-three (33), township three (3) south, range twenty-one (21) east; thence north along the east line of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), and nine (9), in said township and range, to an intersection with the center of the channel of the Yellowstone river; thence down the center of the channel of the Yellowstone river to an intersection with the east line of section thirty-five (35), township two (2) south, range twenty-three (23) east, the place of beginning. The county seat is Columbus, Montana.

History: County created March 24, 1913, by petition and election, out of portions of Yellowstone, Carbon and Sweet Grass; part of Sweet Grass added to and part added to Sweet Grass, March 5, 1915, L. 1915, Ch. 74; boundaries defined by Ch. 205, L. 1921.

4351. SWEET GRASS COUNTY. Beginning at the southwest corner of section thirty-five (35), township seven (7) south, range twelve (12) east; and running thence north along the west boundaries of sections

thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), of said township seven (7) south, range twelve (12) east, continuing north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), of township six (6) south, range twelve (12) east, to the first standard parallel south; thence east along said first parallel south to the southwest corner of section thirty-five (35), township five (5) south, range twelve (12) east; thence north along the west boundary of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11), and two (2), in each of townships five (5), four (4), three (3), two (2), and one (1), respectively, range twelve (12) east, to the northwest corner of section two (2), township one (1) south, range twelve (12) east; thence west along the base line to the line between ranges eleven (11) and twelve (12) east; thence north along the line between ranges eleven (11) and twelve (12) east, observing the offsets and corrections to the northwest corner of township five (5) north, range twelve (12) east; thence east along said township line to the northeast corner of township five (5) north, range sixteen (16) east; thence south along the range line to the southwest corner of township five (5) north, range seventeen (17) east; thence east along the first standard parallel north to the northeast corner of section four (4), township four (4), north, range seventeen (17) east; thence south along the section line to the southeast corner of section thirty-three (33), township four (4) north, range seventeen (17) east; thence east along the township line to the southeast corner of township four (4) north, range eighteen (18) east; thence south along the range line to the southeast corner of township three (3) north, range eighteen (18) east; thence west along the line between townships two (2) and three (3) north, to the northeast corner of section five (5), township two (2) north, range eighteen (18) east; thence south along the east line of sections five (5), eight (8), seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32), to the southeast corner of section thirty-two (32), township two (2) north, range eighteen (18) east; thence west along the north line of sections five (5) and six (6), township one (1) north, range eighteen (18) east, to the northwest corner of said section six (6); thence south along the line between ranges seventeen (17) and eighteen (18) east, to the base line; thence west along said base line to the northwest corner of section six (6), township one (1) south, range eighteen (18) east; thence south along the west line of townships one (1) and two (2) south, range eighteen (18) east, to the southwest corner of section thirty-one (31), township two (2) south, range eighteen (18) east; thence west along the north line of township three (3) south, range seventeen (17) east, to the northwest corner of section six (6), township three (3) south, range seventeen (17) east; thence south along the west line of township three (3) south, range seventeen (17) east, to the northeast corner of section twenty-four (24), township three (3) south, range sixteen (16) east; thence west along the north line of sections twenty-four (24), twenty-three (23), twenty-two (22), twenty-one (21), twenty (20), and nineteen (19), township three (3) south, range sixteen (16) east, to the northwest corner of section nineteen (19), in township three (3) south, range sixteen (16) east; thence south along the west line of

township three (3) south, range sixteen (16) east, to the northeast corner of section one (1), township four (4) south, range fifteen (15) east; thence west along the north line of township four (4) south, range fifteen (15) east, to the northwest corner of section six (6), township four (4), south, range fifteen (15) east; thence south along the west line of townships four (4) and five (5) south, range fifteen (15) east; to the first standard parallel south; thence west along the first standard parallel south to a point which, when surveyed, will be the northwest corner of township six (6) south, range fourteen (14) east; thence south along the west line of township six (6) and seven (7) south, range fourteen (14) east, to a point which, when surveyed, will be the southwest corner of section thirty-one (31), township seven (7) south, range fourteen (14) east; thence west along the line dividing townships seven (7) and eight (8) south to the place of beginning. The county seat is Big Timber, Montana.

History: County created March 5, 1895, L. 1895, pp. 54-58; Sec. 4134, Pol. C. 1895; Sec. 2832, Rev. C. 1907; Stillwater county created from part of, Ch. 112, L. 1911; part of Stillwater added to and part added to Stillwater county, Ch. 74, L. 1915; Wheatland county created, including part of, Ch. 55, L. 1917; portion detached by creation Golden Valley county, Oct. 4, 1920; boundaries defined by Ch. 205, L. 1921.

4352. TETON COUNTY. Commencing at the intersection of the head waters of the north fork of the Sun river with the summit of the main range of the Rocky mountains; and thence southeasterly meandering and following the center of the channel of the north fork of the Sun river to Sun river; thence meandering down the center of the channel of Sun river to the line dividing ranges two (2) and three (3) west; thence north to the southwest corner of township twenty-two (22) north, range two (2) west; thence east to the Montana principal meridian; thence due north along said Montana principal meridian a distance of twenty-six (26) miles, more or less, to the northeast corner of section twenty-five (25), township twenty-six (26) north, range one (1) west; thence due west along the section line to the southwest corner of section twenty-two (22), township twenty-six (26) north, range three (3) west; thence due north along the section line to the southwest corner of section thirty-four (34), township twenty-seven (27) north, range three (3) west; thence due west along the township line three (3) miles to the southwest corner of section thirty-one (31), township twenty-seven (27) north, range three (3) west; thence due north along the township line three (3) miles to the southwest corner of section eighteen (18), township twenty-seven (27) north, range three (3) west; thence due west along the section line to the southwest corner of section eighteen (18), township twenty-seven (27) north, range four (4) west, a distance of six (6) miles; thence due north along the line between ranges four (4) and five (5) west, a distance of three (3) miles to the southwest corner of section thirty-one (31), township twenty-eight (28) north, range four (4) west; thence due west along the line between township twenty-seven (27) north and twenty-eight (28) north, to the point where such line, if extended, would intersect the summit of the main range of the Rocky mountains; thence in a southerly direction following the summit of the main range of the Rocky mountains to the place of beginning. The county seat is Chouteau, Montana.

History: County created March 1, 1893, L. 1893, p. 205; Sec. 4127, Pol. C. 1895; Sec. 2825, Rev. C. 1907; Toole county created, May 7, 1914, from portion

of Teton; Glacier county created April 1, 1919, Ch. 21, L. 1919, from portion of Teton; Pondera county created April 1, 1919, Ch. 22, L. 1919, from portion of Teton; boundaries defined by Ch. 205, L. 1921; boundary line with Chouteau changed and portion added to Teton by Ch. 174, L. 1921, effective March 5, 1921. See Secs. 4362 to 4368.

4353. TOOLE COUNTY. Beginning at a point on the international boundary line where it intersects with the line between ranges three (3) and four (4) east; thence west about forty-two (42) miles along said international boundary line to the northwest corner of section six (6), township thirty-seven (37) north, range four (4) west; thence south about thirty-six (36) and one-half (½) miles along the range line between ranges four (4) and five (5) west, to the center of Marias river; thence following the center of said stream in a southeasterly direction to its intersection with the section line between sections fifteen (15) and sixteen (16), township thirty-one (31) north, range three (3) west; thence south about three (3) miles to the southwest corner of section thirty-four (34) township thirty-one (31) north, range three (3) west; thence east about nine (9) miles, to the northwest corner of section six (6), township thirty (30) north, range one (1) west; thence south about three (3) miles to the southwest corner of section eighteen (18), township thirty (30) north, range one (1) west; thence east about six (6) miles to the southeast corner of section thirteen (13), township thirty (30) north, range one (1) west; thence south about nine (9) miles to the southwest corner of section thirty-one (31), township twenty-nine (29) north, range one (1) east; thence east about eighteen (18) miles, to the southeast corner of section thirty-six (36), township twenty-nine (29), north, range three (3) east; thence north about forty-eight (48) miles to the northeast corner of section one (1), township thirty-six (36) north, range three (3) east; thence east to the southeast corner of section thirty-six (36), township thirty-seven (37) north, range three (3) east; thence north along the line between ranges three (3) and four (4) east, to the place of beginning. The county seat is Shelby, Montana.

History: County created by petition and election, out of Teton and Hill counties, effective May 7, 1914; boundaries defined by Ch. 205, L. 1921.

4354. TREASURE COUNTY. Beginning at the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east; thence east along the north line of township eight (8) north, to the northeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence south along the section line to the southeast corner of section two (2), township eight (8) north, range thirty-six (36) east; thence east to the intersection of the south boundary line of section one (1) with the range line between ranges thirty-six (36) and thirty-seven (37) east; thence south along the range line between ranges thirty-six (36) and thirty-seven (37) east, to the intersection of the north township line of township seven (7) north; thence east along the township line of township seven (7) north, to the intersection with the range line between ranges thirty-seven (37) and thirty-eight (38) east; thence south along the line between ranges thirty-seven (37) and thirty-eight (38) east, to the center of the main channel of the Yellowstone river; thence in a southeasterly course along the main channel of the Yellowstone river, to the east line of section six (6), township six (6) north,

range thirty-eight (38) east; thence due south along the east line of sections six (6), seven (7), eighteen (18), nineteen (19), thirty (30), and thirty-one (31), of townships six (6) and five (5) north, range thirty-eight (38) east, to the southeast corner of section thirty-one (31), township five (5) north, range thirty-eight (38) east; thence east along the north line of township four (4) north, range thirty-eight (38) east, to the northeast corner thereof; thence south to the southeast corner of section thirty-six (36), township two (2) north, range thirty-eight (38) east; thence west to the southwest corner of township two (2) north, range thirty-eight (38) east; thence north to the southwest corner of section eighteen (18), township two (2) north, range thirty-eight (38) east; thence west along the south line of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), to the southwest corner of section eighteen (18), township two (2) north, range thirty-seven (37) east; thence north along the range line to the southwest corner of section thirty-one (31), township three (3) north, range thirty-seven (37) east; thence west along the south line of township three (3) north, range thirty-six (36) east, and township three (3) north, range thirty-five (35) east, to the southwest corner of said township three (3) north, range thirty-five (35) east; thence north along the range line to the southwest corner of section thirty-one (31), township four (4) north, range thirty-five (35) east; thence west along the north line of the township three (3) north, range thirty-four (34) east, to the center of the Big Horn river; thence in a northeasterly direction along the center of the Big Horn river to the point of confluence of the Yellowstone and Big Horn rivers in township five (5) north, range thirty-four (34) east; running thence along the west line of section twenty-two (22), township five (5) north, range thirty-four (34) east, to the northwest corner of said section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-one (21); thence north one (1) mile to the northeast corner of section seventeen (17); thence west one (1) mile to the northwest corner of section seventeen (17); thence north two (2) miles to the northeast corner of section six (6), township five (5) north, range thirty-four (34) east; thence west one (1) mile to the southeast corner of section thirty-six (36) township six (6) north, range thirty-three (33) east; thence north along the range line two (2) miles to the northeast corner of section twenty-five (25); thence west one (1) mile to the northwest corner of section twenty-five (25); thence north one (1) mile to the northeast corner of section twenty-three (23); thence west one (1) mile to the northwest corner of section twenty-three (23); thence north two (2) miles to the northeast corner of section ten (10); thence west one (1) mile to the northwest corner of section ten (10); thence north one (1) mile to the northeast corner of section four (4), township six (6) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-three (33), township seven (7) north, range thirty-three (33) east; thence north three (3) miles to the northeast corner of section twenty (20); thence west one (1) mile to the northwest corner of section twenty (20); thence north one (1) mile to the northeast corner of section eighteen (18); thence west one (1) mile to the southwest corner of section seven (7); thence north along the range line two (2) miles to

the northwest corner of section six (6), township seven (7) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-six (36), township eight (8) north, range thirty-two (32) east; thence north one (1) mile to the north west corner of section thirty-six (36); thence west one (1) mile to the southwest corner of section twenty-six (26); thence north two (2) miles to the northeast corner of section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-two (22); thence north two (2) miles to the northeast corner of section nine (9); thence west one (1) mile to the northwest corner of section nine (9); thence north along the west side of section four (4), to the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east, to the place of beginning. The county seat is Hysham, Montana.

History: County created by Ch. 5, L. 1919, effective April 1, 1919, from portion of Rosebud county; boundaries defined by Ch. 205, L. 1921.

4355. VALLEY COUNTY. Commencing at a point where the range line between ranges thirty-four (34) and thirty-five (35) east, of the Montana meridian joins the international boundary line between the United States and Canada; thence running south about thirty (30) miles along said range line, observing the offsets and corrections to a point where said range line intersects the township line between townships thirty-two (32) and thirty-three (33) north; thence east along said township line about three-fourths (¾) of a mile to a point on said township line where said line intersects the section line between sections four (4) and five (5), in township thirty-two (32) north, of range thirty-five (35) east; thence south about four and one-half (4½) miles on the section line to a point where said section line intersects the center of the channel of Milk river; thence westerly about three (3) miles along the center of the channel of Milk river to a point where the same intersects the section line between sections twenty-three (23) and twenty-four (24), in township thirty-two (32) north, range thirty-four (34) east; thence south about two (2) miles along the section line to a point where said section line intersects the township line between townships thirty-one (31) and thirty-two (32) north; thence west about two (2) miles along said township line to the section corner common to sections three (3) and four (4), in township thirty-one (31) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships thirty (30) and thirty-one (31) north; thence east about two (2) miles on said township line to the northwest corner of section one (1), township thirty (30) north, range thirty-four (34) east; thence south about six (6) miles along the section line to a point where said section line intersects the township line between townships twenty-nine (29) and thirty (30) north; thence west about five (5) miles along said township line to a point where said township line intersects the range line between ranges thirty-three (33) and thirty-four (34) east; thence south about forty-three (43) miles along said range line, observing the offsets and corrections, to a point where said range line intersects the center of the channel of the Missouri river; thence in an easterly direction following the center of the channel of the Missouri river to its intersection with the line dividing ranges forty-

five (45) and forty-six (46) east; thence running north on the line dividing ranges forty-five (45) and forty-six (46) east, observing offsets and corrections to the eighth standard parallel north; thence west along said eighth standard parallel north between townships thirty-two (32) and thirty-three (33) north, to the southwest corner of township thirty-three (33) north, range forty-four (44) east; thence north along the range line between ranges forty-three (43) and forty-four (44) east, a distance of about eighteen (18) miles, to the township line between townships thirty-five (35) and thirty-six (36) north; thence west along said township line, a distance of about six (6) miles, to the range line between ranges forty-two (42) and forty-three (43) east; thence northerly along said range line, observing the offsets and corrections thereof, a distance of about twelve (12) miles, to the northern boundary line of the state of Montana; thence west along said boundary line, a distance of about forty-eight (48) miles, to the place of beginning. The county seat is Glasgow, Montana.

History: County created by act of Feb. 6, 1893, L. 1893, p. 202, effective March 1, 1893; Sec. 4125, Pol. C. 1895; Sec. 2823, Rev. C. 1907; Sheridan county detached March 24, 1913; Phillips county created from portion of Valley, Feb. 5, 1915; Daniels county created from portion of Valley, Aug. 30, 1920; boundaries defined by Ch. 205, L. 1921.

4356. WHEATLAND COUNTY. Beginning at the point where the boundary line between ranges eleven (11) and twelve (12) east, intersects the summit of the Little Belt mountains; thence south along the said boundary line between the said ranges eleven (11) and twelve (12), to the southwest corner of township nine (9) north, range twelve (12) east; thence west along the second standard parallel north, to the northwest corner of township eight (8) north, range twelve (12) east; thence south along the boundary line between said ranges eleven (11) and twelve (12), to the southwest corner of township six (6) north, range twelve (12) east; thence east along the line between townships five (5) and six (6) north, to the southeast corner of township six (6) north, range eighteen (18) east; thence north along the line between ranges eighteen (18) and nineteen (19) east, to the northeast corner of township eight (8) north, range eighteen (18) east; thence east along the second standard parallel north to the southeast corner of township nine (9) north, range eighteen (18) east; thence north along the line between ranges eighteen (18) and nineteen (19) east, to the northeast corner of section twenty-five (25), township eleven (11) north, range eighteen (18) east; thence west along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), and thirty (30), in townships eleven (11) north, range eighteen (18) east, eleven (11) north, range seventeen (17) east, and eleven (11) north, range sixteen (16) east, to a point where said section line, extended, intersects the summit of the divide between the Musselshell and Missouri rivers; thence following the summit of said divide in a westerly direction to the place of beginning. The county seat is Harlowton, Montana.

History: County created April 1, 1917, Ch. 55, L. 1917, from portions of Meagher and Sweet Grass; boundaries defined by Ch. 205, L. 1921.

4357. WIBAUX COUNTY. Beginning at the point of intersection of the center of the channel of the Yellowstone river with a line drawn

east and west through the center of section fifteen (15) of township eighteen (18) north, range fifty-seven (57) east; thence east through the center of said section to a point of intersection with the east line of said section; thence south one-half (½) mile along the east line of the said section fifteen (15), township eighteen (18) north, range fifty-seven (57) east, to the southeast corner of said section; thence east one-half (½) mile along the south line of section fourteen (14), township eighteen (18) north, range fifty-seven (57) east; thence south one-half (½) mile to the center of section twenty-three (23), township eighteen (18) north, range fifty-seven (57) east; thence east one-half (½) mile to a point of intersection with the east line of said section twenty-three (23); thence south one-half (½) mile along the east line of said section twenty-three (23), to the southeast corner of said section twenty-three (23); thence east one-half (½) mile along the south line of section twenty-four (24), of township eighteen (18) north, range fifty-seven (57) east; thence south one-half (½) mile to the center of section twenty-five (25), township eighteen (18) north, range fifty-seven (57) east; thence one-half (½) mile east to the east line of said section twenty-five (25); thence south one (1) mile along the west line of sections thirty (30) and thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence east one-half (½) mile to the center of section thirty-one (31), township eighteen (18) north, range fifty-eight (58) east; thence south one (1) mile to the center of section six (6), township seventeen (17) north, range fifty-eight (58) east; thence east one-half (½) mile to the east line of said section six (6); thence south one-half (½) mile along the east line of said section six (6); thence east one-half (½) mile along the south line of section five (5), township seventeen (17) north, range fifty-eight (58) east; thence south one-half (½) mile to the center of section eight (8), township seventeen (17) north, range fifty-eight (58) east; thence east one-half (½) mile to the east line of said section eight (8); thence south two (2) miles along the east line of sections eight (8), seventeen (17), and twenty (20), all in township seventeen (17) north, range fifty-eight (58) east; thence east one-half (½) mile to the center of section twenty-one (21), township seventeen (17) north, range fifty-eight (58) east; thence south one and one-half (1½) miles through the center of section twenty-eight (28), township seventeen (17) north, range fifty-eight (58) east; to the south line of said section twenty-eight (28); thence east one-half (½) mile along the south line of section twenty-eight (28), township (17) north, range fifty-eight (58), east to the southeast corner of said section twenty-eight (28); thence south one (1) mile along the east line of section thirty-three (33), township seventeen (17) north, range fifty-eight (58) east, to the southeast corner of said section thirty-three (33); thence east and along the north line of section one (1), township sixteen (16) north, range fifty-eight (58) east; to the quarter corner on the north line of the said section one (1); thence south three (3) miles through the centers of sections one (1), twelve (12), and thirteen (13), all in township sixteen (16) north, range fifty-eight (58) east, to the south line of said section thirteen (13); thence east one-half (½) mile along the south line of said section thirteen (13), township sixteen (16) north, range fifty-eight (58) east, to the southeast corner of said section thirteen (13);

thence south six and one-half (6½) miles along the range line between ranges fifty-eight (58) and fifty-nine (59), to the quarter corner on the east line of section twenty-four (24), township fifteen (15) north, range fifty-eight (58) east; thence west one (1) mile through the center of said section twenty-four (24) to the west line of said section twenty-four (24); thence south two and one-half (2½) miles along the east line of sections twenty-three (23), twenty-six (26), and thirty-five (35), all in township fifteen (15) north, range fifty-eight (58) east, to the southeast corner of said section thirty-five (35); thence west and along the township line one-half (½) mile to the quarter corner on the north line of section two (2), township fourteen (14) north, range fifty-eight (58) east; thence south one (1) mile through the center of said section two (2), to the south line of said section two (2); thence west and along the south line of said section two (2), one-half (½) mile to the southwest corner of said section two (2); thence south one (1) mile and along the east line of section ten (10), township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of said section ten (10); thence west one-half (½) mile and along the south line of said section ten (10), to the quarter corner on the south line of said section ten (10); thence south one (1) mile through the center of section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the south line of the said section fifteen (15); thence west one-half (½) mile and along the south line of said section fifteen (15), township fourteen (14) north, range fifty-eight (58) east, to the southwest corner of said section fifteen (15); thence south one (1) mile along the west line of section twenty-two (22), of township fourteen (14) north, range fifty-eight (58) east, to the southeast corner of section twenty-one (21), township fourteen (14) north, range fifty-eight (58) east; thence west one-half (½) mile along the south line of said section twenty-one (21); thence south one-half (½) mile to the center of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence west one-half (½) mile to the west line of section twenty-eight (28), township fourteen (14) north, range fifty-eight (58) east; thence south one-half (½) mile along the west line of said section twenty-eight (28) to the southwest corner of said section twenty-eight (28); thence west one-half (½) mile and along the north line of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the quarter corner of the north line of said section thirty-two (32); thence south one (1) mile through the center of said section thirty-two (32), township fourteen (14) north, range fifty-eight (58) east, to the south line of said section thirty-two (32); thence west one-half (½) mile and along the south line of said section thirty-two (32), to the southwest corner of said section thirty-two (32); thence south one (1) mile and along the east line of section six (6), township thirteen (13) north, range fifty-eight (58) east, to the southeast corner of said section six (6); thence west one (1) mile and along the south line of section six (6), to the southwest corner of the said section six (6); thence south one (1) mile and along the east line of section twelve (12), township thirteen (13) north, range fifty-seven (57) east, to the southeast corner of said section twelve (12); thence west one (1) mile and along the south line of said section twelve (12), to the southwest corner

of said section twelve (12); thence south one-half (½) mile and along the east line of section fourteen (14), township thirteen (13) north, range fifty-seven (57) east; to the quarter corner on the east line of the said section fourteen (14); thence west one-half (½) mile to the center of the said section fourteen (14); thence south one-half (½) mile to a point of intersection with the south line of said section fourteen (14); thence at right angles west one (1) mile along the south line of sections fourteen (14) and fifteen (15), all in township thirteen (13) north, range fifty-seven (57) east; to the quarter corner on the south line of said section fifteen (15); thence south one-half (½) mile to the center of section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east; thence west one-half (½) mile to a point on the west line of said section twenty-two (22); thence south one-half (½) mile along the west line of the said section twenty-two (22), township thirteen (13) north, range fifty-seven (57) east, to the southwest corner of said section twenty-two (22); thence west along the south line of sections twenty-one (21), twenty (20), and nineteen (19), township thirteen (13) north, range fifty-seven (57) east, and along the north line of sections twenty-five (25) and twenty-six (26), township thirteen (13) north, range fifty-six (56) east, to the northwest corner of section twenty-six (26), township thirteen (13) north, range fifty-six (56) east; thence south two (2) miles along the west line of sections twenty-six (26) and thirty-five (35), to the southwest corner of said section thirty-five (35), township thirteen (13) north, range fifty-six (56) east. Thence west along the north line of township twelve (12) north, range fifty-seven (57) east, to the northwest corner of said township; thence at right angles south ten (10) miles along the dividing line between ranges fifty-six (56) and fifty-seven (57), to the southwest corner of section nineteen (19), township eleven (11) north, range fifty-seven (57) east; thence nine (9) miles along the section line to the northwest corner of section twenty-seven (27), township eleven (11) north, range fifty-eight (58) east; thence one (1) mile south along the west line of said section twenty-seven (27), to the southwest corner of said section twenty-seven (27); thence east along the section line to the southwest corner of section thirty (30), township eleven (11) north, range fifty-nine (59) east; thence south along the line between ranges fifty-eight (58) and fifty-nine (59) east, to the southwest corner of section six (6), township ten (10) north, range fifty-nine (59) east; thence east along the section line to the point where the south line of section four (4), township ten (10) north, range sixty-one (61) east, intersects the Montana-North Dakota boundary line; thence north along the Montana-North Dakota boundary line to its intersection with a line dividing the north from the south half of township nineteen (19) north, range sixty (60) east; thence west along the section line to the southwest corner of section eighteen (18), township nineteen (19) north, range sixty (60) east; thence south along the line between ranges fifty-nine (59) and sixty (60) east, to the southwest corner of section thirty-one (31), township nineteen (19) north, range sixty (60) east; thence west along the line between ranges eighteen (18) and nineteen (19) north, to an intersection with the center of the Yellowstone river; thence southwesterly, following

the center of the channel of the Yellowstone river to the place of beginning. The county seat is Wibaux, Montana.

History: County created by petition and election, effective Aug 17, 1914, from portions of Dawson and Fallon counties; conflict in northern boundary with Richland; northern boundary fixed by Ch. 24, L. 1915, effective Feb. 19, 1915; boundaries extended, Sec. 2, Ch. 139, L. 1917; boundary line between Wibaux and Fallon counties changed and established, Ch. 185, L. 1919; boundaries defined by Ch. 205, L. 1921.

4358. YELLOWSTONE COUNTY. Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), in township two (2) south, range twenty-four (24) east, intersects the said river; thence south along the west line of section twenty-one (21), and the west line of sections twenty-eight (28) and thirty-three (33), in said township, to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point where it is intersected by the west line of section eight (8), in township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8) and the west line of sections seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32) of said township, to the southwest corner of section thirty-two (32), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along the line between ranges twenty-four (24) and twenty-five (25) east, to the southeast corner of section twenty-four (24), township four (4) south, range twenty-four (24) east; thence east to the northeast corner of section twenty-five (25), township four (4) south, range twenty-six (26) east; thence south to the southwest corner of section nineteen (19), township four (4) south, range twenty-seven (27) east; thence east to the southeast corner of section twenty-four (24), township four (4) south, range twenty-seven (27) east; thence north to the northeast corner of section thirteen (13), township four (4) south, range twenty-seven (27) east; thence east to the southwest corner of section seven (7), township four (4) south, range twenty-nine (29) east; thence north to the northwest corner of section six (6), township four (4) south, range twenty-nine (29) east; thence east to the northwest corner of section six (6), township four (4) south, range thirty (30) east; thence north on the line between ranges twenty-nine (29) and thirty (30) east, to the northwest corner of section six (6), township one (1) south, range thirty (30) east; thence east to the southwest corner of section thirty-one (31), township one (1) north, range thirty (30) east; thence north on the line between ranges twenty-nine (29) and thirty (30) east, to the northwest corner of section thirty (30), township two (2) north, range thirty (30) east; thence east to the northwest corner of section twenty-eight (28), township two (2) north, range thirty-one (31) east; thence north to the northwest corner of section sixteen (16), township two (2) north, range thirty-one (31), east; thence east to the northwest corner of section fourteen (14), township two (2) north, range thirty-one (31) east; thence north to the northwest corner of section two (2), township two (2) north, range thirty-one (31) east; thence east to the northwest corner of section six (6), township two (2) north, range thirty-two (32) east; thence north to the northwest corner of section thirty (30), township

three (3) north, range thirty-two (32) east; thence east along the north line of sections thirty (30), twenty-nine (29), twenty-eight (28), twenty-seven (27), twenty-six (26), and twenty-five (25), township three (3) north, range thirty-two (32) east, to the southwest corner of section nineteen (19), township three (3) north, range thirty-three (33) east; thence north along the line between ranges thirty-two (32) and thirty-three (33) east, to the northwest corner of section six (6), township three (3) north, range thirty-three (33) east; thence east along the line between township three (3) and four (4) north, to the center of the channel of the Big Horn river; thence in a northeasterly direction along the center of the Big Horn river to the point of confluence of the Yellowstone and Big Horn rivers in township five (5) north, range thirty-four (34) east; running thence along the west line of section twenty-two (22), township five (5) north, range thirty-four (34) east, to the northwest corner of said section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-one (21); thence north one (1) mile to the northeast corner of section seventeen (17); thence west one (1) mile to the northwest corner of section seventeen (17); thence north two (2) miles to the northeast corner of section six (6), township five (5) north, range thirty-four (34) east; thence west one (1) mile to the southeast corner of section thirty-six (36), township six (6) north, range thirty-three (33) east; thence north along the range line two (2) miles to the northeast corner of section twenty-five (25); thence west one (1) mile to the northwest corner of section twenty-five (25); thence north one (1) mile to the northeast corner of section twenty-three (23); thence west one (1) mile to the northwest corner of section twenty-three (23); thence north two (2) miles to the northeast corner of section ten (10); thence west one (1) mile to the northwest corner of section ten (10); thence north one (1) mile to the northeast corner of section four (4), township six (6) north, range thirty-three (33) east; thence west one (1) mile to the southwest corner of section thirty-three (33), township seven (7) north, range thirty-three (33) east; thence north three (3) miles to the northeast corner of section twenty (20); thence west one (1) mile to the northwest corner of section twenty (20); thence north one (1) mile to the northeast corner of section eighteen (18); thence west one (1) mile to the southwest corner of section seven (7); thence north along the range line two (2) miles to the northwest corner of section six (6), township seven (7) north, range thirty-three (33) east; thence west one mile to the southwest corner of section thirty-six (36), township eight (8) north, range thirty-two (32) east; thence north one (1) mile to the northwest corner of section thirty-six (36); thence west one (1) mile to the southwest corner of section twenty-six (26); thence north two (2) miles to the northeast corner of section twenty-two (22); thence west one (1) mile to the northwest corner of section twenty-two (22); thence north two (2) miles to the northeast corner of section nine (9); thence west one (1) mile to the northwest corner of section nine (9); thence north along the west side of section four (4) to the northwest corner of section four (4), township eight (8) north, range thirty-two (32) east; thence west along the second standard parallel north to the southeast corner of lot four (4), in section five (5); thence north to the northeast

corner of lot one (1), in section five (5); thence west to the northwest corner of section six (6), township eight (8) north, range thirty-two (32) east; thence south on the line between ranges thirty-one (31) and thirty-two (32) east, to the southwest corner of section thirty-one (31), township eight (8) north, range thirty-two (32) east; thence west to the northeast corner of section two (2), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section two (2); thence west to the northeast corner of section ten (10), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section ten (10); thence west to the northeast corner of section sixteen (16), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section sixteen (16); thence west to the northeast corner of section twenty (20), township seven (7) north, range thirty (30) east; thence south to the southeast corner of said section twenty (20); thence west to the southwest corner of said section twenty (20); thence south two (2) miles to the southeast corner of section thirty-one (31), township seven (7) north, range thirty (30) east, thence west to the northeast corner of township six (6) north, range twenty-nine (29) east; thence south to the southeast corner of section thirteen (13), township six (6) north, range twenty-nine (29) east; thence west to the northeast corner of section twenty-two (22), township six (6) north, range twenty-seven (27) east; thence south to the southeast corner of said section twenty-two (22); thence west to the southeast corner of section twenty (20), township six (6) north, range twenty-seven (27) east; thence south to the southeast corner of section twenty-nine (29), township six (6) north, range twenty-seven (27) east; thence west to the southeast corner of section twenty-five (25), township six (6) north, range twenty-six (26) east; thence south to the southeast corner of township five (5) north, range twenty-six (26) east; thence west along the first standard parallel north to the northwest corner of section six (6), township four (4) north, range twenty- three (23) east; thence south along the east line of townships three (3) and four (4) north, range twenty-two (22) east, to the southeast corner of township three (3) north, range twenty-two (22) east; thence east along the north line of section six (6), township two (2) north, range twenty-three (23) east, to the northeast corner of said section six (6); thence running south along the east line of sections six (6), seven (7), eighteen (18), nineteen (19), thirty (30), and thirty-one (31), of township two (2) north, range twenty-three (23) east, and one (1) north, range twenty-three (23) east, to the base line; thence west along the base line to the northeast corner of section five (5), township one (1) south, range twenty-three (23) east; thence south along the east line of sections five (5), eight (8), seventeen (17), twenty (20), twenty-nine (29), and thirty-two (32), of township one (1) south, range twenty-three (23) east, to the southeast corner of said section thirty-two (32); thence south along the east line of section five (5), to the northwest corner of section nine (9), township two (2) south, range twenty-three (23) east; thence east along the north line of said section nine (9), to the northeast corner thereof; thence south along the east line of sections nine (9) and sixteen (16), township two (2) south, range twenty-three (23) east, to the northwest corner of section twenty-

two (22), said township and range; thence east along the north line of said section twenty-one (22), to the northeast corner thereof; thence south along the east line of said section twenty-two (22), to the northwest corner of section twenty-six (26), township two (2) south, range twenty-three (23) east; thence east along the north line of said section twenty-six (26), to the northeast corner thereof, thence south along the east line of sections twenty-six (26) and thirty-five (35), to an intersection with the center of the channel of the Yellowstone river; thence in an easterly direction, following the center of the channel of the Yellowstone river to the place of beginning. The county seat is Billings, Montana.

History: County created Feb. 26, 1883, L. 1883, p. 119; extended to include part of Crow Indian Reservation, March 5, 1885, L. 1885, p. 74; Sec. 742, 5th Div. Comp. Stat. 1887; boundaries extended March 4, 1891, L. 1891, p. 223; Secs. 4119, 4135, Pol. C. 1895; Carbon county created from part of, March 4, 1895, L. 1895, pp. 49-54; Sweet Grass county created, including part of, March 5, 1895, L. 1895, pp. 54-58; part of Meagher added to by Sec. 8, supra; boundaries extended to include Crow Indian Reservation W. of Big Horn river, March 5, 1897, L. 1897, p. 55, Secs. 2807, 2808, 2809, 2833, Rev. C. 1907; Musselshell county created, including part of, Ch. 25, L. 1911; Big Horn county created, including part of, Jan. 13, 1913; Stillwater county created, including part of, March 24, 1913; boundary line with Rosebud county changed, Ch. 159, L. 1917; boundary line between Yellowstone and Carbon fixed by Ch. 75, L. 1919; boundaries defined by Ch. 205, L. 1921.

4359. Effect of act. No county not herein mentioned, created, or changed by the present legislative assembly, or now in process of creation by petition and election shall be in any manner affected by the terms of this act.

History: En. Sec. 2, Ch. 205, L. 1921.

4360. Township and range designations. All township and range designations used in this act are hereby expressly declared to refer to the Montana principal base and meridian, according to the United States government survey thereof.

History: En. Sec. 3, Ch. 205, L. 1921.

4361. Publication of act in codes. This act shall be published in the revised codes of Montana of 1921, but only the chapter number and title of said act shall be printed in the session laws of the seventeenth legislative assembly.

History: En. Sec. 4, Ch. 205, L. 1921.

4362. Change in boundary of Teton and Chouteau. The boundary line between the counties of Teton and Chouteau be and the same hereby is changed so that hereafter the said boundary between the said counties shall be as follows: Commencing at a point on the boundary line between the counties of Chouteau and Cascade where the line between ranges two and three east of the Montana meridian intersects said boundary line; thence running due north to a point where the said line between ranges two and three east of the Montana meridian intersects the boundary line between the counties of Chouteau and Pondera, and taking from the said county of Chouteau and adding to and making a part of the said county of Teton, all of the following described territory, to-wit: township twenty-three (23), twenty-four (24), and twenty-five (25), and sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33),

thirty-four (34), thirty-five (35), and thirty-six (36) in township twenty-six (26), north of range one (1), east of the Montana meridian, and townships twenty-three (23), twenty-four (24), and twenty-five (25), and sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36) of township twenty-six (26) north of range two (2), east of the Montana meridian.

History: En. Sec. 1, Ch. 174, L. 1921.

4363. Indebtedness—Apportionment and payment. The governor shall, within fifteen days after the passage and approval of this act, appoint three persons as a board of commissioners, whose duties shall be to meet and apportion the indebtedness between the above described territory and Chouteau county in the manner provided for in chapter 226 of the session laws of the sixteenth legislative assembly of the state of Montana; provided, that the notes or securities covering special relief under chapter 8 of the extraordinary session of 1919 shall not be counted among the assets of the county from which territory is taken under the terms of this act, but any notes or securities covering loans made in territory so taken may be turned over to such new county and receipt taken for the same, but the amounts so turned over or retained by the old county shall not be counted in the transaction. If, upon the settlement between such territory and the said county of Chouteau, the said territory shall be found to be indebted to said Chouteau county, then such indebtedness shall be assumed and paid by Teton county in the manner provided in said chapter 226 of the session laws of the sixteenth legislative assembly.

History: En. Sec. 2, Ch. 174, L. 1921.

Time of apportionment of assets or liabilities on division of territory by legislature, see note in 18 Ann. Cas. 324.

4364. Transmission list delinquent taxes. The treasurer of said Chouteau county shall at the time of the adjustment, as provided in this act, make out and transmit to the county commissioners of Teton county a list of all delinquent taxes and amounts of uncollected taxes within the limits of the territory hereinbefore described; provided, that no delinquent taxes due the county of Chouteau shall be considered in the adjustment of the indebtedness hereinbefore provided.

History: En. Sec. 3, Ch. 174, L. 1921.

4365. Payment of school moneys to Teton county. It is hereby made the duty of the county treasurer of Chouteau county to transfer and pay over to the county of Teton, on or before the first day of July, 1921, all moneys in said county of Chouteau to the credit of school districts embraced within the limits of said territory hereby taken from said county of Chouteau, which said moneys so transferred shall be held by the said county of Teton to the credit and for the use of the same school districts as they formerly existed.

History: En. Sec. 4, Ch. 174, L. 1921.

4366. Contract for transcribing records of Chouteau county. The board of county commissioners of Teton county are hereby empowered, and it shall be their duty, to contract with lowest responsible bidder for

transcribing and indexing the records of Chouteau county as relate to, or affect, property, or the title thereof, of the above described territory hereby taken from said Chouteau county; and such records when so transcribed and certified, as herein provided shall have the same force and effect as such original records; provided, that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff's certificates of sale, liens, and original affidavits of registration which may affect or relate to property or persons situate within said above described territory shall be by the county clerk of Chouteau county delivered to the county clerk of Teton county and be preserved by the county clerk of Teton county as permanent files. The county clerk of Chouteau county shall receive for his services in comparing and certifying to the correctness of the copy of said records, five dollars per day while engaged in such labor, which amount shall be paid by Teton county on the completion of said labor.

History: En. Sec. 5, Ch. 174, L. 1921.

4367. Transfer of actions affecting real estate. All actions pending in the district court of Chouteau county for the recovery of the possession of, quieting title to, or for the enforcement of liens upon, or any actions affecting real estate lying within the said territory hereby taken from said Chouteau county, or any other action or special proceeding, shall, on motion of any of the parties thereto, be transferred to the district court of Teton county, and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of said Teton county.

History: En. Sec. 6, Ch. 174, L. 1921.

4368. Continuance of certain officers. All township, school, and other officers within such territory hereby taken from said Chouteau county shall and may continue, to hold office and exercise the duties pertaining thereto until the expiration of the term for which said officers were elected or appointed.

History: En. Sec. 7, Ch. 174, L. 1921.

CHAPTER 3.

REMOVAL OF COUNTY SEAT.

Section 4369. Removal of County Seat—Petition.
4370. Submission to Electors—Who Are Taxpayers.
4371. Election, Notice of, How Held and Conducted.
4372. Voter to Vote for Place He Prefers.
4373. Publication of Result.
4374. Place Chosen to Be County Seat.
4375. Statement of Result and Notice Transmitted.
4376. No Second Election to Be Held Within Four Years.
4377. County Seat May Be Removed From Time to Time.

4369. Removal of county seat—Petition. Whenever the inhabitants of any county of this state desire to remove the county seat of a county from the place where it is fixed by law, or otherwise, to another place, they may present a petition to the board of county commissioners of their county praying such removal, such place to be named in the petition, and that an election be held to determine whether or not such removal must be made. The petition to remove the county seat of the county from

the place where it is fixed by law to another place must be presented to the board of county commissioners at least sixty days prior to any action thereon being taken by the board of county commissioners, and action on said petition by the board of county commissioners must be had at a regular meeting of said board of county commissioners. Such petition must be filed with the county clerk, and the county clerk, immediately upon the filing of said petition, must cause to be printed in every newspaper published within said county a notice to the effect that a petition praying for the removal of said county seat has been filed with the county clerk, and that said petition is open to the inspection of any and all persons interested therein, and that said petition will be presented to the board of county commissioners at its next regular session for action thereon. No other or additional petition than the one originally filed shall be considered by the board of county commissioners, except that at any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that he desires to have his name withdrawn from such petition; provided, that not more than one withdrawal shall be permitted by the same person.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919. Cal. Pol. C. Sec. 3976.

A board of county commissioners exercises judicial functions when it decides whether a petition for the submission of the removal of the county seat to the electors of the county is signed by sufficient number to require such submission. State ex rel. Buck v. Board of Commrs., 21 Mont. 469, 474, 54 Pac. 939.

The words "changing" and "removing" found in the constitution and the statute laws refer to the act of changing or removing a county seat that has been definitely located, and have no reference to a so-called temporary or provisional county seat. State ex rel. Geiger v. Long, 43 Mont. 401, 412, 117 Pac. 104.

Conceding that the selection or removal of a county seat is a purely political function, that function has not been confided to judges of election or to the canvassers of the returns, but to a certain proportion of the qualified electors of the county affected; it rests with the courts to ascertain and decide whether the choice actually made by the requisite proportion of the qualified electors has been duly declared; and, if not, to declare it and make it effective. Poe v. Sheridan County, 52 Mont. 279, 288, 157 Pac. 185.

Cited or applied as section 2851, Revised Codes, before amendment, in State ex rel. Powers v. Dale, 47 Mont. 227, 230, 131 Pac. 670, Ann. Cas. 1914D, 227; Ainsworth v. McKay, 55 Mont. 270, 271, 175 Pac. 887.

Right to withdraw names from petition for removal of county seat, see note in 35 L. R. A. (N. S.) 1113.

4370. Submission to electors—Who are taxpayers. If the petition is signed by sixty-five per cent. of the taxpayers of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county; provided, that the term "taxpayers" used in this section shall be deemed to mean "ad valorem taxpayers," and that for the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the poll-books in the county clerk's office constituting the returns of the last general election held in their county, for the purpose of ascertaining whether such petition bears the names of sixty-five per cent. of the taxpaying voters listed therein; and they shall make a similar comparison of the names signed to the petition with those appearing upon the listed assessment-roll of the county for the purpose of ascertaining whether the

petition bears the names of sixty-five per cent. of the ad valorem taxpayers as listed in said assessment-roll; and if such petition then shows that it has not been signed by sixty-five per cent. of the voters of the county who are ad valorem taxpayers thereof, after deducting from the said original petition the names of all persons who may have signed such original petition, and who may have filed, or caused to be filed, with the county clerk of said county or the board of county commissioners, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient, and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919. Cal. Pol. C. Sec. 3977.

The official duty devolving upon the commissioners is presumed to have been regularly performed; it is presumed that the board compared the names signed to the petition with the poll-books of the "last election." State ex rel. Stringfellow v. Board of Commrs., 42 Mont. 62, 77, 111 Pac. 144.

A petition for the removal of a county seat is sufficient if it is signed by the required number of ad valorem taxpayers of the county, provided all the persons necessary to make up such number are qualified voters. State ex rel. Stringfellow v. Board of Commrs., 42 Mont. 62, 78, 111 Pac. 144.

Where a petition signed by the requisite number of ad valorem taxpayers of a county, who were qualified voters, for the change of a county seat, was submitted to the county commissioners, and was denied because it did not contain the number of taxpayers of the county required by the statute, it must be presumed that the petition was found sufficient, except for the fact that the board claimed that it should contain such number of taxpayers, which was determined to the contrary, in which case there was no discretion for the board to exercise, and mandamus was available to compel them to give legal effect to the petition. State ex rel. Stringfellow v. Board of Commrs., 42 Mont. 62, 78, 111 Pac. 144.

Under this section the board of county commissioners is limited in its investigation of the sufficiency of a petition for the removal of the county seat to a comparison of the names appearing thereon with the poll-books to ascertain whether the signers are voters, and with the assessment-roll, whether they are taxpayers, and may not, therefore, eliminate from the petition names of persons who have ceased to be legal voters or taxpayers. Ainsworth v. McKay, 55 Mont. 270, 175 Pac. 887.

Cited or applied as section 4158, Political Code, before amendment, in State ex rel. Buck v. Board of Commrs., 21 Mont. 469, 475, 54 Pac. 939.

4371. Election, notice of, how held and conducted. Notice of such election, clearly stating the object, must be given, and the election must be held and conducted, and the returns made, in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law.

History: En. Sec. 4159, Pol. C. 1895; re-en. Sec. 2853, Rev. C. 1907. Cal. Pol. C. Sec. 3979.

4372. Voter to vote for place he prefers. In voting on the question, each elector must vote for the place in the county which he prefers, by placing opposite the name of the place the mark X.

History: En. Sec. 4160, Pol. C. 1895; re-en. Sec. 2854, Rev. C. 1907. Cal. Pol. C. Sec. 3980.

Cited or applied as section 2854, Revised Codes, in State ex rel. Stringfellow v. Board of Commrs., 42 Mont. 62, 75, 111 Pac. 144.

4373. Publication of result. When the returns have been received and compared, and the results ascertained by the board, if a majority of the qualified electors of the county have voted in favor of any particular place, the board must give notice of the results by posting notices thereof

in all the election precincts of the county, and by publishing a like notice in a newspaper printed in the county at least once a week for four weeks.

History: En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921. Cal. Pol. C. Sec. 3981.

Cited or applied as section 2855, Revised Codes, in State ex rel. Stringfellow v. Board of Commrs., 42 Mont. 62, 75, 111 Pac. 144.

On what basis majority essential to adoption of proposition for change of county seat is to be computed, see note in 22 L. R. A. (N. S.) 478.

4374. Place chosen to be county seat. In the notice provided for in the next preceding section, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice, the place chosen is the county seat of the county.

History: En. Sec. 4162, Pol. C. 1895; re-en. Sec. 2856, Rev. C. 1907. Cal. Pol. C. Sec. 3982.

Cited or applied as section 2856, Revised Codes, in State ex rel. Powers v. Dale, 47 Mont. 227, 230, 131 Pac. 670, Ann. Cas. 1914D, 227; Poe v. Sheridan County, 52 Mont. 279, 288, 157 Pac. 185.

4375. Statement of result and notice transmitted. Whenever any election has been held, as provided for in the preceding sections of this chapter, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by section 4374 of this code, they must transmit a certified copy thereof to the secretary of state.

History: En. Sec. 4163, Pol. C. 1895; re-en. Sec. 2857, Rev. C. 1907. Cal. Pol. C. Sec. 3983.

4376. No second election to be held within four years. When an election has been held and a majority of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter.

History: En. Sec. 4164, Pol. C. 1895; re-en. Sec. 2858, Rev. C. 1907. Cal. Pol. C. Sec. 3984.

4377. County seat may be removed from time to time. When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this chapter.

History: En. Sec. 4, Ch. 146, L. 1901; re-en. Sec. 2859, Rev. C. 1907. Cal. Pol. C. Sec. 3985.

CHAPTER 4.

LOCATION OF COUNTY SEATS.

Section 4378. Meeting and Organization of Board of Commissioners on Creation of New County—County Clerk.
4379. Designation of Temporary County Seat—Special Election.
4380. Proceedings After Petition for County Seat Election.
4381. Division of County Into Registration and Polling Precincts.
4382. Registration of Voters.
4383. Judges of Election—Ballots, Books, and Records.
4384. Applicability of General Election Laws.
4385. Form of Ballot.
4386. Canvass of Returns—Result of Election.
4387. Re-Election in Case of Failure to Select County Seat.
4388. Applicability of General Laws to New Counties and Officers.
4389. Submission of Question of Locating Permanent County Seat to Voters—Elections.

4378. Meeting and organization of board of commissioners on creation of new county—County clerk. Whenever a county is created hereafter in this state by legislative enactment, it shall be the duty of the persons appointed to the office of county commissioners of such county by the act creating it, to meet at some place in the county, to be agreed upon by a majority of said county commissioners, within fifteen days after the passage of the act creating the county, and then and there organize as a board of county commissioners by electing one of their number chairman.

The person appointed to the office of county clerk in the bill creating the county shall be notified in writing by the county commissioners, or some one of them, of the time and place of said meeting, and he must attend the meeting and act as the clerk thereof and keep a record of the proceedings. If no person is appointed to the office of county clerk by the act creating the county, the commissioners shall at such meeting select some person qualified to hold office of county clerk to act as clerk of such meeting.

History: En. Sec. 1, Ch. 135, L. 1911.

Prior to the passage of this measure, there was no general law by which a so-called temporary county seat could be located, changed, or removed, so that a temporary county seat, once designated, became in fact, permanent. State ex rel. Geiger v. Long, 43 Mont. 401, 412, 117 Pac. 104.

In this act there is no evidence of intention to require incorporation as a qualification for county seat in the use of the term "city or town." State ex rel. Powers v. Dale, 47 Mont. 227, 231, 131 Pac. 670; Ann. Cas. 1914D, 227.

City or applied as chapter 135, Laws of 1911, in Poe v. Sheridan County, 52 Mont. 279, 288, 157 Pac. 185.

4379. Designation of temporary county seat—Special election. Immediately after the organization of the board of county commissioners, as provided in the preceding section, said board shall, by a resolution spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as hereinafter in this act provided. The place so designated shall be the temporary county seat of said county until the permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county, or at a special election as hereinafter provided.

In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, then each county commissioner shall write the name of the place he favors as the temporary county seat on a slip of paper and said slips be inclosed in envelopes of the same size, color, and texture, and shall be deposited in a box or other suitable receptacle, and the county clerk, in the presence of said commissioners, shall draw out one of the said slips. Thereupon the county commissioners shall, by resolution spread upon the minutes, declare the place named on the slip so drawn by the county clerk to be the temporary county seat of said county.

At said first general election after the creation of the county, it shall be the duty of the board of county commissioners and county clerk to have separate official ballots printed and distributed for the use of the electors at said election; which ballots shall be in the form and contain the same matter as the ballots provided for in section 4385 of this code,

and the provisions of section 4386 of this code shall apply to and govern the manner of voting and of canvassing said ballots, and the board of county commissioners shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of said section 4386.

Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the board of county commissioners of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred taxpayers, whose names appear upon the assessment-books containing the last assessment of the property situated in such new county, and whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

The petition or petitions when filed with the board must also have certificates attached thereto from the county clerk of the county in which the person or persons signing the petition resided before the creation of the new county, certifying that the names of the person signing said petition or petitions appear in the last assessment-books of his county, and also in the registration-books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

History: En. Sec. 2, Ch. 135, L. 1911.

4380. Proceedings after petition for county seat election. Upon filing said petition or petitions, duly certified to as provided in the preceding section, with the county clerk of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board to be held within ten days after the filing of said petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of the preceding section, it shall at said meeting, by a resolution spread upon its minutes, call a special election of the qualified electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

Said election shall be held on Tuesday and not less than forty nor more than sixty days after the date of calling the same. The board must issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least ten days before the election.

History: En. Sec. 3, Ch. 135, L. 1911.

4381. Division of county into registration and polling precincts. At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall, by resolution spread upon its minutes, divide the county into registration districts and

establish polling precincts in the manner provided by law. It must also, at such meeting, make an order designating the house or place within each precinct where the election shall be held. It must also at the same session of the board appoint registry agents for the several registration districts established by it, who must possess the qualifications required by law for registry agents. The county clerk must furnish the said registry agents with books, blanks, and other stationery required for the proper performance of their duties.

History: En. Sec. 4, Ch. 135, L. 1911.

4382. Registration of voters. The period for the registration of electors shall be between the hours of nine a. m. and nine p. m. on all legal days from nine a. m. of the fourth Monday prior to the date of said election to nine p. m. of the second following Saturday. It shall be the duty of each registry agent to publish and post notices of the time and places of registration in the manner provided by law for the publication of notices of registration for general elections. No person shall be entitled to register and vote at such special election unless he is a qualified voter of the state of Montana of the age of twenty-one years, and will have been a resident of Montana one year and of the territory embraced within the boundaries of the new county for a period of one hundred and eighty days on the day next preceding the day of such election, and also takes and subscribes to the oath provided in section 479, Revised Codes of Montana.

The general election laws of this state governing the registration of electors and defining the duties of the registry agents shall apply to and govern the registration of electors in elections held under this act in so far as the same do not conflict herewith.

History: En. Sec. 5, Ch. 135, L. 1911. Note.—Section 479, above referred to, was repealed by chapter 113, Laws of 1911.

4383. Judges of election—Ballots, books, and records. At the same meeting of the board of county commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county who shall act as the judges at said election. It shall be the duty of the county clerk to have printed and distributed to the judges of election the necessary ballots, the form of which shall be as provided in sections 4379, 4385, and 4387 of this code, and also supply the judges with the necessary books, records, stationery and ballot-boxes required to hold such election in the manner provided by law.

History: En. Sec. 6, Ch. 135, L. 1911.

4384. Applicability of general election laws. The judges appointed for said special election must qualify as required by the general election law, and the polls must be opened and closed, the voting done, the ballots counted, returns made to the board of county commissioners, and all other matters connected with said election carried on and conducted in accordance with and as provided by the general election laws of this state.

History: En. Sec. 7, Ch. 135, L. 1911.

4385. Form of ballot. The form of the ballot used at such elections shall be as follows: There shall be a stub across the top of each ballot,

and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire width of the ballot, and shall have a depth of not less than two inches. Upon the face of the stub there shall be printed in what is known as brevier capitals the following instructions:

"To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located."

The ballot below the perforated line shall be in the following form:

"For the permanent county seat of.....county my choice is ....."; (here insert name of county)

Provided, that any person who, from any cause, is unable to write, may have one of the judges in the presence of another judge write his choice on the ballot.

History: En. Sec. 8, Ch. 135, L. 1911.

4386. Canvass of returns—Result of election. When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector, and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county. The board of county commissioners of said county shall canvass the returns of said election in the manner provided by law for the canvassing of election returns, and upon such canvassing of returns the town or place found to have received a majority of all votes cast on such questions shall be declared by the board the permanent county seat of the county. The order declaring the result of such election shall be entered of record in the minutes of the proceedings of the board of county commissioners by the county clerk, and from the date of the declaration of the results of the election the town or place selected shall be and remain, until lawfully changed in the manner provided by law, the permanent county seat of such county. Within ten days after the declaration of the result of such election, all records and county offices of the county, if elsewhere located, must be moved to and remain at the place declared the permanent county seat.

History: En. Sec. 9, Ch. 135, L. 1911.

Equity jurisdiction of election contest relating to county seat, see note in Ann. Cas. 1912 C. 692.

4387. Re-election in case of failure to select county seat. If no town or place receives a majority of all votes cast on such question, then the town or place receiving the highest number of votes shall be declared by the board and immediately become the temporary county seat of the county, and at the next general election the two towns or places receiving the greatest number of votes at said first election shall be the candidates for the permanent county seat. At said next general election, the county clerk shall have separate ballots in the form provided for in section 4385 of this code printed and distributed as provided by law containing the names of said candidates for the permanent county seat. On the stub of such ballots shall be printed the following instructions:

"To vote this ballot the elector will place an X in the square before the name of the town he intends to vote for."

The form of such ballots below the perforated line shall be as follows:

☐.....for the permanent county seat

☐.....for the permanent county seat

Of said towns or places the one receiving a majority of all the votes cast on such question shall be declared the permanent county seat, and the board of county commissioners must canvass the returns and declare the result, and the county seat must be located in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 135, L. 1911.

4388. Applicability of general laws to new counties and officers. All laws of general nature applicable to the several counties of the state of Montana and to the officers thereof, and to their powers and duties, shall be applicable to a new county and the officers thereof from and after the creation of the county, except as otherwise provided in this act, or the act creating the county.

History: En. Sec. 11, Ch. 135, L. 1911.

4389. Submission of question of locating permanent county seat to voters—Elections. Any county heretofore created, in which the permanent county seat has not been located by valid election held for the purpose of locating the permanent county seat of said county, may have a special election, for the purpose of voting on such question, called and held under the provisions of this act, or if no special election is held for such purpose, then said question shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred taxpaying electors of such county, whose names appear upon the last assessment book, and also on the last registration-books of said county, are filed with the clerk of the board of county commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of taxpaying electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election, but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election or otherwise.

History: En. Sec. 12, Ch. 135, L. 1911.

CHAPTER 5.

CREATION OF NEW COUNTIES BY PETITION AND ELECTION.

Section 4390. Creation of New Counties—Debts and Assets Prorated.
4391. Basis of Taxation Upon Creation of New County—Terms Used in Law Defined.
4392. Cities and Towns Eligible for County Seat.
4393. Petition for Creation of New County—Attached Affidavits—Notice and Hearing.
4394. Duty of Commissioners When Findings Justify New County—Division Into Township, Road, and School Districts—Change of Boundaries of Election Precincts—Election—Temporary County Seat.
4395. Measures to Be Taken After Election—Officers—Effect of Adverse Vote.
4396. Officers of New County—Judicial District.
4397. Commission Appointed by Governor to Adjust Indebtedness of Old and New Counties.
4398. Determination of Amount of Indebtedness and Value of Property—Taxation.
4399. Compensation and Expenses of Commissioners.
4400. Assessment and Collection of Taxes.
4401. School and Road Funds.
4402. Records, Books and Papers.
4403. Transfer of Pending Actions in District Court.
4404. Publication by Posting of Notice.
4405. State Senator and Member of House of New County.
4406. Misdemeanor and Malfeasance in Office.
4407. Repealing and Saving Clause.

4390. Creation of new counties—Debts and assets prorated. New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than eight million dollars, inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties, nor shall any new county be formed which contains an assessed valuation of property less than four million dollars, inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of all forest reserve land, or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the court-house situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least fifty-eight per cent. of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five disinterested persons, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles

from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 4393 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a pro rata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a pro rata proportion of the assets of the county or counties from which such territory is taken, to be determined as hereinafter provided.

History: Sec. 1, Ch. 226, L. 1919.

Note.—The first new county act was chapter 112, Laws of 1911. The first four sections of this act were amended and the rest re-enacted by chapter 133, Laws of 1913; section 7 of the act was also amended by chapter 135, Laws of 1913. All these acts were repealed and a complete new county law enacted by chapter 139, Laws of 1915. This act was repealed by chapter 226, Laws of 1919, which is here given as amended.

In proceedings for the organization of a new county, the board of county commissioners is required to act as a quasi judicial tribunal, and this constitutes no invasion of the constitutional provisions which lodge the judicial power of the state in its courts. State ex rel. Arthurs v. Board of County Commrs., 44 Mont. 51, 71, 118 Pac. 804; State ex rel. Jacobson v. Board of Commrs., 47 Mont. 531, 536, 134 Pac. 291; State ex. rel. Lang v. Furnish, 48 Mont. 28, 33, 134 Pac. 297.

Since the enactment of statutes providing for the creation of new counties, the involuntary character of counties in this state is somewhat modified, but the change does not affect their status as political subdivisions of the state for governmental purposes; only incorporated cities and towns are municipal corporations in this state. Hersey v. Neilson, 47 Mont. 132, 144, 131 Pac. 30, Ann. Cas. 1914C, 963.

A valid petition describing the territory to be included within the proposed new county was the very foundation of the proceedings for the creation of a new county. While under certain circumstances the board of county commissioners was authorized to exclude territory, there was not any authority in the board to incorporate within the boundaries of a proposed new county territory which was not included in the petition praying for its creation, or to exclude territory unless a proper petition for withdrawal thereof was presented. State ex rel. Jacobson v. Board of County Commrs., 47 Mont. 531, 537, 134 Pac. 291.

In enacting this statute, it was competent for the legislature to prescribe the order in which an exclusion petition and an inclusion petition should be considered by the board, but it failed to do so. It did, however, create the board a special tribunal, and clothed it with authority to hear the petitions and determine them, and in the absence of legislative restrictions, this necessarily involved the authority to determine which of the two should be considered first. Apparently the legislature referred this question to the sound discretion of the board, and in the absence of fraud its action thereon is not subject to judicial control by mandamus. State ex rel. Koefod v. Board of Commrs., 56 Mont. 355, 360, 185 Pac. 147.

Act cited or applied as Laws 1911, p. 205, before amendment, in State ex rel. Powers v. Dale, 47 Mont. 227, 228, 131 Pac. 670; Ann. Cas. 1914D, 227. State ex rel Dowen v. District Court, 50 Mont. 249, 146 Pac. 467; State ex rel Furnish v. Mullendore, 53 Mont. 109, 110, 161 Pac. 949.

Division of territory of county as affecting its rights and liabilities, see note in 39 L. R. A. (N. S.) 285.

4391. Basis of taxation upon creation of new county—Terms used in law defined. For the purposes of this act the assessed valuation of all property, whether included within the boundaries of a proposed new county, or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in the state of Montana, to-wit: By taking that percentage of the true and full value of all taxable property in any county specified by section 2000 of this code.

Whenever in this act the term "assessed valuation" or "valuation based on the last assessment roll" is used, said terms shall be construed

as meaning taxable valuation determined as herein provided, not the full and true valuation of property.

History: En. Sec. 1, Ch. 16, Ex. L. 1919.

4392. Cities and towns eligible for county seat. No city, town, or village shall become the temporary or permanent county seat of any county organization under the provisions of sections 4390 to 4407 of this code, or created by an act of the legislative assembly, unless such city or town shall have been incorporated in the manner provided by law, or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder, and there be fifty qualified electors residing within the boundaries of such platted village, and the temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

History: En. Sec. 1, Ch. 16, Ex. L. 1919.

4393. Petition for creation of new county—Attached affidavits—Notice and hearing. Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least fifty-eight per cent. of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least fifty-eight per cent. of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar

in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

Such petition or petitions shall contain:

1. A particular description of the boundaries of the proposed new county.

2. A statement that no line thereof passes within fifteen miles of the court-house situated at the county seat of any county proposed to be divided, except as hereinafter in this act provided.

3. A statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation.

4. A statement of the surveyed area in square miles which will remain in the county or counties from which territory is taken to form such new county, after such county is formed, and a statement of the surveyed area in square miles which will be in the new county after formed.

5. The name of the proposed new county.

6. A prayer that such proposed new county be organized into a new county under the provisions of this act.

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors and taxpayers residing with each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least fifty-eight per cent. of the qualified electors as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so verified, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice.

Notice is hereby given that a petition has been presented to the board of county commissioners of.....county (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said.....county and.....county (naming the county

or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meetings (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at.....at.....Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than forty-two per cent. of the votes cast at said election are "for the new county of.....(naming the proposed new county)," "No."

At the time so fixed for said hearing, the board of county commissioners shall proceed to hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. No petition or protest or petition for the exclusion of territory shall be considered unless the same is filed at least one day before the time fixed for the hearing, and such petition for the exclusion of territory shall contain the names of not less than fifty per cent. of the qualified electors who are resident property taxpayers of any territory to be excluded. All such territory being excluded must be in one block, and contain an area of not less than thirty-six square miles, and be totally within one county, and contiguous thereto, and the board of county commissioners may adjourn such hearing from time to time, but not for more than ten days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in said petition. No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signature from the petition for the exclusion of territory shall be received or considered which is not filed within five days after the filing of the petition for such exclusion of territory.

The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. The boundaries of the proposed new county, and the boundaries so determined by said board of county commissioners shall be the boundaries of such proposed new county, if it be created as herein provided.

2. Whether the said petition contains the genuine signatures of at least fifty-eight per cent. of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least fifty-eight per cent. of the qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3. Whether any line of the proposed new county passes within fifteen miles of the court-house situate at the county seat of any county proposed to be divided, except as hereinbefore provided.

4. Whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least four million dollars, inclusive of all assessed valuation.

5. Whether the area of any existing county from which territory is taken to form such new county will be reduced to less than twelve hundred square miles of surveyed land, by taking the territory proposed to be taken therefrom to form such new county.

6. Whether the area of the proposed new county will contain at least one thousand square miles of surveyed land to form such new county.

7. The class to which said proposed new county after its creation will belong, and the name of said proposed new county, as stated in such petition.

8. Whether the area embraced within the proposed new county will be reasonably compact.

On final hearing the board of commissioners, upon petition of not less than fifty per cent. of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent. of the qualified electors who are resident property taxpayers of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than eight million dollars of assessed valuation, based upon the last assessment-roll; provided, that no change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of four million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries

originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

History: Sec. 2, Ch. 226, L. 1919.

In computing the number of signatures the petition must bear, the board must take into consideration only those who are qualified electors at the time of the signing of the petition and the number of electors who are shown to have been disqualified must be deducted from the total number residing in the proposed county. State ex rel. Bogy v. Board of County Commrs., 43 Mont. 533, 538, 117 Pac. 1062; State ex rel. Fadness v. Eie, 53 Mont. 138, 145, 162 Pac. 164.

The board of county commissioners, which is intrusted with the duty of passing upon the sufficiency of the petition required to be filed to effect the elimination of certain territory from a proposed new county, must read it in connection with the original petition for the creation of such county; and if thus, by any fair intendment, a description of the territory sought to be eliminated may be arrived at, it is the duty of the board to give the intention of the petitioners full force and effect. State v. Board of Commrs., 44 Mont. 51, 60, 61, 118 Pac. 804.

A board of county commissioners, in passing upon the sufficiency of the petition, is presumed to understand the method pursued by the government in its surveys of public land, and is chargeable with knowledge of the territory included within its own county, as well as its boundaries. State v. Board of Commrs., 44 Mont. 51, 61, 118 Pac. 804.

The petition for an elimination of certain territory from the area included within the boundaries of a proposed new county, must contain a description of the territory sought to be eliminated, and a prayer for the relief demanded. The other facts may be made to appear by evidence upon the hearing, without being specially alleged. State v. Board of Commrs., 44 Mont. 51, 67, 68, 118 Pac. 804.

The fact that a board of county commissioners, in erroneously rejecting a petition seeking the elimination of certain territory from the area of a proposed new county as insufficient, acted in a quasi-judicial capacity, is not any defense to the issuance of mandamus. State v. Board of Commrs., 44 Mont. 51, 70, 118 Pac. 804.

In determining whether a petition for the exclusion of territory from a county proposed to be created was signed by 50 per cent. of the qualified electors therein, the board of county commissioners may resort to whatever competent evidence it has at hand, including the great register of voters. State ex rel. Lang v. Furnish, 48 Mont. 28, 35, 134 Pac. 297.

In the absence of legislative expression to the contrary, signers of a petition may withdraw their names at any time before final action thereon; and the board of county commissioners was in error in refusing to consider withdrawals from petitions theretofore filed asking the exclusion of certain territory from a proposed new county upon the ground that the withdrawals of signatures, though filed before final action, had not been presented until after the date fixed for the hearing. State ex rel. Lang v. Furnish, 48 Mont. 28, 35, 36, 134 Pac. 297.

The burden of establishing the number of qualified electors residing in territory sought to be excluded from a proposed new county is upon the petitioners seeking exclusion, and not upon the proponents of the new county. State ex rel. Lang v. Furnish, 48 Mont. 28, 37, 134 Pac. 297.

A recital in the affidavit verifying a petition for the elimination of certain territory from the area included within the boundaries of a proposed new county, that fifty per cent. of the qualified electors of the territory sought to be withdrawn had signed such petition, was sufficient prima facie showing of that fact. State v. Board of Commrs., 44 Mont. 51, 68, 118 Pac. 804. But this is not so where the petition is unaccompanied by such affidavit, in which case it may not be taken as prima facie evidence of such facts. State ex rel. Lang v. Furnish, 48 Mont. 28, 38, 134 Pac. 297.

The matter of the creation of a new county must be determined on the case as made upon the date fixed for the hearing, save as it may be affected by subsequent withdrawals before final action taken; therefore, protests against its creation, or petitions for the exclusion of territory from within its proposed boundaries filed after the date fixed for the hearings, may not be entertained by the board of county commissioners. State ex rel. Lang v. Furnish, 48 Mont. 28, 38, 39, 134 Pac. 297.

The expression "qualified electors," means persons who possess the necessary constitutional qualifications, and not electors whose names appear on the great register of voters. State ex rel. Lang v. Furnish, 48 Mont. 28, 32, 33, 134 Pac. 297. The decision in this case is rigidly confined to counter-petitions for exclusion, and does not in terms or effect apply to original petitions for the creation of new counties. State ex rel. Wood v. Board of County Commrs., 49 Mont. 165, 167, 140 Pac. 728. See, also, State ex rel. Fadness v. Eie, 53 Mont. 138, 145, 146, 162 Pac. 164.

A counter-petition for the exclusion of territory from a proposed new county must contain the signatures of at least fifty per cent. of the qualified electors resident in the territory sought to be excluded, and

the burden is on the counter-petitioners to show that fact on the hearing. State ex rel. Lang v. Furnish, 48 Mont. 28, 37, 134 Pac. 297; State ex rel. Wood v. Board of County Commrs., 49 Mont. 165, 170, 140 Pac. 728.

A verification to a counter-petition asking for the exclusion of territory sought to be included in a proposed new county, which merely averred that each affiant believed that the counter-petition was signed by at least fifty per cent. of the qualified electors of the territory sought to be excluded, was of no probative value as to the facts alleged. State v. Board of County Commrs., 49 Mont. 165, 170, 171, 140 Pac. 728.

Since the statute does not require the verification of counter-petitions, and does not authorize the acceptance of it as probative, the counter-petitions, though verified, cannot be given any evidentiary value. State v. Board of County Commrs., 49 Mont. 165, 171, 140 Pac. 728; State ex rel. Arthurs v. Board of County Commrs., 44 Mont. 51, 68, 118 Pac. 804, explained by the above case.

A "taxpayer" within the meaning of this section, which requires petitions for the creation of a new county to be verified by five resident taxpayers, is one who owns property within the county and who pays, or is subject to and liable for, a tax. State ex rel. Woodward v. Moulton et al., 57 Mont. 414, 189 Pac. 59.

Id. Where the owner of personalty listed it and paid taxes thereon, failure of the assessor to place his name on the tax-roll, or the fact that the property was mistakenly assessed in the name of a newspaper of which he was the owner, did not have the effect of disqualifying him as a "taxpayer" as above defined.

Id. The requirement that territory sought to be excluded from a proposed new county must be in one block—the word "block" implying solidity or compactness—was not met by a petition describing an irregularly shaped tract distributed over fourteen townships, the exterior boundaries of which ran back and forth, in all directions of the compass, alternately including and excluding small tracts, so threaded together as to preserve its continuity, and including those against the creation of the new county and excluding those favoring it.

Id. The interest of the legislature in enacting the provision that territory sought to be excluded from a proposed new county must be in one block, held to have been that a block should be mapped out, irrespective of the personnel of those residing within it, the majority of the residents thereof to determine whether, as a whole and not as individuals, they go with the new or remain in the old county.

Cited or applied as section 2, chapter 226, Laws of 1919, in State ex rel. Koefod v. Board of Commrs., 56 Mont. 355, 360, 185 Pac. 147.

Validity of statute authorizing creation of new county only on ratification by voters within territory affected, see note in Ann. Cas. 1914C, 626.

4394. Duty of commissioners when findings justify new county—Division into township, road, and school districts—Change of boundaries of election precincts—Election—Temporary county seat. If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than eight million dollars, inclusive of the assessed valuation, nor the area thereof to less than twelve hundred square miles of surveyed land, and that the proposed new county contains property of an assessed valuation of at least four million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the court-house situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least fifty-eight per cent. of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least fifty-eight per cent. of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of

township, road, and school districts, and define their boundaries and designate the names of such districts. Said board of county commissioners shall also, if necessary for the purpose of the election hereinafter provided for, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county; provided, that the boundary lines of no such precinct shall extend beyond the boundary lines of the then existing county in which it is located, and from which the territory is proposed to be taken; and said board shall appoint election officers to act at said election and to be paid by said board. Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of election, and who are registered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana. Such proclamation and notice of election shall be published at least once a week for three weeks before the holding of such election, in some newspaper of general circulation published in the territory which is proposed to be taken for the new county, and a copy thereof shall be mailed immediately by the county clerk of the county in which the petition is filed to the county clerk of each county from which territory is taken for the proposed new county. Such proclamation and notice shall require the voters to cast ballots which shall contain the words, "For the new county of..... (giving the name of the proposed new county)" "Yes," and "For the new county of..... (giving the name of the proposed new county)," "No," and each voter desiring to vote for the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of.....," "Yes," in the manner now required by law in other elections, and each voter desiring to vote against the establishment and organization of said new county shall mark a cross (X) opposite the words, "For the new county of.....," "No," in the manner now required by law in other elections; and shall also contain the names of persons to be voted for to fill the various elective offices designated in said proclamation for counties of the class to which said proposed county will belong, as determined by the board of county commissioners as herein otherwise provided. There shall also be

printed upon said ballot the words, "For the county seat," and the names of all cities or towns which may have filed with the county clerk a petition signed by at least twenty-five qualified electors, nominating any city or town within the proposed new county for the county seat, and the voter shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot. At the special election to be held, as provided in this act, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon. In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat, and in case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter. When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

The proclamation calling the election and the notice thereof provided for in this act shall be made and given exclusively by the board of county commissioners with which is filed the said petition for the formation and establishment of such new county, and such board shall cause the clerk of said county to furnish to the officers of each precinct in such proposed new county all ballots, poll list, tally lists, registers for voters' signatures, ballot-boxes, and other election supplies and equipment necessary to conduct such election, and which are not hereinafter specifically directed to be furnished by the clerk of another county or counties. Such election shall be governed and controlled by the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. The returns of all elections for the creation of the county, and for officers and for location of the county seat as provided for in this act, shall be made to and canvassed by the board of county commissioners of the county from which the largest area is taken by the proposed county.

The county clerk of each county from which territory is taken for the proposed new county shall, not less than five days before the date of such election, furnish to each board of election within said proposed new county, a copy of the official register for the precincts of such proposed new county as are within their respective counties, and the copies of indexes thereof required by law containing the names of all persons who were qualified electors at the last general election before the date of such election.

All returns of election herein provided for shall be made to the board of county commissioners calling such election.

All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws

relating to primary elections in this state, shall have application to any election provided for in this act.

History: Sec. 3, Ch. 226, L. 1919.

After an order calling an election to determine whether a new county should be created had been made and the board of county commissioners clothed with jurisdiction had adjourned sine die, it was without power to grant a rehearing. State v. Board of County Commrs., 49 Mont. 165, 172, 140 Pac. 728.

4395. Measures to be taken after election—Officers—Effect of adverse vote. If, upon the canvass of the votes cast at such election, it appears that fifty-eight per cent. of the votes cast are "For the new county of .....," "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of.....county, and that the city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than forty-two per cent. of the votes cast at said election are "For the new county of.....," "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no

other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

History: Sec. 4, Ch. 226, L. 1919.

4396. Officers of new county—Judicial district. At the election provided for in section 4394 of this code, there shall be chosen such county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which the said new county is determined to belong, as herein provided; provided, that all duly elected, qualified and acting officers of the county or counties, who may reside within the proposed new county, shall be deemed to be officers of said new county if they file with the board of county commissioners, whose duty it shall be to call the election, within five days after the final hearing and determination of said petition for such proposed new county, their intention to become officers of said proposed new county, and the board of county commissioners issuing the proclamation of any election, as in this act provided, shall omit providing for the election of any such officers as may have filed their declaration as herein provided; and provided, also, that all duly elected, qualified, and acting justices of the peace and constables residing within the proposed new county at the time of the division of such county into townships, as hereinbefore in section 4394 provided, shall hold office as such justices of the peace or constables in said county for the remainder of the term for which they were elected on qualifying as justices of the peace or constables for the respective townships in which they reside, when said townships are organized as provided in this act; provided, further, that all duly elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as hereinbefore in section 4394 provided, shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as said districts are organized as provided by this act. Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided, after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officers authorized by the laws of the state of Montana to administer oaths, and the bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes. The officers elected or appointed under the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in the counties of the class to which such new county shall have been determined to belong, as herein provided under the general classification of counties in this state.

Said new county, when created and organized in pursuance of the provisions of this act, shall be attached to such judicial district as may be designated by the governor of the state of Montana, in a proclamation

to be issued by him, designating such new county as attached to the particular judicial district for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919.

4397. Commission appointed by governor to adjust indebtedness of old and new counties. It shall be the duty of the persons elected to or continuing to hold the office of county commissioners of said new county to meet at the county seat thereof within five days after all of them shall have qualified, and upon organization of said board of county commissioners it shall notify the governor of the state of the organization of said county, and thereupon it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county, and no two of whom shall be from any one county; the three persons so appointed shall form and be a board of commissioners. Such commissioners shall, within ten days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a chairman, and also elect a secretary who must not be a member of said commission. Thereafter such commission may meet at such place or places as it may select. A majority of such commissioners shall constitute a quorum for the transaction of business. Said commission shall have power to compel by citation or subpoena, signed by their president and secretary, the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this act, except that the official records of any county or counties from which said new county was formed shall in no case be taken away from the county seat of said county. It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission; and for any services so performed the sheriff shall be allowed the same fees as are allowed to him for services in civil actions; and all witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in courts of record; provided, that no witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

History: Sec. 6, Ch. 226, L. 1919.

Cited or applied as section 6, chapter 133, Laws of 1913, in State ex rel. Furnish v. Mullendore, 53 Mont. 109, 111, 161 Pac. 949.

4398. Determination of amount of indebtedness and value of property—Taxation. Said board of commissioners shall immediately after its organization ascertain the costs of the election held hereunder, and apportion the same pro rata among each of the counties from which territory was taken to form such new county; shall ascertain the indebtedness of each county from which territory was taken to form the new county, as the same existed at the time when the result of the election was declared by the board of county commissioners, as hereinbefore provided, and also ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively. It shall also ascertain the

assessed value of all property in each of the original old counties from which territory was so taken, according to the last completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed. They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows:

"As said assessed value of the property in the old county is to the said assessed value of the property in the territory by this act to be incorporated within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county."

Said board of commissioners shall certify forthwith to the board of county commissioners of the new county, and the old counties thereby affected, the amount constituting the due proportion of said excess payable by such new county to each of them; also the value of any property belonging to each old county at the time when said division took effect (as hereinbefore provided), which is situated in the new county. The sum of said ascertained value of said last-mentioned property added to the ascertained proportion of said excess which the new county is to pay the old county, and its proportion of the expense of said election as aforesaid, shall be an indebtedness from the new county to the old county, and the said property situated as aforesaid in the new county shall upon settlement therefor, as provided in this act, become the property of the new county; and the old county shall pay the entire indebtedness against it, and the expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof, as hereinbefore provided. The proceedings in this section required to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county, in the manner and at the ratio in said section provided. If, upon the settlement between the old and the new county as herein provided for, the new county shall be found to be indebted to the old county, or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county, and said new county shall pay the same; provided, however, that such payment by said new county may be made in not more than three equal annual payments, or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county, adopted within one year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it. If the value of the property belonging to the old county exceeds the indebtedness of the old county,

then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners, and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county, when the indebtedness of the old county exceeds the value of the property in the old county. In the determination of the value of county property all buildings and their furniture, real estate, road tools, and machinery, and all steel bridges which may have been constructed and in use for a less period than ten years, shall be taken into consideration by the said commissioners.

Delinquent taxes due to the old county against property situated in the new county shall be transcribed in and collected by the new county.

History: Sec. 7, Ch. 226, L. 1919.

Generally speaking, bridges are not such county property as that their value shall enter into consideration in the adjustment of the indebtedness of the old county with the new one. A bridge is to be treated as but a portion of a public highway. State ex rel. Foster v. Ritch, 49 Mont. 155, 156, 157, 140 Pac. 731.

Error committed by a board of commissioners appointed to adjust the indebtedness between an old and a newly created county, which is a function judicial in character, in taking bridges into consideration as county property, constitutes error within jurisdiction not correctible by certiorari, even though provision is not made for an appeal or some other mode of review of the board's action. State ex rel. Furnish v. Mullendore, 53 Mont. 109, 112, 161 Pac. 949.

Mandamus is the proper remedy to compel commissioners appointed to adjust county indebtedness between an old and a new county to reassemble and correctly apportion such indebtedness; the fact of their adjournment being immaterial. Such proceedings should be brought in the name of the county, and not by the board of county commissioners in their official capacity. State ex rel. Furnish v. Mullendore, 53 Mont. 109, 116, 117, 161 Pac. 949.

4399. Compensation and expenses of commissioners. Members of the board of commissioners provided for under this act shall receive a compensation of not to exceed eight dollars per day for every day they are actually employed under the provisions of this act, all of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county, and the amounts payable by each county shall be paid by the treasurers of the respective counties, after the same shall have been presented to and allowed by the board of county commissioners, as is provided by law for claims against any county.

History: Sec. 8, Ch. 226, L. 1919.

4400. Assessment and collection of taxes. After the creation of a new county, as herein provided, its officers shall proceed to complete all proceedings necessary for the assessment or collection of the state and county taxes for the then current year, and all acts and steps theretofore taken by the officers of the old county or counties prior to the creation of the new county shall be deemed and taken as having been performed by the officers of the new county for the benefit of the new county; and upon the creation of the new county it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of county commissioners of such new counties copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes of property in such new county. Such copies shall

be filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county, and such certified copies shall be taken and deemed as originals and original proceedings in the new county, and all proceedings therein recited shall be taken and deemed as original proceedings in the new county, and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county; and the officials of the new county are hereby authorized and directed to proceed thenceforth with the assessment and collection of said taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

History: Sec. 9, Ch. 226, L. 1919.

4401. School and road funds. The county superintendent of schools of the old county, or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a certified copy of the last school census of the different school districts in the territory set apart to form the new county, and shall certify to the board of county commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the new county for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever, in the formation of a new county, a road or school district has been divided, the board of county commissioners shall, by resolution, direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: Sec. 10, Ch. 226, L. 1919.

4402. Records, books and papers. The board of county commissioners of any new county formed as aforesaid must provide suitable books, and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property, or the title thereof, situated in the new county, and said records, when so transcribed and certified, as herein provided, shall have the same force and effect as such original records; the said county commissioners shall have full power and authority to contract for transcribing of records as now provided by law; provided, that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration, which may affect or relate to property or persons situate within the new county, shall be by the county clerk of the old county delivered to the county clerk of the new county, and be preserved by said county clerk of the new county as permanent files of such new county.

History: Sec. 11, Ch. 226, L. 1919.

4403. Transfer of pending actions in district court. All actions pending in the district court of the old county or counties for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, or any other actions affecting real estate lying in the new county shall, on motion of any party thereto, be transferred to the district court to which the new county may be attached for judicial purposes, and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county. All other actions or special proceedings pending in the district court or courts of said old county or counties, if said new county had been in existence at the date in which it is pending, and on motion of any party interested therein, shall be transferred to the district court of such new county.

History: Sec. 12, Ch. 226, L. 1919.

4404. Publication by posting of notice. Whenever in this act publication of any notice is provided for, and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notices in at least ten public places in such territories for the same length of time said notice was required to be published.

History: Sec. 13, Ch. 226, L. 1919.

4405. State senator and member of house of new county. The territory within the limits of any new county, until otherwise provided by law, shall be entitled to representation in the state senate by one state senator; and to representation in the house of representatives by one member of the house of representatives.

History: Sec. 14, Ch. 226, L. 1919.

4406. Misdemeanor and malfeasance in office. Any member of the board of county commissioners, or any other officer who unlawfully and knowingly violates any of the provisions of this act, or fails or refuses to perform any duty imposed upon him hereunder, shall be guilty of a misdemeanor and of malfeasance in office, and shall be deprived of his office by a decree of a court of competent jurisdiction, after trial and conviction.

History: Sec. 15, Ch. 226, L. 1919.

4407. Repealing and saving clause. All acts and parts of acts in conflict herewith are hereby repealed, with the exception: This act shall not apply in any cases whereby the election has been held under the act passed by the fifteenth legislative session for the creation of counties and a majority vote has been cast in favor thereof, but the provisions of this act shall be deemed in full force and effect so far as they may affect any proposed new county now in process of creation, unless said new county can comply with the requirements of this act; and it is hereby made the duty of the board of county commissioners which may have ordered any election in pursuance of existing laws to immediately make an order annulling and setting aside all further proceedings in relation to such proposed new county, including an order to nullify and set aside any election order theretofore made; provided, if any order is made nullifying and setting aside any election as provided in this section, any bond which may have

been given in pursuance with the provisions of law relating to the costs of election for the creation of any proposed new county shall be deemed void, and no liability shall be incurred thereunder.

History: Sec. 16, Ch. 266, L. 1919.

CHAPTER 6.

TRANSFER OF RECORDS OF NEW COUNTIES AND OF ACTIONS AFFECTING LAND TITLES—JURY LISTS.

Section 4408. New Counties Entitled to Records.
4409. County Commissioners May Have Records Transcribed.
4410. Commissioners' Power to Contract.
4411. Payment for Transcribing.
4412. Certificate of Transcript.
4413. Transcribed Records to Be Filed.
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4420. Collection of Taxes in Territory Taken in One Municipality and Added to Another.
4421. Transfer of Records on Creation New County.
4422. Jury-List for Current Year in New Counties.
4423. Duty of Clerks of Court in Old County to Certify Jury List to Clerk of New County.
4424. Time Within Which Jury List to Be Made and Certified by Clerks of Old County.
4425. Removal of Names From Jury Box of Old County.
4426. Duty of Clerk of Court in New County Regarding Jury Lists.

4408. New counties entitled to records. Any county or counties of the state of Montana that shall heretofore have been or may hereafter be formed from portions of another county, shall be entitled to have the county records affecting or relating to any and all property situate in the county segregated, transcribed from the books of the original county and made a part of the records of the county segregated.

History: Sec. 2860, Rev. C. 1907.

Note.—Sections 4408 to 4413 were enacted as sections 1 to 7, pages 217 to 218, Laws of 1893; re-enacted as sections 4166 to 4172, Political Code 1895; appearing as sections 2860 to 2866, Revised Codes 1907.

Cited or applied as section 4166, Political Code, in State ex rel. Lambert v. Coad, 23 Mont. 131, 139, 57 Pac. 1092.

4409. County commissioners may have records transcribed. It shall be the duty of the county commissioners of any county heretofore formed, or that may be hereafter formed from part of another county, to have so much of the records of the original county as relates to the property situate within the segregated county transcribed as hereinafter provided.

History: Sec. 2861, Rev. C. 1907. See also history of Sec. 4408.

4410. Commissioners' power to contract. Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situate within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records shall have access to all records of the county or counties from which segregated.

History: Sec. 2862, Rev. C. 1907. See also history of Sec. 4408.

4411. Payment for transcribing. Payment for transcribing such records shall be made by the county contracting therefor, by a warrant or warrants payable out of the general fund of such county.

History: Sec. 2863, Rev. C. 1907. See also history of Sec. 4408.

4412. Certificate of transcript. When the transcript of such records herein provided for shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken, and it shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county. The county clerk and recorder to whom the said transcript shall be delivered for comparison shall certify under oath that the said transcribed records are full, complete and exact copies of the original records, and the said county clerk and recorder shall be entitled to six dollars per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate.

History: Sec. 2864, Rev. C. 1907. See also history of Sec. 4408.

4413. Transcribed records to be filed. All records so transcribed, when certified to as being full, complete, and correct, shall be delivered to the county clerk and recorder of the segregated county, and shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county.

History: Sec. 2865, Rev. C. 1907. See also history of Sec. 4408.

4414. Effect of transcribed records. A certified copy of the records so transcribed and filed in the office of the county clerk and recorder of any segregated county may be introduced in evidence, and shall have the same force and effect as certified copies of original records.

History: Sec. 2866, Rev. C. 1907. See also history of Sec. 4408.

Cited or applied as section 4172, Political Code, in State ex rel. Lambert v. Coad, 23 Mont. 131, 139, 57 Pac. 1092.

4415. New counties—Transfer of action affecting real estate. In all counties heretofore created out of any other county, and in all counties that may be hereafter created, wherever there has been an action or proceeding begun, affecting any real property situate within such new county, whether such action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in such real property so affected by such action or proceeding, requesting the transfer of the files and papers and records of such action or proceeding to the office of the clerk of the district court of the new county, wherein such real property is situated, it shall be the duty of the judge of the district court, in which said action or proceeding was originally begun, to order that a transfer of all the files and papers of such action or proceeding be made to the office of the clerk of the district court of the new county in which such real property is situated; and when such an order of transfer is made, it shall be the duty of the clerk of the district court, wherein such action or proceeding was originally instituted, to transmit all of the files and papers in such action or proceeding, together with a certified copy of all minutes of the

court relating to such action or proceeding, to the clerk of such new county in which the real property, the subject-matter of such action or proceeding, is situated; and said clerk of the district court of the new county in which said property is situated shall, upon the receipt of such files and papers and certified copies of the minutes of the court, file said papers in his office as transferred files from the original county, and shall enter and transcribe upon his records any final judgment or decree or order contained in such files or papers or records so transferred.

History: En. Sec. 1, Ch. 20, L. 1907; Sec. 2867, Rev. C. 1907.

4416. Same—Jurisdiction of court. Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county heretofore created, or that may be hereafter created, in accordance with the provision of this act, the district court of such new county, in which such files and papers shall have been transferred, shall have the same jurisdiction with reference to said real property for the enforcement of any decree, judgment, or order that may have been entered therein, or for such other proceedings as may be necessary in such action or proceding, as the district court had in the county wherein such action or proceeding was originally begun.

History: En. Sec. 2, Ch. 20, 1907; Sec. 2868, Rev. C. 1907.

4417. Same—Fees of clerk. The clerk of the district court wherein such action or proceeding was originally begun shall be entitled to receive, for transferring such files and papers and certified copy of the minutes and records entered in connection with such action or proceeding, no other fee than at the rate of twenty cents per folio for copies of minutes made by him, and fifty cents for certificate fee; the clerk of the district court of the new county, to which such files and papers may be transferred in accordance with the provisions of this act, shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law.

History: En. Sec. 3, Ch. 20, L. 1907; Sec. 2869, Rev. C. 1907.

4418. Transcript of records when territory detached from one municipality and added to another. When any territory shall be detached from any county, city, or town in this state and annexed to any other county, city, or town it shall be the duty of the proper officer of such county, city, or town to which said territory so detached shall be annexed, to demand from the proper officer of the county, city, or town having custody of the public records of the territory so detached, a transcript of all public records pertaining to such territory; and it shall be the duty of such officer from whom they shall be demanded to furnish such authenticated transcripts of all such records in his office, which shall be paid for after they shall be so furnished by the county, city, or town to which said territory so detached shall be annexed.

History: En. Sec. 1, Ch. 36, L. 1911.

4419. Apportionment of indebtedness and credits where territory is detached and annexed. When any territory shall be detached from any

county, city or town of this state, and the same shall be annexed to any other county, city, or town therein, such county, city, or town to which the same shall be annexed shall be liable to the county, city, or town from which the territory was so detached for its just share of liabilities and indebtedness, and shall receive a just share of the credits from the county, city, or town from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached, and the last prior assessment shall be used as a basis in determining the same.

History: En. Sec. 2, Ch. 36, L. 1911.

Division of property and apportionment of debts between counties on severance and annexation of lands, see note in 20 A. S. R. 677.

Liability of territory annexed to county to pay proportionate share of existing debts, see note in 27 L. R. A. (N. S.) 1147.

4420. Collection of taxes in territory taken from one municipality and added to another. When any territory shall be detached from any county, city, or town in this state and be annexed to any other county, city, or town therein, it shall in no manner invalidate or interfere with the collection of taxes in such territory, and they shall be collected by and the returns made to the county to which said territory is attached in the manner provided by law for levying and collecting taxes.

History: En. Sec. 3, Ch. 36, L. 1911.

4421. Transfer of records on creation new county. Any new county heretofore formed or that may hereafter be formed shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county, and such records, maps, plats, and charts shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor, and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county; and provided, further, that in the event territory is taken from one county and added to another county such plats and records covering such territory taken, shall be transferred to the enlarged county; provided, that if any portion of the cost of preparing such records, maps, plats, or charts remain unpaid, said new county or enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921.

4422. Jury-list for current year in new counties. Whenever a new county has been or may hereafter be created out of territory formerly embraced in any existing county or counties of the state, the jury-list for such new county for the current year, and until the regular jury commission for such new county shall certify for the succeeding year the new jury-list in accordance with the provisions of sections 8896 to 8901 of this code, shall be as follows:

History: En. Sec. 1, Ch. 129, L. 1919.

4423. Duty of clerk of court in the old county to certify jury-list to clerk of new county. The clerk of court of the county from which said new county may be segregated, or in the event of such new county being segregated from two or more counties, the clerks of court of each of such counties shall take the names of such persons as appear upon the jury-list for such year, which may have been certified to him or to them by the jury commission or commissions of his or their respective county or counties to be residents of the territory embraced in such new county, and shall certify the same to the clerk of court of the new county. Such names shall then constitute the jury-list for such new county for the period as aforesaid.

History: En. Sec. 2, Ch. 129, L. 1919.

4424. Time within which jury-list to be made and certified by clerks of old county. Such new list shall be made and certified by such clerk or clerks of the existing county or counties as soon after the creation of such new county as may be practicable, and in any event within five days after request therefor shall be made by the clerk of the district court of the new county.

History: En. Sec. 3, Ch. 129, L. 1919.

4425. Removal of names from jury-box of old county. The clerk or clerks of the district court of the county or counties from which such new county has been or may hereafter be created shall, after the creation of such new county, remove from the list of jurors and jury-boxes of his or their county or counties the names of all persons upon the list which may have been filed with him or them by the jury commission who may appear to him or them to be residents of the new county and so certified by him as aforesaid.

History: En. Sec. 4, Ch. 129, L. 1919.

4426. Duty of clerk of court in new county regarding jury-lists. The clerk of court of the new county shall then file and prepare his jury-list and boxes in accordance with the general law pertaining to the duties of clerks of court with relation to jury-lists and boxes.

History: En. Sec. 5, Ch. 129, L. 1919.

CHAPTER 7.

CHANGE OF NAME OF COUNTIES.

Section 4427. Name of Any County May Be Changed, How.
4428. Petitions for Change of Name to Be Determined in District Court.
4429. Petition for Change of Name of County—By Whom Signed and What to Specify.
4430. Form of Petition.
4431. Comparison of Signatures and Certificate of County Clerk—Time During Which Petition May Be Retained.
4432. Publication and Posting of Copies of Petition.
4433. Hearing of Petition and Objections Thereto—Proceedings.
4434. Duty of Clerk of Court Upon Rendition of Decree Changing Name of County.
4435. Change in Name in Official Records, Forms, Blanks, etc.
4436. Records, Writs, Processes, Actions, etc., to Be the Property and Inure to Benefit of County Under New Name.
4437. Vested Rights and Existing Laws Not Affected by Change in Name.
4438. Assumption of Indebtedness, Bonds, and Contracts by County Under New Name.
4439. Terms of Court.
4440. Retention of Office by County, Township, and District Officials—County Boundaries.

4427. Name of any county may be changed, how. The name, designation, appellation, cognomen, or title of any county in this state may be changed to any other name, designation, appellation, cognomen, or title, as in this act provided.

History: En. Sec. 1, Ch. 113, L. 1917.

4428. Petitions for change of name to be determined in district court. Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

History: En. Sec. 2, Ch. 113, L. 1911.

4429. Petition for change of name of county—By whom signed and what to specify. A petition for the change of the name, designation, cognomen, appellation, or title of any county in this state must be signed by a number of the legal voters in such county equal, at least, to twenty-five per centum who are taxpayers and voters of the whole number of votes cast for the office of governor of Montana in such county, at the gubernatorial election next preceding the circulation of such petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching his name to the petition. The petition must specify the present name of the county, the name proposed, and the reason or reasons for such change of name, and must be entitled in and addressed to the appropriate district court aforesaid.

History: En. Sec. 3, Ch. 113, L. 1917.

4430. Form of petition. The following shall be substantially the form of petition for any change of name of a county as in this act provided:

In the district court of the.....judicial district of the state of Montana, in and for the county of.....

Petition for the change of the

Name of.....County.

To the honorable district court of the..... judicial district of the state of Montana, in and for the county of.....

We, the undersigned legal voters of the county of....., state of Montana, respectfully petition the honorable district court aforesaid that the name of.....county, Montana, be changed to the name of.....county, Montana.

The reasons for the proposed change of name as aforesaid, are as follows: (Here set out reasons.)

We further petition this honorable court to appoint a time for the hearing of this petition, and of such objections thereto as may be filed before such date.

Each voter whose signature is hereby affixed hereby certifies that he has personally signed this petition, and that the residence, post-office address, and voting precinct of such signer is correctly written after his signature appearing hereon.

Name.	Residence.	P. O. Address.	Voting Precinct.
.....	.....	.....	.....

Numbered lines for names.

Every such sheet for petitioner's signature shall be attached to a full and correct copy of the petition; and such petition may be filed with the clerk of the district court aforesaid, in sections for convenience in handling.

History: En. Sec. 4, Ch. 113, L. 1917.

4431. Comparison of signatures and certificate of county clerk—Time during which petition may be retained. The county clerk of the county in which said petition shall be signed shall compare the signatures of the voters signing the same with their signatures on the registration books and blanks on file in his office for the preceding general election, and shall thereupon attach to the sheets of said petition containing such signatures his certificate to the district court aforesaid, substantially as follows:

State of Montana, }
County of.....} ss.

To the honorable district court of the.....judicial district of the state of Montana, in and for the county of.....

I, ..., county clerk of the county of....., hereby certify that I have compared the signatures on (number of sheets) of the petition for change of name attached hereto, with the signatures of said voters as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers) numbering (number of genuine signatures), are genuine. And I further certify that the number of genuine signatures hereto attached equals at least twenty-five per centum of the whole number of votes cast for the office of governor of Montana in said county at the gubernatorial election next preceding the circulation of this petition. ....., County Clerk.

(Seal.) By.....

Deputy.....

The county clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures or fraction thereof on the sheets presented to him, and at the expiration of such time he shall file the same with the clerk of the district court aforesaid, with his certificate attached thereto as above provided. The forms herein given are not mandatory, and, if substantially followed in any petition, it shall be sufficient disregarding clerical and merely technical errors.

History: En. Sec. 5, Ch. 113, L. 1917.

4432. Publication and posting of copies of petition. Upon the filing of the petition as aforesaid, the clerk of the district court, upon the receipt of the costs from any voter in the county, shall cause a copy of the same to be published for four successive weeks in some newspaper published in the county, and a copy of such petition must be posted at three of the most public places in the county for a like period by the said clerk of the district court, and proofs must be made of such publication and posting before the petition can be considered, and before a date for the hearing thereon may be fixed by the court.

History: En. Sec. 6, Ch. 113, L. 1917.

4433. Hearing of petition and objections thereto—Proceedings. Such petition must be heard at such time as the court or judge may appoint, subject to the provisions of the preceding section, and objections may be filed in the office of the clerk of said court at any time before such date by any person who can, in such objections, show to the court or judge good reason against such change of name. On the hearing, the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the petition, and may make an order changing the name if there appears any reason, benefit, or advantage for such change, or may dismiss the petition as to the court or judge may seem right or proper.

History: En. Sec. 7, Ch. 113, L. 1917.

4434. Duty of clerk of court upon rendition of decree changing name of county. Immediately upon the rendition of any decree changing the name of a county as in this act provided, the clerk of the district court of said county shall transmit, by registered mail, a certified copy of said decree, showing the date of its rendition, to the secretary of state of the state of Montana, who shall file the same and record the same in an appropriate book.

History: En. Sec. 8, Ch. 113, L. 1917.

4435. Change in name in official records, forms, blanks, etc. From and after the rendition of the decree, the official records in the custody of the several county officers shall be styled and designated, as in each instance may be proper, with the new name of the county as provided by the decree; and all printed blanks, forms, and all printed matter whatsoever, and all written records of such county, shall be styled and designated with the new name; all the official records, blanks, forms, books and papers belonging to such county before the entry of such decree shall be styled and designated with the new name as in the decree provided; but for the convenience of searchers of public records, and in order to prevent confusion with respect to land titles, or in any other respect, it shall be proper to style designate, or refer to such records, books, papers, blanks, and forms as were in existence before the rendition of such decree in the following manner:

New Name.	(Formerly)	Old Name County.
.....		.....

History: En. Sec. 9, Ch. 113, L. 1917.

4436. Records, writs, processes, actions, etc., to be the property and inure to benefit of county under new name. All public records and property of the county existing under the former name shall be and become the public records and property of the county of the new name, and in all conveyances, indentures, instruments, decrees of courts, and other records, where the former name of the county occurs, said former name shall hereafter be construed to mean the new name of the county. All writs and processes in force and existence under the former name of the county shall thereafter be the writs and processes of and appertaining to the county under its new name; and all bonds, undertakings, and sureties alive and in existence, and running to or standing in the former name of the county,

shall have the same force, effect, and relation to the county under its new name as they had to the county under its former name. All suits, actions, and proceedings in law or equity pending in the district court of the county under its former name, or in any of the other courts of said county, shall continue in full force and be in existence in the said court in which they were pending, under the new name of the county; and shall not be in anywise abated or affected by the change of name.

History: En. Sec. 10, Ch. 113, L. 1917.

4437. Vested rights and existing laws not affected by change in name. The change of name herein provided for shall not impair or work a forfeiture or alteration of any vested rights, and all laws of a general or special nature applicable to the county under its former name shall thereafter apply with equal force and effect to the county under its new name.

History: En. Sec. 11, Ch. 113, L. 1917.

4438. Assumption of indebtedness, bonds, and contracts by county under new name. All indebtedness and obligations of the county, whether bonded or otherwise, shall be assumed by and become the indebtedness of the county under its new name, and shall be the indebtedness and obligations of such county as theretofore; and all bonds theretofore issued by the county under its former name outstanding and unpaid at the time of the rendition of the decree shall be assumed by and become due from and paid by said county under its new name. All contracts and obligations, express or implied, unfulfilled by the county at the date of the rendition of the decree, shall be assumed and discharged by such county under its new name.

History: En. Sec. 12, Ch. 113, L. 1917.

4439. Terms of court. The terms of the district court in and for said county as theretofore established by the court or a judge thereof under the former name of the county shall become the terms of said court for the county under its new name, and shall be held as stated in and for said county under its former name.

History: En. Sec. 13, Ch. 113, L. 1917.

4440. Retention of office by county, township, and district officials—County boundaries. Persons who are, at the date of the rendition of the decree, the county, township, and district officers or officials, and members of the legislative assembly of the county under its former name, shall remain in office and shall thereafter be the county, township, district, and legislative officials of the county under its new name, and as such shall be entitled to the same salaries or compensation during the remainder of their terms of office that they were entitled to receive from the county under its former name. No change of name shall be so construed as to alter or modify the boundaries of the county as the same existed and were established under the former name of the county, but such boundaries shall be and remain the same until changed according to law.

History: En. Sec. 14, Ch. 113, L. 1917.

CHAPTER 8.

GENERAL POWERS AND LIMITATIONS UPON COUNTIES.

Section 4441. Every County a Body Corporate.
4442. Powers, How Exercised.
4443. Name and Designation.
4444. Enumeration of Powers.
4445. Restriction on Loaning Credit.
4446. Restriction on Temporary Loans.
4447. Limit of Indebtedness.
4448. Service of Process.
4449. Witnesses and Jurors, Competency of.
4450. No Execution to Issue.
4451. Money Illegally Paid Recovered.

4441. Every county a body corporate. Every county is a body politic and corporate, and as such has the power specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed.

History: En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907. Cal. Pol. C. Sec. 4000.

A county is one of the civil divisions of the state for political and judicial purposes, created by the sovereign power of the state of its own will, without the consent of the people who inhabit it. It is quasi-corporate in character, but has only such powers as are expressly provided by law or are necessarily implied by those expressed. State ex rel. Lambert v. Coad, 23 Mont. 131, 137, 57 Pac. 1092; Independent Publishing Co. v. County of Lewis and Clark, 30 Mont. 83, 86, 75 Pac. 860; Yellowstone Co. v. First Trust & Savings Bank, 46 Mont. 439, 450, 128 Pac. 596; Hersey v. Neilson, 47 Mont. 132, 143, 131 Pac. 30 Ann. Cas. 1914C, 963; Edwards v. County of Lewis and Clark, 53 Mont. 359, 365, 165 Pac. 297.

While, in a strict sense, a county is not a municipal corporation, yet, in the sense that it is a body corporate with such powers only as are expressly conferred by the code and special statutes, and such as are necessarily implied from those expressed, it comes within the rules and principles applicable to such corporations. State ex rel. Lambert v. Coad, 23 Mont. 131, 137, 57 Pac. 1092; Morse v. Granite County, 44 Mont. 78, 88, 119 Pac. 286.

A county is a body corporate, but does not possess the powers of local legislation and control which are the distinguishing characteristics of a municipal corporation. Hersey v. Neilson, 47 Mont. 132, 141, 131 Pac. 30 Ann. Cas. 1914C, 963.

A county does not have any powers other than those indicated in this section. Hersey v. Neilson, 47 Mont. 132, 145, 131 Pac. 30 Ann. Cas. 1914C, 963.

Cited or applied as section 2870, Revised Codes, in State ex rel. Furnish v. Mullendore, 53 Mont. 109, 117, 161 Pac. 949.

4442. Powers, how exercised. Its powers can only be exercised by the board of county commissioners, or by agents, and officers acting under their authority, or authority of law.

History: En. Sec. 4191, Pol. C. 1895; re-en. Sec. 2871, Rev. C. 1907. Cal. Pol. C. Sec. 4001.

The powers of a county are exercised by the commissioners, but they are not therefore authorized to bring actions in their official capacity on behalf of the county, in the absence of a provision conferring upon them the right to do so. State ex rel. Furnish v. Mullendore, 53 Mont. 109, 117, 161 Pac. 949.

4443. Name and designation. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties; but this provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: En. Sec. 4192, Pol. C. 1895; re-en. Sec. 2872, Rev. C. 1907. Cal. Pol. C. Sec. 4002.

A county by its corporate name is the proper party to bring "all actions and proceedings touching its corporate rights,

property, and duties"; hence, a mandamus proceeding to compel a board of county commissioners to reapportion an indebtedness between an old county and a new one should be brought in the name of the county; the board itself is not authorized to bring such a proceeding in its own name. State ex rel. Furnish v. Mullendore, 53 Mont. 109, 117, 161 Pac. 949.

4444. Enumeration of powers. It has power:

1. To sue and be sued.
2. To purchase and hold lands within its limits.
3. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require.
5. To levy and collect such taxes for the purposes under its exclusive jurisdiction as are authorized by this code or by special statutes.

History: En. Sec. 1, p. 498, Bannack Stat.; re-en. Sec. 1, p. 433, Cod. Stat. 1871; re-en. Sec. 335, 5th Div. Rev. Stat. 1879; re-en. Sec. 744, 5th Div. Comp. Stat. 1887; amd. Sec. 4193, Pol. C. 1895; re-en. Sec. 2873, Rev. C. 1907. Cal. Pol. C. Sec. 4003.

Cited or applied as section 4193, Political Code, with other sections, in Greeley v. Cascade County, 22 Mont. 580, 587, 57 Pac. 274.

Delegation of power of taxation to county authorities, see note in 15 L. R. A. (N. S.) 62.

4445. Restriction on loaning credit. No county must ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to or a shareholder in any company or corporation, or a joint owner with any person, company or corporation.

History: En. Sec. 4194, Pol. C. 1895; re-en. Sec. 2874, Rev. C. 1907. Cal. Pol. C. Sec. 4004.

4446. Restriction on temporary loans. All moneys borrowed by or on behalf of any county must be used only for the purpose specified in the law authorizing the loan.

History: En. Sec. 4195, Pol. C. 1895; re-en. Sec. 2875, Rev. C. 1907. Cal. Pol. C. Sec. 4005.

4447. Limit of indebtedness. No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the electors thereof voting at an election to be provided by law.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907.

The issuance by a county of coupon bonds to the extent of one hundred and fifty thousand dollars for the purpose of redeeming outstanding county warrants to that amount is merely a change in the form of a subsisting liability, and not the creation of a new indebtedness or liability, and is, therefore, not within the inhibition of the constitution and laws of the state which provide in effect that counties shall not incur an indebtedness or liability for any single purpose in an amount exceeding ten thousand dollars without the approval of a majority of the electors of the county. Hotchkiss v.

Marion, 12 Mont. 218, 223, 224, 29 Pac. 821; see Edwards v. County of Lewis & Clark, 53 Mont. 359, 165 Pac. 297.

Constitutional limit of indebtedness of county as affected by existence of two or more separate political bodies wholly or partly coincident in territory, see notes in Ann. Cas. 1912C, 449; L. R. A. 1917E, 468.

Creation of indebtedness within the meaning of debt-limit provision, see notes in 37 L. R. A. (N. S.) 1058; L. R. A. 1917E, 437.

4448. Service of process. In all legal proceedings against the county, process must be served on the chairman of the board of county commissioners; and whenever an action or proceeding is commenced, it is the duty of the chairman forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at its next meeting, all the information he may have in regard to such action or proceeding.

History: En. Sec. 4197, Pol. C. 1895; re-en. Sec. 2877, Rev. C. 1907.

4449. Witnesses and jurors, competency of. On the trial of an action in which the county is interested, the inhabitants of such county are competent jurors, if otherwise competent and qualified according to law.

History: En. Sec. 341, 5th Div. Rev. Stat. 1879; re-en. Sec. 750, 5th Div. Comp. Stat. 1887; amd. Sec. 4198, Pol. C. 1895; re-en. Sec. 2878, Rev. C. 1907.

Effect on competency of juror of his residence in county interested in suit, see notes in 6 Ann. Cas. 961; Ann. Cas. 1913A, 120.

4450. No execution to issue. When a judgment is rendered against the county, or against any county officer, in an action prosecuted against him in his name of office, when the same is to be paid by the county, no execution must issue upon the judgment, but the same must be paid as other county charges; and when so collected, must be paid by the county treasurer to the proper person to whom the same is adjudged, upon the delivery of a proper voucher therefor.

History: En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907.

Cited as section 4199, Political Code, in Greeley v. Cascade County, 22 Mont. 580, 587, 57 Pac. 274.

4451. Money illegally paid recovered. Whenever any board of county commissioners, without authority of law, orders any money paid as a salary, fees, or for other purposes, and such money has been actually paid, or whenever the county clerk has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of county commissioners, or by the law, and the same has been paid, the county attorney of such county must institute an action in the name of the county against such person or persons to recover the money so paid, and twenty per cent. damage for the use thereof, and no order of the board of county commissioners therefor is necessary in order to maintain such action; when the money has not been paid on such orders, it is the duty of the county attorney to commence an action in the name of the county for restraining the payment of the same; and no order of the board of county commissioners therefor is necessary to maintain such action.

History: En. Sec. 4200, Pol. C. 1895; re-en. Sec. 2880, Rev. C. 1907.
Related sections: 4520, 4821.

Recovery back of fees or compensation paid illegally or by mistake, see notes in 13 Ann. Cas. 351; Ann. Cas. 1915B, 811.

CHAPTER 9.

COUNTY COMMISSIONERS—ORGANIZATION, MEETINGS, AND COMPENSATION.

Section 4452. Board, How Composed.
4453. Member Must Be Elector of County.
4454. Vacancy, How Filled.
4455. Bond of Members of Board.
4456. Chairman of Board—Administration of Oaths.
4457. Special Meetings, How Called.
4458. Meetings and Records Published.
4459. Clerk.
4460. Duties of Clerk.
4461. Duties of Board.
4462. Regular Meetings—Extra Sessions.
4463. Other Meetings.
4464. Compensation of Members of Board.

4452. Board, how composed. Each county must have a board of county commissioners, consisting of three members, whose term of office is four years.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907. Cal. Pol. C. Sec. 4022.

Cited as section 4210, Political Code, in Williams v. Commrs. of Broadwater Co., 28 Mont. 360, 364, 72 Pac. 755.

4453. Member must be elector of county. Each member of a board of county commissioners must be an elector of the county he represents.

History: En. Sec. 4211, Pol. C. 1895; re-en. Sec. 2882, Rev. C. 1907. Cal. Pol. C. Sec. 4023.

4454. Vacancy, how filled. Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy, and such appointee shall hold office until the next general election.

History: En. Sec. 4212, Pol. C. 1895; re-en. Sec. 2883, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1913; amd. Sec. 1, Ch. 28, L. 1921. Cal. Pol. C. Sec. 4026.

The power to fill a vacancy in the office of county commissioner is conferred by the constitution upon the district judge of the district in which the vacancy occurs and the provisions of this section, enacted in pursuance thereof, but such power is ministerial, not judicial, in character. Certiorari does not lie to annul an order filling a vacancy deemed by the judge to exist in that office in a newly created county because of the alleged unconstitutionality of the act under which the office was filled by election, and because the incumbent was holding two other offices regarded by him as incompatible. State ex rel. Dowen v. District Court, 50 Mont. 249, 251, 252, 146 Pac. 467.

Cited as section 1, chapter 5, Laws of 1913, and construed as to constitutionality, in State ex rel. Rowe v. Kehoe, 49 Mont. 582, 586, 144 Pac. 162.

Cited or applied as section 2883, Revised Codes, before amendment, and construed as to constitutionality, in State ex rel. McGowan v. Sedgwick, 46 Mont. 187, 193, 127 Pac. 94.

4455. Bond of members of board. Each person elected or appointed to the office of county commissioner must, before he enters upon the duties of his office, execute and file with the clerk of the district court of the county a bond, as provided in section 466 of this code. It is the duty of the district judge on the first day in each term or session of court, in open court, to examine and inquire into the sufficiency of such bond, and order a new bond if found insufficient, and if found sufficient, his approval must be entered in the minutes of the court.

History: Ap. p. Sec. 917, 5th Div. Comp. Stat. 1887; amd. Sec. 4213, Pol. C. 1895; re-en. Sec. 2884, Rev. C. 1907.

4456. Chairman of board—Administration of oaths. The board of county commissioners must elect one of its members chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907. Cal. Pol. C. Sec. 4028.

4457. Special meetings, how called. If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the board, a special meeting may be ordered by a majority of the board. The order must be entered of record, and five days' notice thereof must by the clerk be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting.

History: En. Sec. 4215, Pol. C. 1895; re-en. Sec. 2886, Rev. C. 1907. Cal. Pol. C. Sec. 4034.

Where the board of county commissioners called a special meeting for the purpose, among other things, of doing "all necessary things in connection with the advertising and sale of" proposed bonds, and at such meeting adopted a formal resolution directing the bonds to issue, the debentures were not void because the call did not specifically state that one of the purposes of the meeting was the making of an order directing them to issue, such purpose being included in the general purpose of the meeting. Morse v. Granite County, 44 Mont. 78, 93, 94, 119 Pac. 286.

The purpose of the requirement of this section, that "the order must specify the business to be transacted, and none other that that specified must be transacted at such meeting," is to give every member of the board the opportunity to be present and take part in the business to be transacted. If he does not care to attend, he has the assurance that the board will not take up any other business than that specified. Morse v. Granite County, 44 Mont. 78, 93, 94, 119 Pac. 286. See Reid v. Lincoln County, 46 Mont. 31, 56, 57, 125 Pac. 429.

Cited as section 4215, Political Code, in Williams v. Commrs. of Broadwater Co., 28 Mont. 360, 365, 72 Pac. 755; as section 2886, Revised Codes, in Smith v. Zimmer, 45 Mont. 282, 307, 125 Pac. 420.

4458. Meetings and records published. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907. Cal. Pol. C. Sec. 4035.

Cited as section 4216, Political Code, in Williams v. Commrs. of Broadwater Co., 28 Mont. 360, 364, 365, 72 Pac. 755.

4459. Clerk. The county clerk is the clerk of the board of county commissioners. The records must be signed by the chairman and the clerk.

History: En. Sec. 4217, Pol. C. 1895; re-en. Sec. 2888, Rev. C. 1907. Cal. Pol. C. Sec. 4029.

4460. Duties of clerk. The clerk of the board must:

1. Record all the proceedings of the board.

2. Make full entries of all its resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county.

3. Record the vote of each member on any question upon which there is a division, or at the request of any member present.

4. Sign all orders made and warrants issued by order of the board for the payment of money, and certify the same to the county treasurer.

5. Record the reports of the county treasurer of the receipts and disbursements of the county.

6. Preserve and file all accounts acted upon by the board.

7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon.

8. Record all orders levying taxes.

9. Designate upon every account allowed by the board the amount allowed, and he must deliver to any person who may demand it a certified copy of any record in his office, or any account on file therein.

10. As often as a new township is organized, or the boundaries of any township are altered, to immediately make out and transmit to the secretary of state a certified statement of the names and boundaries, and the boundaries of any township altered.

11. Perform all other duties required by law or any rule or order of the board.

History: En. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Secs. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907. Cal. Pol. C. Sec. 4030.

4461. Duties of board. The board of county commissioners must cause to be kept:

1. A "Minute Book," in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.

2. A "Road Book," containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts, or relating to road supervisors and their reports and accounts, as provided in section 2604 (see note) of this code.

3. A "Franchise Book," containing all franchises granted by them, for what purpose, the length of time, and to whom granted, the amount of bond and license tax required.

4. A "Warrant Book," in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

History: En. Sec. 4219, Pol. C. 1895; re-en. Sec. 2890, Rev. C. 1907. Cal. Pol. C. Sec. 4031.

Note.—The reference to section 2604, supra, is obsolete, the section having been repealed. See section 1622 of this code.

Cited or applied as section 2890, Revised Codes, in Smith v. Zimmer, 45 Mont. 282, 300, 125 Pac. 420.

4462. Regular meetings—Extra sessions. The board of county commissioners, except as may otherwise be required of them, may meet at the county seat of their respective counties on the first Monday of each and every month of the year, for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least five days' public notice, hold an extra session of not over three

days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes.

History: Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915. Cal. Pol. C. Sec. 4032.

Note.—Chapter 148, Laws of 1915, was in terms repealed by section 20, chapter 225, Laws of 1921; the latter act was "An Act for the General Revision of the Civil and Criminal Practice Acts of Montana," etc. The evident intent of the 1921 act was to repeal chapter 149, Laws of 1915, instead of chapter 148, which relates to a wholly different subject. Whether or not this intent may be judicially declared, the repeal of chapter 148 is believed to be void as not germane to the subject of chapter 225, Laws of 1921.

Cited or applied as section 2891, Revised Codes, before amendment, in Smith v. Zimmer, 45 Mont. 282, 307, 125 Pac. 420.

4463. Other meetings. Such other meetings must be held to canvass election returns, equalize taxation, and other purposes as are prescribed in this code or provided by the board.

History: En. Sec. 4221, Pol. C. 1895; re-en. Sec. 2892, Rev. C. 1907. Cal. Pol. C. Sec. 4033.

4464. Compensation of members of board. Each member of the board of county commissioners is entitled to eight dollars per day for each day's attendance on the sessions of the board, and ten cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907.

Note.—For compensation of county commissioners when inspecting construction work see section 1632.

Cited or applied as section 2893, Revised Codes, in State ex rel. Payne v. District Court, 53 Mont. 350, 354, 165 Pac. 294; State v. Story, 53 Mont. 573, 165 Pac. 748.

Meaning of "necessary travel" or "necessarily traveled" as used with respect to mileage allowance, see note in Ann. Cas. 1918D, 934.

Per diem compensation of county boards and other officers, see note in 1 A. L. R. 287.

CHAPTER 10.

GENERAL POWERS OF BOARDS OF COUNTY COMMISSIONERS.

Section 4465. General and Permanent Powers.
4466. Validation of Sales Made Under Subdivision 10 of Preceding Section.

4465. General and permanent powers. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, charged with assessing, collecting, safe keeping, management, or disbursement of the public revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; and, when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection.

2. To divide the counties into township, school, road, and other districts required by law, change the same, and create others as convenience requires.

3. To establish, abolish, and change election precincts, and to appoint judges of election, canvass all election returns, declare the result, and issue certificates thereof.

4. To lay out, maintain, control, and manage public highways, ferries, and bridges, within the county, and levy such tax therefor as required by law; provided, however, that they may, in the exercise of a sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve public highways, ferries, and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of county commissioners of the counties concerned, and levy taxes therefor as provided by law.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding two dollars, and a tax on property not exceeding one-fifth of one per cent., or either of such levies when both are not required, and to expend not to exceed five per cent. of any such levy for the collection of said tax, or of any part thereof.

6. To provide a farm for the support of the poor of the county, and make regulations for working the same.

7. When there are no necessary county buildings, to provide suitable rooms for county purposes.

8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage, and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor.

9. To cause to be erected and furnished a court-house, jail, hospital, and such other public buildings as may be necessary.

10. To sell at public auction at the court-house door, after thirty days' previous notice, given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the use of the county.

11. At the regular meetings of the board, to examine and allow the accounts of all officers having the care, management, collection, or disbursement of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit.

12. At the regular meetings of the board to examine, settle, and allow all accounts legally chargeable against the county except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same.

13. To levy such tax annually on the taxable property of the county for county purposes as may be necessary to defray the current expenses therefor, including salaries otherwise unprovided for, not exceeding sixteen mills on each dollar of the assessed valuation for any one year; and to levy such taxes as are required to be levied by special or local statutes.

14. To equalize the assessments.

15. To direct and control the prosecution and defense of all suits to which the county is a party.

16. To insure the county buildings in the name of and for the benefit of the county.

17. To grant licenses for keeping ferries, and such other licenses as are provided by law.

18. To fix the compensation of all county officers not otherwise in this code or by general or special law fixed, and provide for the payment of the same.

19. To fill by appointment all vacancies that may occur in county, township, or precinct offices, except in the office of county commissioner.

20. To contract for the county printing, and provide books and stationery for county officers.

21. At the adjournment of each session of the board, to cause to be published in a newspaper, or otherwise, a fair statement of all its proceedings, and annually a statement of the financial condition of the county.

22. To represent the county, and have the care of county property, and the management of the business and concerns of the county in all cases where no other provision is made by law.

23. To make and enforce such rules for its government, the preservation of order, and the transaction of business, as may be necessary.

24. To adopt a seal for the board, a description and impression whereof must be filed by the clerk in the offices of the county clerk and secretary of state.

25. To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

26. To borrow money upon the credit of the county to meet current expenses, if the county revenue is insufficient.

27. To issue on the credit of the county coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, in accordance with the provisions of articles III and IV, chapter II, title II, part IV of the Political Code. (See note.)

History: En. Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919. Cal. Pol. C. Sec. 4046.

Note.—The language of subdivision 27 is retained in this code for the reason that it alludes to the Political Code 1895, instead of to the Political Code 1907. The sections referred to are 4614 to 4635 and 4717 to 4721 of this code.

For a decision concerning the validity of a contract entered into by the board of county commissioners for the care of the poor under former statutes, see Lebcher v. Commrs. of Custer Co., 9 Mont. 315, 23 Pac. 713.

Under the law as it stood in 1892, the commissioners of a county had power to levy a tax on the taxable property of a school district within their county to satisfy a judgment against the trustees of such district, where the funds under the control of such district were insufficient to pay the same, and mandamus was available to compel such levy without a statute expressly authorizing county commissioners to make an assessment for such purpose. State ex rel. Shapley v. Board of Commrs. of Yellowstone Co., 12 Mont., 503, 507, 31 Pac. 78.

A board of county commissioners, is one of limited powers, and must in every instance justify its action by reference to the provisions of law defining and limiting these powers. If, however, there is no question of the existence of the power to do the act proposed, and the mode of its exercise is not pointed out, the board is left free to use its own discretion in selecting the mode it shall adopt or the course it shall pursue, and the result cannot be called in question if the course pursued is reasonably well adapted to the accomplishment of the end proposed. State ex rel. Lambert v. Coad. 23 Mont. 131, 137, 57 Pac. 1092; State ex rel. Gillett v. Cronin, 41 Mont. 293, 295, 109 Pac. 144; Morse v. Granite County, 44 Mont. 78, 89, 119 Pac. 286; Hersey v. Neilson, 47 Mont. 132, 145, 131 Pac. 30 Ann. Cas. 1914C, 963.

A contract with an attorney for his services, entered into by the chairman of the board individually, is not binding on the county, since the commissioners have power to bind the county only where they act as a legal entity. Williams v. Commrs. of Broadwater Co., 28 Mont., 360, 365, 366. 72 Pac. 755.

The board of county commissioners did not have the power to erect and maintain a detention hospital for persons affected with contagious or pestilential diseases, at the expense of the county. Yegen v. Board of County Commrs., 34 Mont. 79, 86, 85 Pac. 740.

A contract made by a board of county commissioners, a few weeks before the expiration of its term of office, and upon the expiration of a prior contract, for county printing for the two succeeding years, is valid in the absence of fraud or bad faith in the making, and is not against public policy. Picket Pub. Co. v. Board of County Commrs., 36 Mont. 188, 194, 195, 92 Pac. 524, 122 Am. St. Rep. 352, 12 Ann. Cas. 986, 13 L. R. A. (N. S.) 1115.

While the board of county commissioners has the power under this section to change the boundaries of a county, or to abolish a township altogether, a due regard for other provisions of the code requires that its authority in this respect be limited to the extent that there must always be at least two townships in each county, and in abolishing all but one township in a county it acts in excess of its jurisdiction. State ex rel. Gillett v. Cronin, 41 Mont. 293, 296, 109 Pac. 144.

The eighth subdivision of this section, relative to the manner of purchasing real estate, applies to a bridge. State ex rel. Donlan v. Board of Commrs., 49 Mont. 517, 523, 143 Pac. 984.

This section refers to an outright purchase of property for county purposes, but it has no application to the acquisition of a right of way under the general highway law. Flynn v. Beaverhead County, 54 Mont. 309, 314, 170 Pac. 13.

The word "accounts" used in this section must be understood in a broad, generic sense, and as including any right to or claim for money which is due and payable from the county treasury. State ex rel. Dolin v. Major, 58 Mont. 140, 148, 192 Pac. 618.

Cited or applied as section 2894, Revised Codes, before amendment, in State ex rel. Stuewe v. Hindson, 44 Mont. 429, 439, 120 Pac. 485; Reid v. Lincoln County, 46 Mont. 31, 64, 125 Pac. 429; State ex rel. Hillis v. Sullivan, 48 Mont. 320, 324, 137 Pac. 392; State v. Story, 53 Mont. 573, 581, 165 Pac. 748.

Delegation of power of taxation to county authorities, see note in 15 L. R. A. (N. S.) 62.

Delegation of legislative power to county boards of supervisors, see note in 16 L. R. A. 161.

Statutes conferring powers upon counties in respect to their officers as a delegation of legislative power, see note in L. R. A. 1916D, 921.

Right of county to exercise power of eminent domain, see note in Ann. Cas. 1913E, 1079.

Power of members of board of county commissioners to make contract extending beyond term of office, see notes in 12 Ann. Cas. 988; 29 L. R. A. (N. S.) 652; L. R. A. 1915E, 581.

Right to collect tolls on bridges or highways, under control of county, see notes in Ann. Cas. 1914D, 515; 42 L. R. A. (N. S.) 836.

Jurisdiction of street as between city and county including city, see note in Ann. Cas. 1914A, 1051.

Power of county to sell real estate, see note in Ann. Cas. 1913E, 528.

Power to take devise of real estate to county, see note in Ann. Cas. 1914A, 1192.

Power of county to make contract for search of property omitted from taxation, see notes in 4 Ann. Cas. 140; 11 Ann. Cas. 487; 4 L. R. A. (N. S.) 339; 38 L. R. A. (N. S.) 261; 11 A. L. R. 913.

Power of county to employ expert accountant to examine public accounts and records, see notes in Ann. Cas. 1913B, 1087; Ann. Cas. 1916B, 1035; Ann. Cas. 1917D, 442.

4466. Validation of sales made under subdivision 10 of preceding section. All sales heretofore made of real property owned in fee simple by any county in this state, by the board of county commissioners of any

county, the validity of which may be in doubt or involved by reason of the failure of the board of county commissioners to comply with the provisions of subdivision 10 of the preceding section, are hereby legalized and declared to be valid and binding sales, and all deeds or conveyances heretofore executed by any board of county commissioners, or by its chairman duly authorized by said board, for and on behalf of any county, transferring and conveying any such real property so sold, are hereby legalized and declared to be valid, and vesting the title of the property so conveyed in the purchaser named in such conveyance in fee simple.

History: En. Sec. 1, Ch. 103, L. 1913.

CHAPTER 11.

SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS.

Section 4467. Records of Water Users' Associations.
4468. New Townships, How Organized.
4469. Sheriff to Attend Meetings When Directed.
4470. County Commissioners May Protect Forests.
4470a. Appropriation by Commissioners to Advertise Resources of County.
4470b. Preparation and Distribution of Statistics.
4471. County Commissioners May Establish Public Scales.
4472. Capacity of Scales.
4473. Public Weigher.
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4476. False Receipts.
4477. Public Ferries and Wharves—Establishment and Maintenance by Counties.
4478. Same—Acquisition of Real Property—Proviso as to Incorporated Cities and Towns.
4479. Ferries Uniting Two Counties—Reports of Ferrymen on Joint Ferries.
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4481. Rules and Regulations—Posting Rate of Toll.
4482. Contracts for County Printing—Duty of County Commissioners to Enter Into.
4483. Rewards by County Commissioners for Apprehension of Criminals.
4484. Employment of Stock Inspector by County Commissioners.
4485. Secrecy to Be Maintained Regarding Employment of Stock Inspector.
4486. Special Counsel to Assist County Attorneys.
4487. Extension Work in Agriculture and Home Economics—County Commissioners May Appropriate Money for.
4488. County Commissioners May Erect Market Houses and Establish Markets.
4489. Acquisition of Land for Establishment and Maintenance of Public Market.
4490. County Auditor or County Clerk to Act as Market Master—Powers and Duties.
4491. Five Per Cent. of Gross Sales to Be Paid to County—County Market Fund—Penalty for Refusal to Pay.
4492. When Market Shall Be Open—Publication of Rules and Regulations and Notice of Market Days.
4493. Expense of Establishing and Maintaining Public Market—How Paid.
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4495. Extermination of Gophers.
4496. Notice, How Served—Supplying Poison to Landowners Financially Unable to Procure Same.
4497. Compensation, Statement and Voucher to Be Charged Against Said Land as Taxes.
4498. "Gopher Destruction Fund."
4499. Purchase and Furnishing of Poison.
4500. "Gopher" Defined.
4501. Destruction Insect Pests by County Commissioners.
4502. Compensation of Person Appointed.
4503. Purchase Equipment—Warrants.
4504. Tax Levy for Payment Warrants.

4505. "Insect Pest" Defined.
4506. "Noxious Weeds" Defined—Nuisance.
4507. Prohibits Against Permitting Weeds to Bloom or Seed.
4508. Seed Commissioner—Employment and Duties.
4509. Inspection of Premises for Seeds—Notice to Occupant.
4510. Service of Notices.
4511. Destruction of Weeds by Authorities—Collection of Cost as Tax.
4512. Destruction When Mingled With Crop—Agreement With Owner.
4513. Penalty for Violation of Act—Disposal of Fines.
4514. Power of County Commissioners to Conduct Cemeteries Outside Corporate Limits—Joint Conduct of Cemeteries.
4515. Board to Provide Appliances for Holding Elections, and Allow Expenses.
4516. Issuance of Certificates of Elections as Board of Canvassers.
4517. Power to Require Attendance of Witnesses.
4518. Examination of Witnesses.
4519. Officers and Witnesses Not to Be Prepaid.
4520. Liability on Official Bond of Commissioner.

4467. Records of water users' associations. The county commissioners of each county where water users' associations, organized in conformity with the laws of the United States under the reclamation act, have organized, or wherein such associations shall hereafter organize, are required to furnish the county recorder, for the proper recording of stock subscriptions and contracts, and of articles of incorporation and stock certificates of such companies, books to conform to such articles of incorporation, stock certificates, and contracts as are used by the secretary of such water users' associations, containing printed blank forms of such stock subscriptions and contracts, and articles of incorporation and stock certificates, in accordance with the laws of the United States and of the state of Montana, such forms to be prepared by the attorney-general and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation, and stock certificates.

The county recorder shall charge fifty cents for recording each stock subscription and contract, stock certificate, and articles of incorporation.

History: En. Sec. 1, Ch. 68, L. 1909.
Related sections: 147, 7160-7165.

4468. New townships, how organized. The board must not set off or organize any new township unless a petition is presented to the board, signed by at least fifty citizens resident therein.

History: En. Sec. 18, p. 502, Bannack Stat.; re-en. Sec. 18, p. 436, Cod. Stat. 1871; re-en. Sec. 352, 5th Div. Rev. Stat. 1879; re-en. Sec. 757, 5th Div. Comp. Stat. 1887; re-en. Sec. 4231, Pol. C. 1895; re-en. Sec. 2895; Rev. C. 1907.

4469. Sheriff to attend meetings when directed. The board has the power to direct the sheriff to attend in person or by deputy all the meetings of the board, to preserve order, and serve notices or citations, as directed by the board. And the board has the same power to punish for contempt, by fine and imprisonment, as is now exercised and allowed by law to district courts to require obedience to their citations and decorum in their meetings.

History: En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907. Cal. Pol. C. Sec. 4047.

4470. County commissioners may protect forests. The board of county commissioners of any county may provide money for the purposes of forest protection, improvement, and management.

History: En. Sec. 105, Ch. 147, L. 1909.

4470a. Appropriation by commissioners to advertise resources of county—Petition. The board of county commissioners of any county of the state, upon receiving a petition signed by at least fifty resident freehold taxpayers, whose names appear on the last assessment-books of the county, is authorized to make an appropriation, as hereinafter provided, from the general fund of the county for the purpose of advertising the agricultural, commercial, mining, manufacturing, labor, or other industrial resources of the county. Said petition shall specifically state the class or classes of industries of said county that the petitioners desire to advertise, and the appropriation shall be limited to the purposes stated in the petition.

Said appropriations shall not exceed the following amounts, to-wit:

In counties of the first class, fifteen hundred dollars; counties of the second class, thirteen hundred dollars; counties of the third class, one thousand dollars; and all counties below the third class, eight hundred dollars.

History: En. Sec. 5, Ch. 70, L. 1909.

Note.—This and the following section are taken from chapter 70, Laws of 1909, the title of which declares, in part, that it is an act to provide for the collection of statistics for the use of the bureau of agriculture, labor and industry. This bureau and its successors having been abolished by chapter 216, Laws of 1921, the sections named are included in this code pending judicial determination as to whether or not they are still in force and effect.

4470b. Preparation and distribution of statistics. The board of county commissioners of counties where appropriations have been made in accordance with section 5 of this act, may appoint some suitable person to gather data and statistics, and compile and have printed pamphlets or folders of the size and character provided for in section one of this act. When so prepared, said pamphlets or folders may be sent to the commissioner of agriculture, labor, and industry for the purpose of distribution by him in the manner provided for in section one of this act, and it shall be his duty to so distribute the same, provided he gives his approval thereof, as required by section one of this act.

History: En. Sec. 6, Ch. 70, L. 1909. See note to preceding section.

4471. County commissioners may establish public scales. The board of county commissioners of any county is hereby authorized, in its discretion, when petitioned by twenty-five or more residents and freeholders of the county, to establish and locate public scales at any suitable location selected by the county commissioners within the county.

History: En. Sec. 1, Ch. 22, L. 1905; re-en. Sec. 2899, Rev. C. 1907.

4472. Capacity of scales. Such scales shall be purchased by the county, and be of not less than five tons' weighing capacity, and shall be provided with glass or open front which can be observed by the one weighing, without dismounting from wagon, and shall be the property of the county, and at all times be under its control and subject to the will of the county commissioners.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907.

4473. Public weigher. The board of county commissioners shall appoint at each place where public scales are established by them a public

weigher, who shall have the custody and care of such property, and who shall give a bond to the county in the sum of five hundred dollars, conditioned for the safe-keeping of the same, and for the faithful and impartial discharge of the duties incident to his trust in office.

History: En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907.

4474. Duty of public weigher. It shall be the duty of each public weigher to keep a stub record of all weighing done by him, which record and the receipt issued by such public weigher shall show for whom property was weighed, and the character and kind thereof, and shall constitute prima facie evidence of the facts therein contained; and all such stub records, or other records which the county commissioners may require him to keep, shall at all times be open to public inspection during business hours, between seven a. m. and six p. m. of any day, save and except Sundays and legal holidays, and such public weigher shall file a sworn statement with the county recorder of the county, as prescribed by the county commissioners thereof, which statement shall show the date and character or kind of property weighed, for whom weighed, and a complete statement of all fees collected.

History: En. Sec. 4, Ch. 22, L. 1905; re-en. Sec. 2902, Rev. C. 1907.

4475. Rules and regulations. Such public weigher shall receive not to exceed ten cents for each receipt issued by him, and shall be governed by such rules and regulations as may be from time to time prescribed or adopted by the board of county commissioners, and he may be removed at any time by such board.

History: En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907.

4476. False receipts. Any public weigher, under the provisions of this act, who shall make any false or fraudulent receipt of any weighing done by him, or shall be guilty of any collusion with any other person or persons for the purpose of deceiving any person or persons in regard to the correctness of weights, or who shall fail to comply with the requirements of the preceding section, is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 22, L. 1905; re-en. Sec. 2904, Rev. C. 1907.

4477. Public ferries and wharves—Establishment and maintenance by counties. When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across, or a wharf at any unfordable stream, lake, estuary, or bay, any county within the state, through its board of county commissioners, is hereby authorized to construct, or to acquire by condemnation or purchase, and to operate, maintain, direct, regulate, and control the operation of a ferry across or a wharf at any unfordable stream, lake, estuary, or bay, within or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

History: En. Sec. 1, Ch. 33, L. 1909. Cited or applied as chapter 33, Laws of 1909, in Reid v. Lincoln County, 46 Mont. 31, 63, 125 Pac. 429.

4478. Same—Acquisition of real property—Proviso as to incorporated cities and towns. The board of county commissioners, in the exercise of the power herein bestowed, may acquire real property as provided in the Code of Civil Procedure, sections 9933 to 9958; provided, that no county ferry or wharf shall be established or maintained with a landing-place in any incorporated town or city, which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the foot of streets terminating at a river or harbor.

History: En. Sec. 2, Ch. 33, L. 1909.

4479. Ferries uniting two counties—Reports of ferrymen on joint ferries. When public ferries, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate any such ferry or ferries, provided that each county shall acquire its own landings and approaches, and maintain the same separately. Where ferrymen are employed on joint ferries, each county board shall receive a quarterly report from said ferrymen, giving such information as the board of county commissioners of either county may require.

History: En. Sec. 3, Ch. 33, L. 1909.

4480. Employment of ferrymen—Leasing of ferries and wharves. The board of county commissioners may employ one or more ferrymen to operate free or toll ferries, and the board may lease any ferries or wharves to a company, firm, or individual, to be operated for the use of the public, and said company, firm, or individual shall give bond in an amount deemed sufficient by the board of county commissioners, and conditioned for the careful and businesslike operation of such ferry or wharf, in accordance with law and the regulations of said board.

History: En. Sec. 4, Ch. 33, L. 1909. Right to lease ferries operated by county, see note in 2 Ann. Cas. 694.

4481. Rules and regulations—Posting rate of toll. The board of county commissioners shall make all needful rules and regulations for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies; and in all cases the rate of toll shall be printed in legible form, and posted upon the boat and at the landing-places.

History: En. Sec. 5, Ch. 33, L. 1909.

4482. Contracts for county printing—Duty of county commissioners to enter into. It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, published at least once a week, and of general circulation, published within the county, and having been published continuously in such county at least one year, immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, blanks, blank-books, stationery, election supplies, loose-leaf forms and devices, official publications, and all other printed forms required for the use of such counties, at not more than the following prices: For every folio of one hundred words, or fraction thereof, one dollar and fifty cents shall be paid for the insertion thereof, and fifty cents per folio of one hundred

words for each subsequent insertion required by law to be made. For rule and figure work, two dollars per folio of one hundred words or fraction thereof, and fifty cents per folio of one hundred words for each subsequent insertion thereof, required by law to be made. For the purpose of establishing a basis of measurement, one column thirteen ems wide and one inch in depth, when set in solid six-point type, shall constitute a folio; one column thirteen ems wide and one and two-tenths inches in depth, when set in solid seven-point type, shall constitute a folio; one column thirteen ems wide and one and four-tenths inches in depth, when set in solid eight-point type, shall constitute a folio; one column thirteen ems wide and one and five-tenths inches in depth, when set in solid ten-point type, shall constitute a folio.

Printed blanks, blank-books, stationery, election supplies, loose-leaf forms and devices, and all other printed forms required for the use of such counties, shall be furnished at not more than the following rates:

Envelopes, Letter-Heads and Bill-Heads.	Per 500	Per 1000	Additional 1000
Envelopes XXX 6½ white rag	$3.00	$5.00	$4.00
Envelopes XXX 10 white rag	3.75	6.50	5.50
Envelopes XXX 11 white rag	4.25	7.25	6.25
Envelopes XXX 12 white rag	4.50	7.50	6.50
Envelopes, Manila 6½—36 lb	2.50	4.00	3.00
Envelopes, Manila 10—50 lb	3.00	5.00	4.00
Envelopes, Manila 11—50 lb	3.25	5.50	4.50
Envelopes, Manila 12—50 lb	4.00	6.25	5.75
Envelopes for poll-books, each			.30
Envelopes for tally-sheets, each			.30
Envelopes for voted ballots, each			.50
Envelopes for unused ballots, each			.50
Envelopes for return election books, each			.50
Envelopes for returns of election, each			.10
Letter-heads, 10 lb., flat paper, ruled or unruled		6.00	5.00
Letter-heads, 8 lb. bond paper, ruled or unruled		6.00	5.00
Letter-heads, 10 lb. bond paper, ruled or unruled		7.50	6.50
Bill-heads—6's (printed head only) (500)	3.00	4.75	3.75
Bill-heads—4's (printed head only)	3.25	5.00	4.00
Bill-heads—2's (printed head only)	4.25	6.50	5.50

Blanks, Binding, Blocking, Etc.	Per 500	Per 1000	Additional 1000
⅛ sheet 3½x8½, printed one side	$4.25	$6.50	$5.00
⅛ sheet 3½x8½, printed two sides	6.50	9.50	6.00
¼ sheet 7x8½, printed one side	5.75	8.50	6.00
¼ sheet 7x8½, printed two sides	8.50	11.50	8.00
½ sheet 14x8½, printed one side	10.25	14.00	8.50
½ sheet 14x8½, printed two sides	13.50	20.00	10.00
Full sheet 28x8½, printed one side	15.25	24.00	14.00

Blanks, Binding, Blocking, Etc.—(Continued).	Per 500	Per 1000	Additional 1000
Full sheet 28x8½, printed two sides	$23.75	$31.50	$15.00
Full sheet 17x14, printed one side, 8 pt	20.00	26.00	14.50
Full sheet 17x14, printed two sides, 8 pt	30.00	38.00	15.00
Binding ⅛ sheets in books of 50 each, per book			.15
Binding ⅛ sheets in books of 100 each, per book			.20
Binding ¼ sheets in books of 50 each, per book			.20
Binding ¼ sheets in books of 100 each, per book			.30
Binding ½ sheets in books of 50 each, per book			.35
Binding ½ sheets in books of 100 each, per book			.45
Blocking ⅛ sheets in blocks of 100 each, per block			.06
Blocking ¼ sheets on blocks of 100 each, per block			.08
Blocking ½ sheets on blocks of 100 each, per block			.10
Blocking full sheets in blocks of 100 each, per block			.12
Gathering forms per 100 single sheets			.10
Perforating ⅛ sheets per 100, per perforation			.07
Perforating ¼ sheets per 100, per perforation			.07
Perforating ½ sheets per 100, per perforation			.08
Perforating full sheets per 100, per perforation			.08
Numbering—single numbers per 100 numbers			.06
Numbering—Duplicate numbers per 100 numbers			.09
Numbering—triplicate numbers on same sheet per 100 numbers			.12

Receipts, Election Supplies, Etc.	Per 1000	Additional 1000
Poor-tax receipts, in one color ink, books of 50 complete	$12.50	$ 7.00
Poor-tax receipts, in two colors ink, books of 50 complete	14.50	9.00
Road-tax receipts, in one color ink, books of 50 complete	12.50	7.00
Road-tax receipts, in two colors ink, books of 50 complete	14.50	9.00
License receipts, in one color ink, books of 50 complete	24.00	17.00
License receipts, in two colors ink, books of 50 complete	27.50	21.00
Tax receipts, in triplicate on bond paper, one color ink	30.00	22.00
Tax receipts in triplicate two on bond, 1 on manifold tissue, one color ink, complete	37.50	30.00
Warrants lithographed in books of 1000	30.00	21.00
Tally-books, presidential primaries, registration up to five thousand names, each		1.50
Tally-books, county primaries, registration up to five thousand names, each		2.00
Tally-books, state and county primaries, presidential years, registration up to five thousand names, each		2.25
Poll-books, presidential primaries, registration up to five thousand names, each		$1.50
Poll-books, county primaries, registration up to five thousand names, each		2.00
Poll-books, state and county primaries, presidential years, registration up to five thousand names, each		2.25

Receipts, Election Supplies, Etc.—(Continued).

For each poll-book or tally-sheet where the registration is in excess of five thousand names, five cents for each one thousand names, or fraction thereof, of such excess shall be paid.

Precinct registers, one letter to leaf 8½x14, each.....$ 4.00
Precinct registers, one letter to leaf 14x17, each..... 6.00
Precinct copy and check-list, one letter to leaf 8½x14, each..... 4.00
Precinct copy and check-list, one letter to leaf 14x17, each..... 6.00
Instructions to voters, one ½ sheet card 14x22, or on 100-lb. manila tag, per 100—$25.00. Additional 100..... 10.00

	Per 1000	Additional 1000
Registration cards, 4x6, printed one side	$ 7.00	$ 5.00
Registration cards, 4x6, printed two sides	11.00	7.00
List of electors, per name, per 100 copies		$ .07
Ballots, county primary, per party	22.50	12.50
Ballots, presidential primaries, per party	22.50	12.50
Ballots, county primary, presidential year, per party	30.00	20.00
Ballots, county general election	60.00	30.00
Ballots, general election, presidential year	70.00	40.00
Ballots, initiative and referendum	8.00	4.00
Claim blanks, ruled and printed, ½ sheet	30.00	15.00
Assessment-lists, 14x17 flat	35.00	20.00
Assessment-lists, 24-page book form	97.50	27.50

Blank Books Made to Order.

Demy 10½x16.	4 Quire	5 Quire	6 Quire	7 Quire	8 Quire
Plain ¾ Russia	$14.65	$16.15	$17.65	$19.15	$20.65
Plain full Russia	21.75	23.25	24.75	26.25	27.55
Printed head full Russia	25.90	27.40	28.90	30.40	31.90
Printed page full Russia	32.65	34.90	31.75	39.40	41.25

For each extra heading $3.50, and for each extra full page $5.00 shall be charged.

Medium 11½x18.					
Plain ¾ Russia	$18.40	$20.25	$22.50	$24.75	$27.00
Plain full Russia	25.90	27.75	29.65	31.50	33.40
Printed head full Russia	32.25	35.25	36.35	39.00	41.25
Printed page full Russia	38.25	40.90	43.50	46.15	48.75

For each extra heading $4.00, and for each extra full page $7.00 shall be charged.

Double cap 14x17.					
Plain ¾ Russia	$18.40	$20.25	$22.50	$24.75	$27.00
Plain full Russia	25.90	27.75	29.65	31.50	33.40
Printed head full Russia	32.25	35.25	36.75	39.00	41.25
Printed page full Russia	38.25	40.90	43.50	46.50	48.75

For each extra heading $4.00, and for each extra full page $7.00 shall be charged.

Blank Books Made to Order—(Continued).

Double demy 21x16.	4 Quire	5 Quire	6 Quire	7 Quire	8 Quire
Plain ¾ Russia	$25.15	$29.65	$27.40	$31.90	$34.15
Plain full Russia	40.15	42.40	44.65	47.65	50.25
Printed head full Russia	46.90	50.25	54.00	57.75	61.50
Printed page full Russia	48.00	52.50	57.00	61.50	66.00

For each extra heading $6.00, and for each extra full page $7.50 shall be charged.

Double medium 18x23.					
Plain ¾ Russia	$30.00	$34.50	$38.25	$42.40	$46.50
Plain full Russia	47.65	51.75	55.90	60.15	64.50
Printed head full Russia	53.65	58.15	62.65	67.15	71.65
Printed page full Russia	56.65	61.15	65.65	70.15	74.65

For each extra heading $6.00, and for each extra full page $8.00 shall be charged.

Assessment-books.					
¾ Russia, page 21x32	$75.00	$82.50	$90.00	$ 97.50	$105.00
¾ Russia, page 18x46	82.50	90.50	98.50	107.00	115.00

Any book not specified in the above list shall be charged at a pro rata rate. Fractional quires to be computed as full quires. Quires to consist of 80 pages, 40-folio page, 40 leaves.

All other blanks, blank-books, stationery, election supplies, loose-leaf forms and devices, and other printed forms required for the use of such counties, shall be furnished and paid for not to exceed the rates herein provided for similar blanks or printing. The contract shall be let to the newspaper that in the judgment of the county commissioners shall be most suitable for performing said work; provided, that the county commissioners shall require of any contractor to do such county printing a good and sufficient undertaking, in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties, conditioned to the effect that said contractor will faithfully perform all the conditions of said contract in accordance with the terms thereof, or in default thereof, said sureties shall pay the said county the sum mentioned in said undertaking as the penalty thereof; provided, that nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided, however, that this requirement shall not affect any contract made prior to the passage of this act. No such contract for printing shall extend for a period of more than two years. All newspapers which may receive any contract for printing under this act, and which may not be able to execute any part of such contract, shall be required to sublet such contract or portion of contract to some newspaper or printing establishment within the state, which shall do the work under contract so sublet entirely within the state with Montana labor.

History: En. Sec. 4233, Pol. C. 1895; re-en. Sec. 2897, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1917.

4483. Rewards by county commissioners for apprehension of criminals. The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who

have committed any felony within their respective counties. Said reward shall not exceed the sum of five hundred dollars for the apprehension and conviction of the party or parties guilty of a felony, and the reward shall not be paid in any case until a conviction has first been had in said case. All rewards shall be paid by warrants drawn on the general fund of the county. In no case shall the members of the board of county commissioners, sheriff, or other county officer receiving an annual or monthly salary, be entitled to any part of any such reward.

History: En. Sec. 1, Ch. 61, L. 1909.

Power of county commissioners to offer reward, see notes in 3 Ann. Cas. 157; 21 Ann. Cas. 62.

4484. Employment of stock inspector by county commissioners. The board of county commissioners of each county, except in counties of the first class, has the power, to employ a stock inspector whenever the board is satisfied from its own knowledge, or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock are being stolen, slaughtered, or otherwise disposed of contrary to law in such county, and in such manner that the public officers of the county are not in position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution. Whenever such a stock inspector is so employed, the employment shall be only for the case or cases then under investigation, and his compensation shall be at the rate of not to exceed the sum of seven dollars and fifty cents per day and necessary expenses for the time actually engaged in such work, and he shall be paid by a warrant on the general fund of the county, and during the existence of such appointment he shall be vested with the same police power and authority as the sheriff, within the limitation of the purposes for which he is appointed.

Whenever a stock inspector is so employed in the investigation of a crime, and a reward has been offered under the preceding section for the apprehension and conviction of the party or parties guilty of such crime, such inspector shall not be entitled to any part of said reward.

History: En. Sec. 2, Ch. 61, L. 1909.

4485. Secrecy to be maintained regarding employment of stock inspector. The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector shall not be made public until after the investigation of the crime or crimes by said inspector is completed and any officer who divulges the name of the stock inspector employed, or the purpose of his employment during such period, shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 61, L. 1909.

4486. Special counsel to assist county attorneys. The board of county commissioners has the power, except in counties of the first class, whenever, in its judgment, the ends of justice or the interests of the county require it, to employ, or authorize the county attorney to employ, special counsel to assist in the prosecution of any criminal case pending in such county, or to represent said county in any civil action in which such county is a party.

History: En. Sec. 4, Ch. 61, L. 1909.

Power of county to employ attorney to assist county attorney, see notes in L. R. A. 1917D, 241, 251.

4487. Extension work in agriculture and home economics—County commissioners may appropriate money for. The county commissioners of any county in the state of Montana may appropriate money from the general funds of the county treasury, or from funds provided by special levy, which the said county commissioners are hereby authorized to make at the same time as other levies for county purposes, for the purpose of carrying on extension work in agriculture and home economics within the said county in co-operation with the Montana state college of agriculture and mechanic arts, and the United States department of agriculture. The amount of such appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents, the compensation and conditions of service of such agents, shall be covered in memoranda of agreements between the county commissioners, the county farm bureau, and the Montana state college of agriculture and mechanic arts.

History: En. Sec. 1, Ch. 109, L. 1913; amd. Sec. 1, Ch. 54, L. 1915; amd. Sec. 1, Ch. 13, L. 1919.

4488. County commissioners may erect market houses and establish markets. In addition to the powers specifically granted by the laws of the state of Montana, and such other limitations and exceptions contained in the existing statutes of the state of Montana in reference to the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county in the state of Montana shall have the power to erect market houses, to be located at the county seats of their respective counties, and to establish and regulate markets, and to acquire the property necessary therefor.

History: En. Sec. 1, Ch. 28, L. 1917.

4489. Acquisition of land for establishment and maintenance of public markets. The boards of county commissioners within the state of Montana may, within said period of one year, or at any time thereafter, acquire by purchase, lease, construction, or otherwise, suitable grounds, buildings, and quarters for the establishing, conducting, operating, and maintaining of a public market open to the farmers, gardeners, and actual producers of farm products within their respective counties. The boards of county commissioners of the counties of the state availing themselves of the provisions of this act must, as soon as the lands and premises necessary therefor have been acquired, cause to be opened and maintained, at the county seats of their respective counties, in the quarters so acquired, an open public market for the benefit of the farmers, gardeners, and actual producers of farm products, for the sale by the producers thereof direct to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption, wherein the producers thereof within each county may display and offer for sale his or her products direct to the consumers thereof within said counties.

History: En. Sec. 2, Ch. 28, L. 1917.

4490. County auditor or county clerk to act as market-master—Powers and duties. In each of the counties of this state wherein the office of county auditor exists the county auditor shall be ex-officio the county market-master,

and in all counties of this state hereinbefore enumerated, and in all other counties which may avail themselves of the provisions of this act, wherein no office of county auditor is maintained, the county clerk of such county shall be ex-officio market-master, and as such market-master shall, under the supervision and approval of the board of county commissioners, make all necessary rules and regulations for the establishment, maintenance, operation, and control of the markets established hereunder in the respective counties of the state; and it shall be the duty of such market-master to cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition; to arrange for stalls and spaces in such manner as to best suit the conveniences of both buyers and sellers; to see that the laws in the state of Montana in reference to weights and measures are enforced and observed; to cause order to be preserved during the time such market shall be open and in operation; to prevent and remove obstructions from the market place or grounds; to remove all vagrants, and prevent disorderly conduct, and prevent disorderly persons from loitering in said market buildings, space, or grounds during the market hours; to cause all offenses against the laws of the state of Montana in relation to the inspection of foods, the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, or vegetables, or provisions of any kind, to be prosecuted; to designate proper means of supervising and accounting for the sales therein made, and collecting the commissions hereinafter provided for; and to generally supervise and control the operations of the public markets established under the provisions of this act.

History: En. Sec. 3, Ch. 28, L. 1917.

4491. Five per cent. of gross sales to be paid to county—County market fund—Penalty for refusal to pay. Every producer of products availing himself or herself of the use of the market place established under the provisions of this act shall pay, or cause to be paid, at the close of each day's business, to the market-master thereof, a charge of five per centum of his or her gross sales; and the funds thus collected by the market-master shall be turned into the county treasury of the county to the credit of the county market fund, and shall be used by the county treasurer towards the payment of the expenses of operating and maintaining such public market; and every person, firm, or corporation availing themselves of the privileges provided hereby who shall fail, neglect, or refuse to so pay to the market-master of the county market of any county of this state five per centum of the gross sales by them made within such market shall be guilty of a misdemeanor, and, upon the conviction thereof, shall be fined not less than ten nor more than one hundred dollars, and imprisoned in the county jail until such fine be paid, in the manner provided by law, and shall be forever thereafter disbarred from the privileges afforded by the county markets established at the county seats of every county in the state of Montana.

History: En. Sec. 4, Ch. 28, L. 1917.

4492. When market shall be open—Publication of rules and regulations and notice of market days. All county markets established under the provisions of this act shall be open to the public not less than two

days in each week, and the rules and regulations adopted for the government thereof, together with a notice of the market days in each week, shall be published by the county commissioners once in each year in every newspaper printed and published in their respective counties for a period of not less than two successive weeks, the first publication thereof to be made not less than two weeks prior to the opening of the markets established hereunder in each county, and the future annual publications thereof to be made at such time as may be ordered by the boards of county commissioners.

History: En. Sec. 5, Ch. 28, L. 1917.

4493. Expense of establishing and maintaining public market—How paid. The expense of the establishment and maintaining of the markets provided for in this act shall be paid by the boards of county commissioners from the general funds of the counties, save and except such portions of the expense of operating and maintaining the same as may be derived from the revenues provided for in this act.

History: En. Sec. 6, Ch. 28, L. 1917.

4494. Purchase of products for resale or speculation prohibited. No rules or regulations adopted for the government of any market established under this act shall permit any person, firm, or corporation to purchase the products displayed and offered for sale, for the purpose of speculating thereon by again offering the same for sale within such public market place; and the privileges of the markets established under the provisions of this act shall be extended only to the actual producers of the products offered for sale.

History: En. Sec. 7, Ch. 28, L. 1917.

4495. Extermination of gophers. The county commissioners of any county of this state where there are gophers, upon a petition of ten resident land-owners, are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be to poison, kill, and exterminate the gophers within such county, and any person so appointed is hereby empowered and directed to, between March first and September first, enter upon any farm, railroad right of way, grounds or premises where there are gophers, and poison, kill, and exterminate the gophers thereon when the owner or occupant thereof shall neglect or refuse to do so. In any county where there is a duly incorporated farm bureau, the appointment of the aforesaid person or persons to exterminate gophers shall be made on the recommendation of the farm bureau, which shall also supervise the work of the above person or persons.

History: Sec. 1, Ch. 153, L. 1919.
Note.—This law first enacted as chapter 96, Laws of 1917; amended by chapter 153, Laws of 1919, which is here given.

4496. Notice, how served—Supplying poison to landowners financially unable to procure same. It shall be the duty of the person so appointed to give any one, on whose premises are found gophers, ten days' notice in writing to poison, kill, or exterminate the same; or if such land is unoccupied and owned by a non-resident, such notice shall be mailed to its owner's address, or if the address is unknown, posted upon the land or premises where such gophers are to be exterminated; and if upon the

land or right of way of any railroad company, such notice may be served upon its agent at the station nearest to such land or right of way; and if the work of exterminating same is not done within such time, the person so appointed by the county commissioners shall proceed to poison, kill, and exterminate the gophers on such land or premises; provided, that any person authorized to exterminate gophers according to the provisions of the act shall, when poison is laid out, use every precaution to prevent the destruction of domestic fowl or animals and of game-birds by such poison, and no person shall lay out poison in any pasture where there is stock, or within forty rods of any occupied dwelling or farmhouse, without the knowledge of the owner or occupant thereof; provided, further, that any person who is not able financially to poison, kill, and exterminate the gophers on his land or premises, may make application to the county commissioners for financial assistance in procuring poison by him for that purpose. Such application shall set forth such facts as may be necessary to advise the county commissioners of the financial condition of such applicant. If, upon investigation, the board of county commissioners shall find such applicant entitled to assistance, it shall be the duty of the board of county commissioners to provide such applicant with sufficient poison or poisoned grains to kill and exterminate the gophers upon his land or premises; provided, that the maximum amount that may be advanced to any one person shall not be greater than six dollars per one hundred and sixty acres. The amount so advanced by the county commissioners shall be paid by such county out of its general fund, and charged as taxes against each parcel of land owned by such applicant, or against the personal property owned by applicant.

History: Sec. 2, Ch. 153, L. 1919.

4497. Compensation, statement, and voucher to be charged against said land as taxes. Any person so appointed under the provisions of this article shall receive as compensation the sum of not less than two dollars and fifty cents, or more than four dollars per day for eight hours' labor performed in poisoning and exterminating gophers exclusive of time going to and returning from work. Such person shall make a sworn statement to the county commissioners of the time put in and the poison and grain used on each tract of land; provided, that the maximum charge against any parcel of land containing twenty acres or more shall not be greater in any one year than at the rate of twelve dollars per one hundred and sixty acres, on gophers or twenty-four dollars on one hundred and sixty acres infested by prairie dogs, and the minimum charge shall not be less than one dollar against any parcel of land, which amount shall be paid by such county out of its general fund and charged as taxes against each parcel of land on which the expenses were incurred; provided, that in the case of unpatented land the cost of exterminating gophers or prairie dogs on such land be charged to the personal property of the occupant of such land; provided, further, that before the county commissioners shall charge such amount to the taxes of such person or corporation, they shall give such person or corporation at least twenty days' notice by mail, of the time when and the place at which such amount will be charged against them, and such person or corporation shall have the right to appear and

show cause why such amount shall not be charged against their taxes; provided, further, that if such person or corporation shall feel aggrieved by the decision of the county commissioners, such person or corporation may appeal to the district court, and such appeal shall be perfected and prosecuted in the same manner as appeal in justice courts and the county clerk shall enter such amounts upon the tax roll of the county against the land on which such work has been done, and expenses incurred, and the county treasurer of such county shall collect such amounts the same as taxes, and place the same to the credit of the respective counties from which collected.

History: En. Sec. 3, Ch. 153, L. 1919; amd. Sec. 1, Ch. 130, L. 1921.

4498. "Gopher destruction fund." The board of county commissioners of any county in this state may create a gopher extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one mill on the dollar of assessed valuation upon all horticultural, farming, and grazing lands in such county, the proceeds of which shall be used solely for the purpose of promoting the destruction of gophers in said county; the fund provided to be raised in accordance with this section shall be denominated the "gopher destruction fund," and shall be kept separate and distinct by the county treasurer, and shall be expended by the board of county commissioners at such time, and in such manner, as is by said board deemed best to secure the abatement and extermination of the gopher pest.

History: Sec. 4, Ch. 153, L. 1919.

4499. Purchase and furnishing of poison. The board of county commissioners of any county may, from time to time, purchase such quantities and amounts of poison as the board may deem proper, and may furnish such poison to any person or persons appointed in accordance with the provisions of section 4495 to exterminate gophers, and may also furnish such poison to other persons desiring to use the same for the extermination of gophers, at the actual cost thereof; provided, however, that the cost of such poison shall be paid out of the "gopher destruction fund," and all moneys received from the sale thereof shall be paid into such fund.

History: Sec. 5, Ch. 153, L. 1919.

4500. "Gopher" defined. The word "gopher" as used in this act shall include striped gopher, flickertail-gopher, pocket-gopher, Columbian ground-squirrel, and prairie dogs.

History: Sec. 6, Ch. 153, L. 1919.

4501. Destruction insect pests by county commissioners. The board of commissioners of any county of this state, where there are any insect pests, are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be, acting under the direction of the state entomologist, to poison, kill, catch, and exterminate insect pests within such county, and any such person so appointed is hereby empowered and directed to enter upon any farm, railroad right of way, grounds or,

premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.

History: En. Sec. 1, Ch. 227, L. 1921.

4502. Compensation of person appointed. Any person so appointed under the provisions of this act shall receive as compensation the sum of not less than two dollars and fifty cents, or more than four dollars per day for eight hours' labor performed in poisoning, killing, catching, and exterminating such insect pests exclusive of time going to and returning from such work. Such person shall make a sworn statement to the county of the time put in and the poison or other means used, which said statement shall be attached to the bill or claim against the county, and warrants therefor drawn on the "insect pest fund" and registered as are other warrants as "not paid for want of funds in the treasury" and bear interest as other county warrants..

History: En. Sec. 2, Ch. 227, L. 1921.

4503. Purchase equipment—Warrants. The board of county commissioners of any county may, from time to time, purchase such quantities and amounts of poisons, traps, or other equipment necessary to carry out the provisions of this act to poison, kill, catch, or exterminate such insect pests, and warrants in payment thereof shall be drawn on the "insect pest fund" and registered as provided in the preceding section.

History: En. Sec. 3, Ch. 227, L. 1921.

4504. Tax levy for payment warrants. The board of county commissioners shall determine the total amount of such warrants outstanding, and the succeeding year shall levy a tax sufficient to retire and pay off all such outstanding warrants with accrued interest, which said tax shall be levied upon all the property in the county and shall not exceed one-half mill on each dollar of assessed valuation, and such tax when collected shall be credited to the "insect pest fund" and said warrants shall at once be called in and paid off and discharged.

History: En. Sec. 4, Ch. 227, L. 1921.

4505. "Insect pest" defined. The term "insect pest" as used in this act shall include grasshopper, cut-worm, pale western cut-worm, army worm, chinchbug and any other insect generally recognized as a destroyer of grain, hay, and horticultural crops.

History: En. Sec. 5, Ch. 227, L. 1921.

4506. "Noxious weeds" defined—Nuisance. Each of the plants mentioned in this section is hereby declared to be a noxious weed and a common nuisance. No person, copartnership, corporation, or company owning, occupying, or controlling land shall permit any Canada thistle or quack grass to go to bloom thereon.

History: En. Sec. 1, Ch. 168, L. 1921.

4507. Prohibits against permitting weeds to bloom or seed. For all purposes of this act, the one-half of any road or street lying next to the lands abutting thereon shall be considered part of such land, and no person owning, occupying, or controlling land shall permit any noxious weed

to bloom or remain thereon or to produce seed on such land or such adjoining one-half of the highway.

History: En. Sec. 2, Ch. 168, L. 1921.

4508. Seed commissioner—Employment and duties. The board of county commissioners of each county and the city council of each municipal corporation are hereby authorized and upon presentation to them of a petition signed by one hundred freeholders of the county or twenty-five freeholders of the municipal corporation, as the case may be, may employ a suitable and competent person as weed commissioner for the period between the first day of June and the fifteenth day of September of each year and to provide for his compensation at not to exceed the sum paid to road supervisors or street commissioners, and it shall be the duty of said weed commissioner when so appointed to supervise the destruction of noxious weeds, and he is hereby empowered to give notices provided for in this act, and cause the provisions hereof to be enforced.

History: En. Sec. 3, Ch. 168, L. 1921.

4509. Inspection of premises for seeds—Notice to occupant. Where the weed commissioner has knowledge, or on written complaint made to any such weed commissioner, that noxious weeds described in this act are growing or standing upon the lands within his jurisdiction, in violation of the law, he shall forthwith inspect the premises and if the complaint be well founded, he shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this act in respect thereto within six days after such service.

History: En. Sec. 4, Ch. 168, L. 1921.

4510. Service of notices. All notices herein provided for may be served by any citizen of the county or municipal corporation in which the land is situated; such service shall be upon the occupant, if any there be, otherwise upon the owner or person in charge of the land and shall be personal and by copy whenever practicable. If there be no person within the county upon whom service can be made, of which the affidavit of the person serving the notice shall be prima facie evidence, the subsequent procedure shall be the same as though service had been had and the notice ignored.

History: En. Sec. 5, Ch. 168, L. 1921.

4511. Destruction of weeds by authorities—Collection of cost as tax. If the notice be not obeyed within six days, the weed commissioner of the county or municipal corporation, as the case may be, shall forthwith destroy such weeds and make report thereof to the county clerk or to the city clerk in cities where taxes are collected by the city treasurer, with a verified, itemized account of his services and expenses in so doing, and a description of the lands involved, and shall include in said account his own wages for the time of his necessary employment as well as for men and teams employed, at a rate not to exceed the rates paid for labor on roads or streets. Such expense shall be paid by the county or municipal corporation out of the road or street funds and unless the sum be repaid by the owner or occupant before September first next ensuing, the

county clerk, or the city clerk as the case may be, shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same on the assessment list of said county or city as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered of the owner in a civil action with costs.

History: En. Sec. 6, Ch. 168, L. 1921.

4512. Destruction when mingled with crop—Agreement with owner. When noxious weeds are so intermixed with a growing crop that they cannot be eradicated without serious damage to such crop, a written agreement may be made by the owner or occupant with the officer providing for the destruction of weeds upon specified parts of the land and for the proper treatment of the remainder after the crop has matured, and so long as such agreement is performed by such owner or occupant in good faith, he shall be exempt from the penalties of this act. All officials charged with the enforcement of this act may go upon the lands infested with noxious weeds, or suspected thereof, for any purpose necessary to such enforcement.

History: En. Sec. 7, Ch. 168, L. 1921.

4513. Penalty for violation of act—Disposal of fines. Every person who shall violate any of the provisions of this act or refuse to comply with any notice given pursuant thereto, and any officer neglecting to perform any official duty imposed upon him thereby shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or imprisonment in the county jail for not less than five days nor more than three months, or by both such fine and imprisonment. Upon the request of any taxpayer the county attorney shall prosecute any such offender. All fines collected under the provisions of this act shall be paid into the treasury of the county or municipality in which the offense was committed.

History: En. Sec. 8, Ch. 168, L. 1921.

4514. Power of county commissioners to conduct cemeteries outside corporate limits—Joint conduct of cemeteries. The board of county commissioners of any county within the state of Montana is hereby given jurisdiction and power to establish and conduct cemeteries outside of the corporate limits of any city or town, and to acquire lands for said purpose by purchase, condemnation, gift, or devise, and also to acquire by purchase, condemnation, gift, or devise, cemeteries already established and conducted by persons, firms, or corporations other than municipal corporations and are also given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county, and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm, or corporation other than municipal corporations; provided, that nothing herein contained will permit the interment of bodies of deceased persons in any such cemetery so condemned and taken over as are, under the articles of incorporation or by-laws of such cemetery association or corporation, debarred from burial therein.

History: En. Sec. 1, Ch. 39, L. 1919.

4515. Board to provide appliances for holding elections, and allow expenses. The board of county commissioners must provide all poll-lists, poll-books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

History: En. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907. Cal. Pol. C. Sec. 4064.

4516. Issuance of certificates of election, as board of canvassers. Whenever, as canvassers, the board of county commissioners declares the result of any election held in the county, certificates must be by the clerk of the board issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the title relative to Elections.

History: En. Sec. 4281, Pol. C. 1895; re-en. Sec. 2940, Rev. C. 1907. Cal. Pol. C. Sec. 4065.

4517. Power to require attendance of witnesses. The board may, by its chairman or the chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

History: En. Sec. 4282, Pol. C. 1895; re-en. Sec. 2941, Rev. C. 1907. Cal. Pol C. Sec. 4067.

4518. Examination of witnesses. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer before any court. Disobedience to the subpoena, or to an order to attend or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of sections 10618 to 10630 of the Code of Civil Procedure.

History: En. Sec. 4283, Pol. C. 1895; re-en. Sec. 2942, Rev. C. 1907. Cal. Pol. C. Sec. 4068.

4519. Officers and witnesses not to be prepaid. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board must allow the witnesses reasonable compensation for their attendance, but in no case to exceed the amount for like services in courts.

History: En. Sec. 4284, Pol. C. 1895; re-en. Sec. 2943, Rev. C. 1907. Cal. Pol. C. Sec. 4069.

4520. Liability on official bond of commissioner. Any county commissioner who neglects or refuses to perform any duty imposed on him, without just cause therefor, or who wilfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or wilfully, fraudulently, or corruptly attempts to perform an act, as commissioner, unauthorized by law, in addition to the penalty provided in the Penal Code, forfeits to the county five hundred dollars for

every such act, to be recovered on his official bond; and is further liable on his official bond to any person injured thereby for all damages sustained.

History: En. Sec. 4295, Pol. C. 1895; re-en. Sec. 2954, Rev. C. 1907. Cal. Pol. C. Sec. 4086. **Related sections:** 4451, 4821.

CHAPTER 12.

CARE OF THE COUNTY POOR.

Section 4521. The Board of County Commissioners Vested With Control.
4522. Relatives to Care for Poor—Penalty for Neglect.
4523. Intemperate Person Not Entitled to Support.
4524. When a Person May Receive Relief From the County.
4525. Care of County Poor—Letting of Contracts by Commissioners.
4526. Contract for Care of Poor and Infirm.
4527. Contract for Medicines and Medical Attendance.
4528. Board May Reject Any Bid.
4529. Bond of Contractor—Duty of Physician to Examine and Notify Contractor.
4530. Persons Falling Sick to Be Cared for.
4531. Application of Persons Seeking Relief.
4532. Persons Belonging to Another County to Be Removed.
4533. Non-Residents Furnished Temporary Relief.
4534. Poor-Farm and Workhouse.
4535. Surplus Moneys in Poor Fund.
4536. Burial of Deceased Soldiers, Sailors, and Marines.
4537. County of Residence to Bear Expense.
4538. Person Conducting Burial to Report Expense.
4539. Duty of County Clerk.
4540. Person Conducting Burial Not to Receive Compensation.
4541. Act Not to Apply to Inmates of Soldiers' Home.

4521. The board of county commissioners vested with control. The board of county commissioners are vested with entire and exclusive superintendence of the poor.

History: Sec. 2050, Rev. C. 1907.

Note.—Sections 4521 to 4535, appear in part as section 1, 2 and 4, pp. 457, 458, Bannack Statutes; re-enacted as sections 1, 2 and 4, p. 535, Codified Statutes 1871; section 1 to 15, pp. 51 to 56, Laws of 1876; re-enacted sections 955 to 969, Fifth Division Revised Statutes 1879; re-enacted sections 1609 to 1623, Fifth Division Compiled Statutes 1887; re-enacted sections 3200 to 3214, Political Code 1895; re-enacted sections 2050 to 2064, Revised Codes 1907.

4522. Relatives to care for poor—Penalty for neglect. Every person without means, who is unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, must be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such poor person, if they, or either of them, be of sufficient ability, in the order named; and every person who fails or refuses to support his or her father, grandfather, mother, grandmother, child, sister, or brother, in the order named, when directed by the board of county commissioners of the county where such poor person is found, whether such relative reside in the county or not, must pay to the county, for the use of such person, the sum of thirty dollars per month, which may be recovered in the name of the county.

History: Sec. 2051, Rev. C. 1907. See also history of Sec. 4521.

4523. Intemperate person not entitled to support. When any person becomes poor from intemperance or other vice, he is not entitled to any support from relatives, except from parent or child.

History: Sec. 2052, Rev. C. 1907. See also history of Sec. 4521.

4524. When a person may receive relief from the county. When such person does not have the relatives mentioned in section 4522 of this code, in any county, or such relatives are not able, or fail or refuse to maintain such person, then he must receive relief from the county, as hereinafter provided.

History: Sec. 2053, Rev. C. 1907. See also history of Sec. 4521.

4525. Care of county poor—Letting of contracts by commissioners. The board must, at its regular session in September, 1909, and at each regular September session thereafter, immediately preceding the expiration of any contract previously made for the care, support, and maintenance of the county poor, make an order directing the clerk of the board to publish a notice in a newspaper inviting sealed proposals for the care, support, and maintenance of the indigent sick, poor, and infirm of the county, per capita, by the week, for a period of not less than one nor more than two years, said proposals to include the entire cost of feeding, clothing, and nursing of the indigent sick, poor, and infirm, and the burial expenses. The notice must be published in a newspaper printed in the county for four successive weeks, at least once a week.

History: Sec. 2054, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1909. See also history of Sec. 4521.

The several provisions of the statute, relating to the care of county charges, are to be construed together. State ex rel. Stuewe v. Hindson, 44 Mont. 429, 439, 120 Pac. 485.

There is a manifest contradiction of terms in this section, but, when read in connection with section 4526, it is evident that it was the intention of the legislature that bids should be asked for one year only, and that any contract made by the board of county commissioners for the care of the poor should run but one year. State ex rel. Stuewe v. Hindson, 44 Mont. 429, 441, 120 Pac. 485.

Cited or applied as section 2054, Revised Codes as amended, in Albers v. Barnett, 53 Mont. 71, 75, 161 Pac. 521.

Who is pauper or poor person within poor laws, see notes in 20 Ann. Cas. 756; Ann. Cas. 1916C, 389.

Liability of municipality for failure to furnish relief to pauper, see note in Ann. Cas. 1913D, 1074.

Liability of county for support of unsettled or transient pauper, see note in Ann. Cas. 1913C, 82.

Liability of municipality for medical attendance furnished pauper, see note in Ann. Cas. 1916D, 183.

4526. Contract for care of poor and infirm. The proposal must be addressed to the clerk of the board, and the board must annually, at their September session, award the contract for the care, support, and maintenance of the sick, poor, and infirm of the county to the lowest responsible bidder for the ensuing year; provided, however, that in a county owning a county poor-farm, with suitable buildings of sufficient size to care for the indigent sick, poor, and infirm of such county, the county commissioners of such county may employ some suitable person as superintendent of such poor-farm, and the county may maintain the said indigent sick, poor, and infirm at said farm at the expense of such county. Such superintendent shall at all times be under the control of and subject to the orders of the board of county commissioners, and may be removed by them at any time.

History: Sec. 2055, Rev. C. 1907; amd. Sec. 2, Ch. 29, L. 1909; amd. Sec. 1, Ch. 45, L. 1911. See also history of Sec. 4521.

For a decision concerning the validity of a contract entered into by the board of county commissioners for the care of the poor under former statutes, see Lebcher v. Commrs. of Custer Co., 9 Mont. 315, 23 Pac. 713.

The board of county commissioners having the power, under section 4528, to reject all bids, no absolute duty is imposed upon it to accept the lowest responsible bid,

and hence mandamus does not lie, either at the suit of an unsuccessful bidder or a taxpayer, to coerce the board to let the contract to the lowest responsible bidder. State ex rel. Stuewe v. Hindson, 44 Mont. 429, 440, 120 Pac. 485.

The letting of contracts to the lowest bidder is for the benefit of the public; the provision requiring it does not confer any right upon the lowest bidder as such; but an unsuccessful bidder may, as a taxpayer, invoke the aid of a court, by mandamus, to compel action by the board, where it has failed to act. State ex rel. Stuewe v. Hindson, 44 Mont. 429, 440, 120 Pac. 485.

In advertising for bids for two years, and in assuming to let a contract to the highest bidder, the board exceeds its authority: State ex rel. Stuewe v. Hindson, 44 Mont. 429, 441, 120 Pac. 485.

A contract fraudulently let is a nullity. State ex rel. Stuewe v. Hindson, 44 Mont. 429, 441, 120 Pac. 485.

4527. Contract for medicines and medical attendance. The board must annually, at their December meeting, make a contract with some resident practising physician to furnish medical attendance to the sick, poor, and infirm of the county, and to the inmates of the county jail, and must also make provision for the furnishing of medicine to the same; provided, however, that the board may let such contract for the furnishing of medical attendance to the physician appointed by such board as county health officer, and may fix a salary or other rate of compensation to be paid to such county health officer for the furnishing of such medical attendance, which salary or other compensation shall be in addition to the salary of such physician as county health officer.

History: Sec. 2056, Rev. C. 1907; amd. Sec. 1, Ch. 31, L. 1917. See also history of Sec. 4521.

4528. Board may reject any bid. The board may reject the bid of and refuse to contract with any person whom they deem unsuitable as a contractor under the next three preceding sections.

History: En. Sec. 3207, Pol. C. 1895; re-en. Sec. 2057, Rev. C. 1907. See also history of Sec. 4521.

The authority of the board to reject all bids is necessarily implied; and, if the situation warrants it, the board may readvertise. State ex rel. Stuewe v. Hindson, 44 Mont. 429, 440, 120 Pac. 485.

4529. Bond of contractor—Duty of physician to examine and notify contractor. Any person with whom any such contract is made must execute a bond to the state in a sum not less than one thousand nor more than five thousand dollars, with two or more sureties, conditioned for the faithful performance of his contract; said bond to be approved by and filed with the chairman of the board. It is the duty of the physician with whom the contract for medical attendance is made to examine each week any person who is a charge upon the county, and if, after such examination, he is satisfied that such person is able to support and maintain himself, he must so notify the contractor having the person in charge, by leaving with the contractor a notice of the fact that such person requires no further medical attendance, and file a duplicate thereof with the clerk of the board. After the serving of said notice and filing the duplicate thereof with the clerk, the person mentioned therein ceases to be a charge upon the county.

History: Sec. 2058, Rev. C. 1907. See also history of Sec. 4521.

4530. Persons falling sick to be cared for. When any non-resident without means is sick within any county in this state, and not able to pay his board, nursing, or medical attendance, the board must, on application

being made, give assistance to such person as is necessary, and if the person dies, the board must give him a decent burial, and make allowance for the expenses incurred and order the same to be paid out of the county treasury.

History: Sec. 2059, Rev. C. 1907. See also history of Sec. 4521.

4531. Application of persons seeking relief. Any person seeking relief must make application to any member of the board, who, before granting an order for relief, must require satisfactory evidence that he has been a resident of the county for two months immediately preceding the day upon which the application is made.

History: Sec. 2060, Rev. C. 1907. See also history of Sec. 4521.

4532. Persons belonging to another county to be removed. When application is made, if it appears to the satisfaction of the board that the person applying has resided in the county for two months, he is entitled to the relief provided by this chapter; but if on examination it appears that the applicant is a resident of some other county of the state, the board must, at the expense of the county, cause him to be removed to the county of which he is a resident.

History: Sec. 2061, Rev. C. 1907. See also history of Sec. 4521.

4533. Non-residents furnished temporary relief. Persons who have not been residents of a county two months may be furnished relief by the commissioners in cases of extreme necessity and destitution.

History: En. Sec. 3212, Pol. C. 1895; re-en. Sec. 2062, Rev. C. 1907. See also history of Sec. 4521.

4534. Poor-farm and workhouse. The board may purchase, improve, and keep in repair a tract of land not exceeding one hundred and sixty acres, to be known as a poor-farm, and to erect thereon suitable workhouses for the use, health, and employment of all persons as are a county charge, and the poor-farm, with the workhouses and the persons who are a county charge, must be under such rules and regulations as the board orders. It may also provide for the care, support, and maintenance of the sick, poor, and infirm of the county upon the poor-farm.

History: Sec. 2063, Rev. C. 1907. See also history of Sec. 4521.

4535. Surplus moneys in poor fund. Any surplus that may accumulate in the poor fund of the county may be set apart and applied to the purposes of the next preceding section.

History: Sec. 2064, Rev. C. 1907. See also history of Sec. 4521.

4536. Burial of deceased soldiers, sailors, and marines. It shall be the duty of the board of county commissioners of each county in this state to designate some proper person in the county, preferably an honorably discharged soldier, sailor, or marine, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor, marine or nurse who shall have served in the army, navy, marine corps, or army nurse corps of the United States, who may hereafter die; such burial

shall not be made in any burial grounds or cemetery, or in any portion of such burial grounds or cemetery, used exclusively for the burial of pauper dead; provided, the expense of each burial shall not exceed the sum of one hundred and fifty dollars, to be paid by the county commissioners of the county in which the deceased resided at the time of his death.

In the event any honorably discharged soldier, sailor, marine or nurse, who shall have served in the army or navy of the United States, and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of his residence, then the provisions of this act shall apply, and the burial expenses not exceeding one hundred and fifty dollars shall be paid in the same manner as above provided in cases where death occurs in the county of deceased's residence, and the person appointed in the county of which said deceased was a resident as hereinbefore provided, may take charge of said burial in the same manner as he would, had such deceased person died within the county of his residence.

Whenever any soldier, sailor, marine or nurse hereinbefore described shall die at the state soldiers' home, or at any public institution of the state of Montana, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state soldiers' home, or of any public institution of the state of Montana, as aforesaid, shall provide the proper burial herein prescribed, providing that the expense of each burial shall not exceed the sum of one hundred and fifty dollars, which expense shall be paid by the county in which he resided at the time of his entry into such home or institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed to the disparagement of decent and proper interment.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921.

4537. County of residence to bear expense. The expenses of such burial shall be paid by the county in which such soldier, sailor, or marine dies, but if such deceased person has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county.

History: En. Sec. 2, Ch. 39, L. 1903; re-en. Sec. 2066, Rev. C. 1907.

4538. Person conducting burial to report expense. It shall be the duty of the person appointed as provided in Section 4536 of this code to cause such deceased person to be buried as provided in this act, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the name, rank, or command, so far as is known, to which the deceased belonged, as such soldier, sailor, or marine, the date of death, place of burial, and his occupation while living, and also an itemized statement of the expenses incurred by reason of such burial.

History: En. Sec. 3, Ch. 39, L. 1903; re-en. Sec. 2067, Rev. C. 1907; amd. Sec. 1, Ch. 109, L. 1911.

4539. Duty of county clerk. It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcribe, in a book to be kept for that purpose, all the facts contained in such report concerning such soldier, sailor, or marine. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by act of congress, and to cause the same to be placed at the head of the grave of such soldier, sailor, or marine, the expense of which shall not exceed the sum of ten dollars for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 4537 of this code for the burial expenses.

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907.

4540. Person conducting burial not to receive compensation. The person appointed as provided in section 4536 of this code shall not receive any compensation for any duties he may perform in compliance with this act.

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2069, Rev. C. 1907.

4541. Act not to apply to inmates of soldiers' home. This act shall not apply to such soldiers, sailors, or marines as may hereafter die in the state soldiers' home in this state.

History: En. Sec. 6, Ch. 39, L. 1903; re-en. Sec. 2070, Rev. C. 1907.

CHAPTER 13.

COUNTY FARM BUREAUS.

Section 4542. Corporation May Be Organized as County Farm Bureaus.
4543. How Bureau Shall Be Incorporated.
4544. Certificate Fee Only to Be Paid.

4542. Corporation may be organized as county farm bureaus. A corporation to be known as the county farm bureau may be organized in any county, to develop and to carry out a county program of work in co-operation with the board of county commissioners of said county, the Montana state college of agriculture and mechanic arts of the university of Montana, and the United States department of agriculture, for the advancement of agriculture and home economics, the promotion of better understanding between the citizenship of town and country and the development of a wholesome community life.

History: En. Sec. 1, Ch. 14, L. 1919.

4543. How bureau shall be incorporated. Such corporation shall be incorporated in the manner and under the provisions of law applicable to the corporations specified and authorized to be organized under the provisions of sections 6453 to 6458 of these codes.

History: En. Sec. 2, Ch. 14, L. 1919.

4544. Certificate fee only to be paid. No other fee than the usual certificate fee shall be required to be paid to any county or state officer for filing of such articles of incorporation.

History: En. Sec. 3, Ch. 14, L. 1919.

CHAPTER 14.

COUNTY FAIRS.

Section 4545. County Fair Commission—Appointment.
4546. Duties of Commission.
4547. Organization of Commission.
4548. Compensation of Members.
4549. Appropriation and Tax Levy for County Fairs.
4550. Disbursement of Appropriation—Acquisition of Lands—Appropriation for Exhibits at Fairs.

4545. County fair commission—Appointment. The board of county commissioners of each county of Montana may, at their regular meeting in December of each year, or thereafter, appoint from among the electors of their respective counties, five responsible persons to constitute a county fair commission Said persons shall be well qualified to perform the duties of organizing and successfully carrying on a county fair.

In case there is in any county a fair association, horticultural or agricultural society, the board of county commissioners may appoint said fair commission from the members of said fair association, horticultural or agricultural society, giving preference in said appointments to the officers of the said associations or societies.

History: Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921.

Note.—Sections 4545 to 4550 were enacted as sections 1 to 5, chapter 67, Laws of 1903, appearing as sections 2927 to 2932, Revised Codes 1907; amended by chapter 131, Laws of 1917.

4546. Duties of commission. Said commission shall do all things necessary to hold a successful county agricultural fair in their respective counties, and shall have charge of all fair grounds and fair property.

History: En. Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917.

4547. Organization of commission. Said commission shall organize by electing one of its members president and one of its members vice-president, and the county treasurer shall be ex-officio the treasurer. The secretary shall be appointed by the commission, and may be a member of the commission; provided, that should he be a member of the commission, then his salary shall be fixed by the commission in lieu of the salary of twenty-five dollars a year, as provided for in this act.

History: En. Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917.

4548. Compensation of members. Each member of the said commission shall receive a salary of twenty-five dollars a year as compensation for his services. In addition thereto, the said commissioner may be allowed his actual and necessary expenses while fulfilling the duties of his office.

History: Sec. 4, Ch. 131, L. 1917. See also note to Sec. 4545.

4549. Appropriation and tax levy for county fairs. The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed twenty-five hundred dollars, to be expended by the county fair commission for the purpose of holding a county fair. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one mill or less on each dollar of tax-

able property in such county, for the purpose of securing, equipping, and maintaining a county fair, including the purchase of land for such purpose, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse-racing.

History: Sec. 5, Ch. 131, L. 1917. See also note to Sec. 4545.

Validity of statute appropriating public funds for fairs or expositions, see notes in 9 Ann. Cas. 52.

4550. Disbursement of appropriation—Acquisition of lands—Appropriation for exhibits at fairs. The funds derived from such appropriation or tax levy shall be kept in a separate fund by the county treasurer, and shall hereafter be paid out by the said treasurer on orders signed by the president and secretary of the said fair commission.

The board of county commissioners of any county in the state of Montana may purchase, receive by donation, or own and hold a tract of land in their respective counties, not exceeding one hundred sixty acres, as county fair grounds, which land may be used by the county fair commission for the purpose of promoting the interests of horticulture, agriculture and stockraising. The board of county commissioners who shall avail themselves of the foregoing provisions may purchase, erect, construct and maintain permanent improvements on such county fair grounds.

The board of county commissioners appropriating money for exhibits at the state fair of each county is hereby authorized to appropriate each year the sum of one thousand dollars, or as much thereof as may be necessary, out of the general fund of the county for the purpose of defraying the expenses of collecting, transporting to the state fair and taking care of any exhibit from such county at the said state fair; such money to be expended under the direction of the board of county commissioners.

The board of county commissioners of any county in Montana may appropriate each year the sum of two hundred dollars, or so much thereof as may be necessary, out of the general funds of the county, for the purpose of defraying the expenses of collecting, transporting, and taking care of any exhibit from such county at any county agricultural fair, seed show, or other agricultural exhibition held within the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921.

CHAPTER 15.

COUNTY ATHLETIC COMMISSION.

Section 4551. County Athletic Commission, How Established.
4552. Organization of Commission—Secretary, Appointment and Salary—Seal and Rules.
4553. Duty of Secretary.
4554. Boxing, Sparring, and Wrestling Exhibitions, How Regulated and Licensed.
4555. Buildings, How Equipped.
4556. Conditions Governing Bouts—Physical Examination of Contestants.
4557. Forfeiture of License for Fake Contests.
4558. Penalty for Participating in Fake Contests.
4559. Report of Contest to Commission—Disposal of Funds.
4560. Bond and License.
4561. Penalty for Delinquencies.
4562. Penalty for Violation of Act.

4551. County athletic commission, how established. Each county in the state of Montana may have a county athletic commission within thirty days after the passage of this act and its ratification by a majority vote of the people of the state of Montana. The district judge or judges of the judicial district of which said county is a part, shall, upon the presentation and filing of a petition by one hundred taxpayers of a county, appoint three persons to be members of such commission, who shall hold office during the term of the district judge or judges who appointed said commission, and until their successors are appointed and qualified, and who shall not receive any salary. Each member of the commission shall be a qualified elector in the county wherein said commission is created.

History: Secs. 4551-4562 were enacted as Ch. 190, L. 1919; app. by people on referendum Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920.

4552. Organization of commission—Secretary, appointment and salary—Seal and rules. The commission may maintain an office for the transaction of its business at a place to be by it designated. The commission shall, within thirty days after its members have been appointed, meet and elect one of its members chairman of the commission, and also elect a secretary of the commission, who shall act during the pleasure of the commission, and who may receive a salary not to exceed three hundred dollars per annum, to be paid in monthly instalments not to exceed twenty-five dollars per month, from a fund to be created as hereinafter provided for.

The commission shall adopt a seal and enact such rules and regulations not inconsistent herewith as the commission may deem necessary for the proper administration of this act.

History: See history of Sec. 4551.

4553. Duty of secretary. It shall be the duty of the secretary of the commission to keep a full and correct account of all proceedings of the commission; to preserve and keep at the office of the commission all books, documents and papers, and to prepare and serve such notices and other papers that may be required of him by the commission.

History: See history of Sec. 4551.

4554. Boxing, sparring and wrestling exhibitions, how regulated and licensed. It shall be lawful to conduct boxing, sparring and wrestling exhibitions in conformity with and subject to the provisions of this act. The commission shall have, and hereby is invested with, the sole direction, management and control of the jurisdiction over all boxing, sparring and wrestling matches and exhibitions to be conducted, held or given within the county and by any club, corporation or association; and no boxing, sparring, or wrestling match or exhibition shall be conducted, held or given within the county except pursuant to its authority and in accordance with the provisions of this act; provided, however, nothing in this act shall be construed as relating to amateur boxing or wrestling exhibitions conducted in regularly organized gymnasiums. The commission shall have power to license such boxing, sparring and wrestling clubs as it may deem advisable under such rules and regulations and amendments thereof as it may prescribe. Every application for a license, as herein provided for, shall be in writing and shall be addressed to the commission, and shall

be verified by such officer of the club, corporation or association on whose behalf the application may be made. It shall contain a recital of such facts as, under the provisions hereof, will show the applicant entitled to receive a license, and, in addition thereto, such other facts and recitals as the commission may by rule require to be shown.

History: See history of Sec. 4551.

4555. Buildings, how equipped. All buildings or structures used, or intended to be used, for the purpose of this act, shall be properly ventilated and provided with fire exits and fire escapes, if there need be, and in all manner conform to the laws, ordinances and regulations pertaining to buildings in the city, town or village where situated. Where a part of a building or structure is used for the purpose set forth in this act, this section shall apply in the same manner.

History: See history of Sec. 4551.

4556. Conditions governing bouts—Physical examination of contestants. No boxing, sparring or wrestling match or exhibition shall be of more than fifteen rounds in length; and the contestants shall wear during such contests gloves weighing at least six ounces. No person or persons may take part in the exhibition or sparring match unless they have first passed a rigorous physical examination to determine their fitness to engage in any such exhibition. Said examination to be conducted by a regular practicing physician, said physician to be designated by the commission.

History: See history of Sec. 4551.

4557. Forfeiture of license for fake contests. Any club, corporation or association which may conduct, hold or give, or participate, in any sham or fake boxing, sparring or wrestling match or exhibition shall thereby forfeit its license issued in accordance with the provisions of this act, which shall therefore be, by the commission, canceled and declared void; and it shall not thereafter be entitled to receive another such or any license pursuant to the provisions of this act.

History: See history of Sec. 4551.

4558. Penalty for participating in fake contests. Any contestant who shall participate in any sham or fake boxing, sparring or wrestling match or exhibition shall be penalized in the following manner: For the first offense, he shall be restrained for a period of six months, such period to begin immediately after the occurrence of such offense, from participating in any boxing competition to be held or given by any club, corporation or association duly licensed to give or hold such boxing, sparring or wrestling match or exhibition; for a second offense he shall be totally disqualified from further admission or participation in any boxing contest held or given by any club, corporation or association duly licensed for said purpose.

History: See history of Sec. 4551.

4559. Report of contest to commission—Disposal of funds. Every club, corporation or association which may hold or exercise any of the

privileges conferred by this act, shall, within twenty-four hours after the determination of every contest, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for said contest, and the amount of the gross proceeds thereof, and such other matters as the commission may prescribe, and shall also within the said time pay to the county treasurer a tax of fifty per cent of its total net receipts from the sale of the tickets of admission to such boxing, sparring or wrestling match or exhibition, which sum shall be by the county treasurer remitted to the state treasurer, to be by him applied to a fund to be created for the support and maintenance of a home for returned and disabled soldiers and sailors of the world war.

In the event no such home is created or established, the state treasurer shall hold said funds so received by him until such time as an institution is provided for returned and disabled soldiers and sailors of the world war, at which time said funds shall be used for the support and maintenance of such institution, or until January 1, 1929, at which time, if no such institution has been created, then said sum shall by the state treasurer be transferred to the school fund of the state of Montana.

History: See history of Sec. 4551.

4560. Bond and license. Before any license shall be granted to any club, corporation, or association to conduct, hold or give any boxing, sparring or wrestling match or exhibition, such applicant therefor shall execute and file with the county treasurer a bond in the sum of five thousand dollars, to be approved as to form by the county attorney of the county in which said club is situated, and as to the sufficiency of the sureties thereon by the county treasurer, which said bond shall be conditioned upon the payment of the tax hereby imposed. Upon the filing and approval of such bond, the county treasurer shall issue to such applicant for such license a certificate of such filing and approval, which shall be by such applicant filed in the office of the commission with its application for such license, and no license shall be issued until such certificate shall be so filed.

History: See history of Sec. 4551.

4561. Penalty for delinquencies. Whenever any such club, corporation or association shall fail to make a report of any contest at the time prescribed by this act, or whenever such report is unsatisfactory to the county treasurer, he may examine or cause to be examined the books and records of such club, corporation, or association, for the purpose of determining the total amount of its gross receipts for any contest and the amount of tax due pursuant to the provisions of this act, which tax he may, upon and as the result of such examination, fix and determine. In case of the default in the payment of any tax so ascertained to be due, together with the expenses incurred in making such examination, for a period of ten days after notice to such delinquent club, corporation or association of the amount at which the same may be fixed by the county treasurer, such delinquent club, corporation or association, shall ipso facto forfeit its license and shall be thereby disqualified from receiving any new license or any renewal of license, and it shall, in addition, forfeit to the county wherein said club, corporation or association is located, the sum of

five hundred dollars, which may be recovered by the said county, and it shall be the duty of the county attorney to institute an action for said recovery, and which said sum shall be remitted to the state treasurer, to be by him added to the sum herein provided, for the support and maintenance of a home for returned and disabled soldiers and sailors of the world war.

History: See history of Sec. 4551.

4562. Penalty for violation of act. Any person who violates any of the provisions of this act, for which a penalty is not herein expressly prescribed, shall be guilty of a misdemeanor.

History: See history of Sec. 4551.

Note.—Sections 13, 14 and 15 of the above act deemed being the referendum provision, effective date and repealing clause, are omitted from this code.

CHAPTER 16.

COUNTY FREE LIBRARIES.

Section 4563. Proceedings to Establish County Library.
4564. Withdrawal of Incorporated City or Town.
4565. Appointment and Qualifications of Librarian.
4566. Supervision of County Commissioners Over Libraries—Branches and Stations—Employees and Apprentices.
4567. Oath, Duties, and Compensation of Librarian.
4568. Library Tax—Bonds for Building—Gifts and Bequests—Funds and Claims.
4569. Acceptance of Property of School Libraries.
4570. School Libraries as Branches of County Library.
4571. Funds of District Library Turned Over to County Library.
4572. Disestablishment of Library.
4573. How Libraries of City or Town May Assume Functions of County Library.

4563. Proceedings to establish county library. Upon petition signed by not less than twenty per cent. of the resident taxpayers whose names appear upon the last assessment-roll of the county, at least half of whom shall reside outside of the county seat, being filed with board of county commissioners, requesting the establishment of a county free library, the county commissioners of any county shall appoint a meeting for a public hearing, and may in their discretion, by resolution, establish at the county seat a county free library, as provided in this act. For four successive weeks prior to taking such action, the board of county commissioners shall publish, in each issue of a newspaper of general circulation in such county, notice of such contemplated action, giving therein the date and place of the meeting for a public hearing at which such action is proposed to be taken.

History: En. Sec. 1, Ch. 45, L. 1915; amd. Sec. 1, Ch. 137, L. 1917.

4564. Withdrawal of incorporated city or town. After the establishment of a county free library as provided in this act, the board of trustees, common council, or other legislative body of any incorporated city or town in the county, may withdraw such incorporated city or town from the operation of this act, by notifying the board of county commissioners that such city or town no longer desires to be a part of the county free library

system, and thereafter the residents of such city or town shall cease to participate in the benefits of such county free library, and the property situated in such city or town shall not be liable to taxes for county free library purposes; provided, that public notice of such contemplated action by the board of trustees, common council, or other legislative body of any incorporated city or town desiring to withdraw such incorporated city or town from the operation of this act, shall be given by publication in some newspaper of general circulation in such city or town, for at least once a week for four successive weeks prior to taking such action, giving therein the date and place of the meeting at which such contemplated action is proposed to be taken.

History: En. Sec. 2, Ch. 45, L. 1915.

4565. Appointment and qualifications of librarian. Upon the establishment of a county free library, the board of county commissioners may appoint a county librarian, who may be removed for cause, after the hearing, by said board. Any person who is a graduate of a library school, or has had two years' practical experience in a library of not less than two thousand volumes, shall be eligible to the office of county librarian; provided, that, from and after the creation and organization of a state board of library examiners, no person shall be eligible to the office of county librarian, unless, prior to his appointment, he has received from said board of library examiners a certificate of qualification for the office.

History: En. Sec. 3, Ch. 45, L. 1915; amd. Sec. 2, Ch. 137, L. 1917.

4566. Supervision of county commissioners over libraries—Branches and stations—Employees and apprentices. The county free library shall be under the general supervision of the board of county commissioners, who shall have the power to make general rules and regulations regarding the policy of the county free library. The county librarian shall have power to establish branches throughout the county, and may locate said branches and stations wherever deemed advisable; to determine the number and kind of employees of such library, and to employ and dismiss such employees. All employees of the county free library whose duties require special training in library work shall be graded in grades to be established by the county librarian, according to the duties required of them. Before appointment to a position in the graded service, the candidate must pass an examination appropriate to the position sought, satisfactory to the county librarian, and show a satisfactory experience in library work; provided, that the county librarian may also accept as apprentices, and who shall receive no compensation, candidates possessing personal qualifications satisfactory to the librarian, and the librarian may dismiss such apprentices at any time if in her judgment the work is not satisfactory.

History: En. Sec. 4, Ch. 45, L. 1915; amd. Sec. 3, Ch. 137, L. 1917.

4567. Oath, duties, and compensation of librarian. The county librarian shall, subject to the general rule adopted by the board of county commissioners, build up and manage, according to the accepted principles

of library management, a library for the use of the people of the county, shall establish branches and stations throughout the county, and shall determine what books and other equipment shall be purchased. The library building shall be under the general supervision and care of the county librarian. The county librarian shall be allowed actual and necessary traveling expenses incurred in the business of the office, and such compensation as the board of county commissioners may fix. The boards of county commissioners of the several counties of the state are hereby authorized to audit and allow such traveling expenses and other compensation of the county librarian of the respective counties, and the same shall be paid out of the county free library fund.

History: En. Sec. 5, Ch. 45, L. 1915; amd. Sec. 4, Ch. 137, L. 1917.

4568. Library tax—Bonds for building—Gifts and bequests—Funds and claims. The board of county commissioners, after a county free library has been established, may annually levy, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed one mill on the dollar upon all property in such county, for the purpose of maintaining the county free library. County bonds may be issued in the manner prescribed in sections 4614 to 4616 of these codes, for the erection and equipment of county free library buildings, and the purchase of land therefor. The board of county commissioners is authorized to receive, on behalf of the county, any gift, bequest, or devise for the county free library, or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds of the county free library, whether derived from taxation or otherwise, shall be in the custody of the county treasurer. They shall constitute a separate fund, called the county free library fund, and shall not be used for any purposes except those of the county free library. Each claim against the county free library fund shall be authorized and approved by the county librarian, or in his absence from the county, by his assistant. It shall then be acted upon in the same manner as are all other claims against the county.

History: En. Sec. 6, Ch. 45, L. 1915.

4569. Acceptance of property of school libraries. The board of county commissioners shall have power to accept, on behalf of the county free library, all books and other property of school libraries as provided by sections 1181 to 1186 of this code, and to manage and maintain the same as a part of the county free library.

History: En. Sec. 7, Ch. 45, L. 1915.

4570. School libraries as branches of county library. Whenever the county in which a school district library is situated shall maintain a county free library, the board of school trustees or city board of education may agree with the proper authorities of such county to make the school district library a branch of such county library. In this event this board of school trustees or city board of education shall turn over the books to the county free library, and shall annually transfer to such county free library

its library fund, as soon as it is available, to be kept and expended as other funds of such county library. The said county free library shall thereupon have such district library managed and maintained according to the rules and regulations established by the authorities of the county free library.

History: En. Sec. 8, Ch. 45, L. 1915.

4571. Funds of district library turned over to county library. Whenever a school district library shall have become a branch library, as provided in the preceding section, the county or city superintendent of schools may draw a warrant for the whole amount of the district library fund, payable to the proper authorities of the county free library, upon the filing with him of a copy of the resolution of the board of trustees of the district or the city board of education, embodying the agreement made with such county free library, which copy shall be duly certified as correct by the clerk and recorder of the county, or other proper officer.

History: En. Sec. 9, Ch. 45, L. 1915.

4572. Disestablishment of library. After a county free library has been established, it may, upon petition signed by not less than ten per cent. of the qualified voters of a county requesting its disestablishment being filed with the board of county commissioners, be disestablished in the same manner as it was established. At least once a week for four successive weeks prior to taking such action, the board of county commissioners shall publish, in a newspaper designated by them and published in the county, notice of such contemplated action, giving therein the date and place of meeting for a public hearing at which contemplated action is proposed to be taken; provided, that an interval of three months shall elapse between such action and the disestablishment.

History: En. Sec. 10, Ch. 45, L. 1915.

4573. How libraries of city or town may assume functions of county library. Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees, or other authority in charge of the free public library of any incorporated city or town, and the board of library trustees, or other authority in charge of such free public library, is hereby authorized to make such a contract. Such contract may provide that the free public library of such incorporated city or town shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city or town such sum as may be agreed upon. Either party to such contract may terminate the same by giving six months' notice of intention to do so.

History: En. Sec. 11, Ch. 45, L. 1915.

CHAPTER 17.

RURAL IMPROVEMENT DISTRICTS.

Section 4574. Rural Improvement Districts—Creation and Objects.
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4574. Rural improvement districts—Creation and objects. Whenever the public interest or convenience may require, and upon the petition of sixty per cent. of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing and maintaining sanitary and storm sewers, light systems, waterworks plants, sidewalks and such other special improvements as may be petitioned for.

History: En. Sec. 1, Ch. 147, L. 1921.

Note.—The first act regulating creation of rural improvement districts was chapter 123, Laws of 1915; this was superseded by chapter 156, Laws of 1917, which was amended by chapter 67, Laws of 1919; all the above acts were repealed by chapter 147, Laws of 1921.

4575. Resolution of intention—Publication, mailing and notice. Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approxi-

mate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Sec. 2, Ch. 147, L. 1921. See also note to Sec. 4574.

4576. Extension of district where cost exceeds one-half assessed valuation of property. Whenever a contemplated work, or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit, or whenever according to the estimates furnished by the county surveyor or an engineer approved by the board of county commissioners and designated in the petition, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed, if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment-roll, whereon it was assessed for taxes, the board of county commissioners may make the expense of such work chargeable upon the extended district, and which may include other lots and lands not fronting on the improvement, and which the said board of county commissioners shall in its resolution of intention declare to be the district benefited by said work or improvements, and to be assessed to pay the cost and expense thereof.

History: En. Sec. 3, Ch. 147, L. 1921. See also note to Sec. 4574.

4577. Protests against creation or extension of district—Hearing. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof

is to be assessed upon the property fronting thereon, and the board of county commissioners finds that such protest is made by the owners of more than fifty per cent of the area fronting on the proposed work, or when the protest is against the proposed work and the cost thereof is to be assessed upon the property within the extended district, and the board of county commissioners finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for such improvements, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said county clerk, except in case the improvements are the construction of sanitary sewers, when the said protests may be overruled by a unanimous vote of the board of county commissioners. In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the county shall be considered the same as other property in the district. The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 4, Ch. 147, L. 1921. See also note to Sec. 4574.

4578. Jurisdiction attaches, when—Resolution creating district. When no protests have been delivered to the county clerk within fifteen days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, or when a protest against the extending of the proposed district shall have been heard and denied, immediately thereupon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

History: En. Sec. 5, Ch. 147, L. 1921. See also note to Sec. 4574.

4579. Sufficiency of subsequent resolutions, etc. In all resolutions, notices, orders and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 6, Ch. 147, L. 1921. See also note to Sec. 4574.

4580. Notice inviting proposals—Publication and posting—Opening bids—Re-advertisement. A notice inviting proposals and referring to specifications on file with the engineer selected as hereinbefore provided, shall be published at least twice in a daily, semi-weekly or weekly newspaper published and circulated nearest to the boundaries of the said proposed improvement district, and which paper shall be designated by the board of county commissioners for that purpose, and a copy of said notice shall be posted in at least three public places within the boundaries of the proposed district.

The board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind of type or materials to be used in

making any or all of said improvements after the bids or proposals therefor shall have been opened, examined and declared.

The time fixed for the opening of the bids shall not be less than fifteen days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the board of county commissioners, certified by a responsible bank, for an amount which shall not be less than ten per cent. of the aggregate of said proposal. Such proposals or bids shall be delivered to the county clerk, and the board of county commissioners shall, in open session, publicly open and examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check.

The board of county commissioners may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the board of county commissioners, and shall reject all proposals, other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for such work or improvement, to the lowest responsible bidder at the prices named in his bid.

If the bids are rejected or no bids are received the board of county commissioners may within six months thereafter re-advertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks accompanying the bids so rejected, but the check accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work as hereinafter provided has been entered into, either by the said lowest bidder, or by the owners of over fifty per cent. of frontage, whereupon said certified check shall be returned to said bidder, but if said bidder fails, neglects or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the certified check accompanying his bid, in the amount herein mentioned, shall be declared to be forfeited to the said board of county commissioners, and shall be collected by it, and paid into the general fund of the county.

History: En. Sec. 7, Ch. 147, L. 1921. See also note to Sec. 4574.

4581. Reletting or completion of contract on delinquency contractor. If the contractor who may have taken any contract does not complete same within the time limited in the contract, or within such further time as may be given him, the engineer selected as hereinbefore provided shall report such delinquency to the board of county commissioners, which may relet the unfinished portion of said work, after pursuing the formalities prescribed herein for the letting of the whole in the first instance, or the board of county commissioners shall have the right, in its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bonds or warrants, due such contractor, and in the event there is no money, bonds or warrants due such contractor from which to deduct such cost, then and in such event the board of county commissioners shall have the right to sue such contractor and recover from him such costs.

History: En. Sec. 8, Ch. 147, L. 1921. See also note to Sec. 4574.

4582. Bond of contractor or contracting owners. All contractors and contracting owners included shall at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, with two or more sureties, payable to said county in a sum not less than twenty-five per cent. of the amount of the contract, conditioned for the faithful performance of the contracts, indemnifying the county from any detriment, damage or loss growing out of said work, and the sureties shall justify before any person competent to administer an oath in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that nothing herein contained shall be considered as to prevent or prohibit the board of county commissioners from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana.

History: En. Sec. 9, Ch. 147, L. 1921. See also note to Sec. 4574.

4583. Notice of defects or irregularities—Objections. At any time within sixty days from the date of the awarding of a contract, any owner or other person having any interest in any lot, tract or plot of land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous or faulty, or that his property will be damaged by the making of any of the improvements in the manner contemplated, may file with the county clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. Said notice shall state that it is made in pursuance of this section. All objections in any act or proceeding or in relation to the making of said improvements must be made in writing and in the manner and at the time aforesaid, and all claims for damages therefor shall be waived by such property owner, in case no written objection is filed by him; provided, that notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this act.

History: En. Sec. 10, Ch. 147, L. 1921. See also note to Sec. 4574.

4584. Assessment of property—Apportionment of costs—Railroads. To defray the cost of making any of the improvements provided for in this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of such improvements against the entire district and each lot or parcel of land assessed in such district to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the board of county commissioners in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for, between the corner lots and inside lots of any block, the board of county commissioners may in the resolution creating any improvement district provide that

whenever any of the improvements herein provided for shall be along any side street or abutting upon the side of any corner lot or block, that the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear. Whenever any portion of the surface of a street is kept or used by any person, firm or corporation for railroad or for street railway purposes, the cost and expense of making such improvements between the rails and for one foot on each side thereof shall be paid by the person, firm or corporation owning such railroad, and where double tracks of railroads are laid, such person, firm or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs.

History: En. Sec. 11, Ch. 147, L. 1921. See also note to Sec. 4574.

4585. Federal property omitted from assessment. Whenever any lot, piece or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement, or to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the said board of county commissioners shall in the resolution of intention declare that said lots, pieces or parcels of land or any of them shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the county from its general fund.

History: En. Sec. 12, Ch. 147, L. 1921. See also note to Sec. 4574.

4586. Tax levy—Resolution—Term of years. To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed ten years, payment to be made in equal annual instalments.

History: En. Sec. 13, Ch. 147, L. 1921. See also note to Sec. 4574.

4587. Notice of resolution—Contents—Objections. Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk, subject to inspection, shall be published at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to

the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

History: En. Sec. 14, Ch. 147, L. 1921. See also note to Sec. 4574.

4588. Damages to be added to costs, when—Additional assessments. Whenever the owner or any one interested in any property, situate in the special improvement district, after having filed with the county clerk a written notice, claiming that his property had been damaged, shall be awarded or recover any amount on account of damages sustained to said property by the reason of the construction of any improvement in said special improvement district, before the resolution levying the assessment to defray the cost of making such improvements in said district has been passed and adopted by the board of county commissioners, the amount so ordered as recovered shall be added to and constitute a part of making such improvements, but if the resolution levying the assessment to defray the cost and expenses of making said improvements has been passed and adopted by the board of county commissioners, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in said district for the purpose of paying the amount so awarded of covering the said supplemental resolution, and shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making such improvements.

History: En. Sec. 15, Ch. 147, L. 1921. See also note to Sec. 4574.

4589. Incidental expenses as costs of improvement—Duty of county clerk. The cost and expense connected with and incidental to the formation of any special improvement district, including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence and inspection, and preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement districts, and it shall be the duty of the engineer selected as hereinbefore provided to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the county clerk, whose duty it shall be to prepare all necessary schedules and resolution levying the taxes and assessments in such special improvement district.

History: En. Sec. 16, Ch. 147, L. 1921. See also note to Sec. 4574.

4590. Special assessments, etc., a lien on property. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment,

which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 17, Ch. 147, L. 1921. See also note to Sec. 4574.

4591. Effect of misnomer or mistake. When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake, relating to the ownership thereof, shall affect such assessment or render it void or voidable.

History: En. Sec. 18, Ch. 147, L. 1921. See also note to Sec. 4574.

4592. Maintenance of improvements—Resolution—Change in maintenance districts. Whenever any sanitary or storm sewers, lights or light systems, waterworks plants or sidewalks, or any other special improvements petitioned for, have been made, built, constructed, erected or accomplished as in this act provided, it is hereby made the duty of the board of county commissioners, under whose jurisdiction the district was created, adequately and suitably to maintain and preserve said improvements and fully to keep the same in proper repair and operation, by contract, for such period of time or for the execution of a particular work or works, and in such way or manner as the board shall deem suitable and proper; provided, that the board shall not let any maintenance contract for a period to exceed three years. The whole cost of maintaining, preserving and repairing of said improvements in any improvement district shall be paid by assessing the entire district in the method provided by section 4576 of this code. It shall be the duty of said board to estimate as near as practicable the cost of maintaining, preserving or repairing the improvements in each district for each year beginning January first; and before the first Monday in September of each year the board shall pass and finally adopt a resolution levying and assessing all the property within the district within an amount equal to the whole cost of maintaining, preserving or repairing said improvements within the district, and the same shall be proportioned as provided in section 4576, supra. Said resolution levying assessments to defray the cost of maintenance, preservation or repairs of such improvements shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing and installing the improvements in said special improvement districts, and the money collected therefor shall be paid into a fund known as "Special Improvement District No. .... Maintenance Fund," the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situate; and such fund shall be used to defray the expense of maintenance, preservation or repair of said improvements, and for no other purpose. Any special assessment levied and made for any of the purposes in this section mentioned, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

The board shall have the power not more than once in a year of changing, by resolution, the boundaries of any maintenance district. In all maintenance, preservation or repair work, the provisions of this act as to contracts, bids and bidders for construction work shall apply as near as practicable and the same shall be a guide for the proper execution of maintenance contracts.

History: En. Sec. 19, Ch. 147, L. 1921. See also note to Sec. 4574.

4593. Form and terms of district warrants and bonds. All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district, shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No.....
United States of America
State of Montana.

Warrant or (Bond No.....) Dollars $.....

Interest at the rate of six per cent. per annum, payable annually.

Special Improvement District Coupon Warrant or Bonds.

.....Montana.

Issued by the county of....., Montana.

The county treasurer of..... county, Montana, will pay to....., or bearer, the sum of.....dollars, as authorized by resolution No....., as passed on the.....day of ....., 19...., creating or maintaining special improvement district No....., for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of.....county, Montana.

This warrant (or bond) bears interest at the rate of six per cent. per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of.....of each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws

of the state of Montana and the resolution and ordinances of the county of....., Montana, relating to the issuance thereof.

Dated at....., Montana, this..... day of ....., 19...., county of....., Montana.

(Seal.)

By....., chairman of the board of county commissioners. (Seal.)

.....county clerk.

Registered at the office of the county treasurer of..... county, Montana, this.....day of....., 19....

.....

County treasurer.

And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest at the rate of six per cent. per annum from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall be signed by the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signature of the chairman of the board of county commissioners and the county clerk; provided, however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars or fractions, or multiples thereof; and may be issued in instalments, and may extend over a period of not to exceed ten years. Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided, that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date so fixed, interest shall cease. When it is pro-

vided by the resolution creating or maintaining the district that the work be paid in warrants (or bonds) the board of county commissioners shall by resolution fix the denominations of such warrants (or bonds) which may be one hundred dollars, or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent. per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed ten years from and after the date of issuance.

History: En. Sec. 20, Ch. 147, L. 1921. See also note to Sec. 4574.

4594. Contracts payable in warrants—Conversion into cash, when. Whether provided in the call for proposals, or not, all contracts let under the provisions of this act shall be payable in bonds or warrants issued under the provisions hereof, and the board of county commissioners may provide by contract with the person, persons or corporation doing the work, or making the improvement, or maintaining, preserving, or repairing the same, for the payment of which such warrants or bonds are issued, to deliver the said warrants or bonds in instalments as the work progresses, or upon the entire completion thereof; provided, however, that no warrants or bonds must be delivered to such contractor or contractors in excess of the amount of work actually done at the time of the delivery; nor shall the total amount issued be in excess of the total cost and expense of the improvements, and no warrants or bonds shall be delivered or received in payment of a less sum than its face value. And when it becomes necessary to pay for private property taken for the opening, widening or extending of any street, avenue or alley, or to pay any amount awarded or covered on account of damages to any property caused by the making of any improvements, in money, in cases where the persons whose property is so taken or damaged, refuse to receive pay in warrants or bonds, then the board of county commissioners shall have the power, under such regulations as it may prescribe, to sell such bonds or warrants for not less than par, and devote the moneys derived therefrom to the payment of the damages assessed or agreed upon for such property or the damages thereto.

History: En. Sec. 21, Ch. 147, L. 1921. See also note to Sec. 4574.

4595. County treasurer to collect assessments. It shall be the duty of the county treasurer, in accordance with the provisions of the Revised Codes of Montana, where any resolution of assessment, either for construction or maintenance, has been duly certified by the county clerk, to collect such asssessment in the same manner and at the same time as taxes for general and municipal purposes are collected by him.

History: En. Sec. 22, Ch. 147, L. 1921. See also note to Sec. 4574.

4596. Correction of erroneous or invalid assessment. Whenever, by reason of any alleged non-conformity to any law, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct the same, and to re-assess and re-levy the same, including the ordering of work, with the same force and effect as it made at the time provided by law, or resolution relating thereto; and may re-assess and re-levy the same with the same

force and effect as an original levy; whenever any apportionment or assessment is made, and any property is assessed too little or too much, the same may be corrected and re-assessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon re-assessment or re-levy shall, so far as it is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provision of any law specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this act. Any and every rule and regulation of any board of county commissioners passed in substantial conformity with this section is hereby legalized.

History: En. Sec. 23, Ch. 147, L. 1921. See also note to Sec. 4574.

4597. Payment of tax under protest—Action to recover. When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the county treasurer, and thereupon such party so paying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the county in whose behalf the same was collected, to recover such tax or any portion thereof so paid under protest; provided, however, that any action instituted to recover such tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the county treasurer until the determination of any action brought for the recovery thereof.

History: En. Sec. 24, Ch. 147, L. 1921. See also note to Sec. 4574.

4598. Mistake not to vitiate liens. Any mistake in the description of property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description.

History: En. Sec. 25, Ch. 147, L. 1921. See also note to Sec. 4574.

4599. Definition of terms. 1. The person owning the fee, or the person to whom, on the day the action is commenced, appears the legal title to the lot and lands, by deed duly recorded in the county recorder's office in each county, or the person in possession of lands, lots or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator or guardian of the owner, shall be regarded, treated and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed the possession of such owner.

2. The words "work," "improved" and "improvement," as used in this act, shall include all work or the securing of property mentioned in this act, and also the construction, reconstruction, maintenance and repairs, of all or any portion of said work.

3. The term "incidental expenses," as used in this act, shall include the compensation of the engineer selected as hereinbefore provided for work done by him; also the cost of printing and advertising, as provided in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses in this subdivision shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant.

4. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily newspaper or a semi-weekly newspaper, or weekly newspaper, to be designated by the board of county commissioners, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to publications herein provided for; provided, however, that in case there is no daily, semi-weekly or weekly newspaper printed or circulated in any such county, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in each voting precinct, except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer or clerk or the newspaper, or of the poster of the notice. No publication of notice other than that provided for in this act shall be necessary to give validity to any of the proceedings provided therein. The word "twice," as used in this act, referring to the number of times, notices, resolutions or other matter shall be published, shall be held to mean publication of the same in two entire issues of the newspaper, one being on one day and the other issue being on a subsequent day of the same or subsequent week.

5. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

6. The word "paved" or "re-paved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick or other material, whether patented or not, which the board of county commissioners by rule or resolution shall adopt.

7. The word "street," as used in this act, shall be deemed and is hereby declared to include avenues, highways, lanes, alleys, crossings or intersections, courts and places, which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

8. The term "engineer," designated in the petition as used in this act, shall be understood and so construed as to mean the person, firm or corporation whose name is designated and approved by the board of

county commissioners as the engineer in the original petition asking for the improvement and may be the county surveyor.

9. The term "board of county commissioners" is hereby declared to include any body or board which under the law is the legislative department of the government of the county.

10. The terms "clerk," "county clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said board of county commissioners.

11. The term "quarter block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street half way from such intersection to the next main street, or when no main street intervenes all the way to the boundary line of any city.

12. The term "county treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the county.

13. The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

History: En. Sec. 26, Ch. 147, L. 1921. See also note to Sec. 4574.

4600. Jurisdiction of board preserved on adjournment—Notice of hearing. Whenever in proceedings hereunder, a time and place for hearing by the board of county commissioners is fixed, and, from any cause the hearing is not then and there held or regularly adjourned to a time and place fixed, the power and jurisdiction of the board of county commissioners in the premises shall not be thereby divested or lost, but the board of county commissioners may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the board of county commissioners shall have power to act in as in the first instance.

History: En. Sec. 27, Ch. 147, L. 1921. See also note to Sec. 4574.

4601. County clerk to post notices—Effect of error. Whenever any resolution, order, notice or determination is required to be published or posted, and the duty of posting or procuring the publication or posting the same is not specifically enjoined upon any officer in the county, it shall be the duty of the county clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order or determination hereinunder when the same is actually published or posted for the time herein required.

History: En. Sec. 28, Ch. 147, L. 1921. See also note to Sec. 4574.

4602. Transfer of management and control of district to city or town. When a special improvement district has been created in accordance with the provisions of chapter 123, laws of the fourteenth legislative assembly, in any county of the state, and the property contained therein shall have

become a part of or included within the boundaries of an incorporated city or town, such city or town is authorized and empowered to take over, operate, and control the same, and the board of county commissioners shall have the right and authority to transfer the operation, control and management thereof to such city or town, upon such terms and conditions as may be agreed upon.

History: En. Sec. 1, Ch. 156, L. 1919.

4603. Authority of city or town to levy tax. Such city or town is authorized to levy and collect a special tax for the purpose of raising funds to pay the expense of maintenance, operation, and control of such improvement district.

History: En. Sec. 2, Ch. 156, L. 1919.

CHAPTER 18.

CLAIMS AGAINST COUNTIES—COUNTY WARRANTS.

Section 4604. County Officer Not to Present Certain Claims Against County.
4605. All Claims Must Be Itemized.
4606. In What Transactions Commissioners Not to Be Interested.
4607. Claims in Favor of County Commissioners.
4608. Payment of Claims Incurred in Counties of the First Class.
4609. Account Must Be Filed Prior to Session.
4610. Appeals.
4611. Duty of Clerks on Appeals.
4612. Warrants, Specification, Presentation, and Payment.
4613. Annual Examination of Warrants by Board.

4604. County officer not to present certain claims against county. No county officer must, except for his own service, present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. Any citizen and taxpayer of the county in which he resides may appear before the board and oppose the allowance of any claim or demand made against the county.

History: En. Sec. 4285, Pol. C. 1895; re-en. Sec. 2944, Rev. C. 1907. Cal. Pol. C. Sec. 4071.

4605. All claims must be itemized. No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated, and is verified by affidavit showing that the account is just and wholly unpaid; and if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Every claim against the county must be presented within a year after the last item accrued.

History: Ap. p. Sec. 23, p. 503, Bannack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907. Cal. Pol. C. Sec. 4072.

A complaint in an action against a county to recover witness fees, which failed to allege that the claim had been presented under oath to the county, in separate items, with the nature of each item stated, was held to be defective. First Nat. Bank v. Custer County, 7 Mont. 464, 472, 17 Pac. 551.

A claim against a county for the repayment of taxes paid under protest was an "account" within the meaning of a section similar to the above. Powder River Cattle Co. v. Commrs. of Custer County, 9 Mont. 145, 152, 153, 22 Pac. 383.

The presentation of a claim to the board of county commissioners is a condition precedent to the commencement of an action against the county for its recovery. Powder River Cattle Co. v. Commrs. of Custer County, 9 Mont. 145, 152, 22 Pac. 383; Greeley v. Cascade County, 22 Mont. 580, 588, 57 Pac. 274. See also First Nat. Bank of Billings v. Custer County, 7 Mont. 464, 472, 17 Pac. 551.

A section similar to the above was held not to apply to the claim of a surveyor for services performed by virtue of his employment under the terms of a special act creating a boundary commission for the survey of the boundaries of certain counties, and empowering such commission to ascertain the expenses incurred in such survey, and to certify to and file with the county clerks of their respective counties the amount thereof. Kornburg v. Commrs. Deer Lodge Co., 10 Mont. 325, 329, 25 Pac. 1041.

A person who serves as a member of a sheriff's posse in obedience to a law requiring him to do so, cannot recover from the county for expenses or services rendered, in the absence of an express or implied provision of law authorizing payment therefor. Sears v. Gallatin County, 20 Mont. 462, 465, 52 Pac. 204, 40 L. R. A. 405. See State ex rel. McGrade v. District Court, 52 Mont. 371, 376, 157 Pac. 1157.

The subject-matter of an action against a county by which it was sought to obtain compensation for land taken for road purposes under an agreement, the consideration for which failed, is not a "claim" against the county, within the meaning of this section, an action on which is barred if not brought within one year after its accrual. Flynn v. Beaverhead County, 54 Mont. 309, 314, 170 Pac. 13.

Cited or applied as section 2945, Revised Codes, in State v. Story, 53 Mont. 573, 582, 165 Pac. 748; State ex rel. Dolin v. Major, 58 Mont. 140, 146, 192 Pac. 618.

4606. In what transactions commissioners not to be interested. No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or the purchasing of supplies, or for any other purpose.

History: En. Sec. 4292, Pol. C. 1895; re-en. Sec. 2951, Rev. C. 1907. Cal. Pol. C. Sec. 4077.

4607. Claims in favor of county commissioners. All claims against the county presented by members of the board for per diem and mileage, or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

History: En. Sec. 4293, Pol. C. 1895; re-en. Sec. 2952, Rev. C. 1907. Cal. Pol. C. Sec. 4082.

This section is a mere prescription, touching the manner in which commissioners' claims for compensation shall be formulated, and is designed in connection with section 4605 to enable the board to determine in the first instance whether it will even consider the claim. The effect of the section is not to authorize compensation to county commissioners, for attending to business of the county other than meetings of the board, and inspecting and overseeing road work, without a previous order of the board, charges for which services are otherwise illegal. State v. Story, 53 Mont. 573, 582, 583, 165 Pac. 748.

4608. Payment of claims incurred in counties of the first class. The board of county commissioners in any county of the first class may, in its discretion, allow any claims for services rendered or labor performed for or on behalf of the county by any person at the request of any county officer, whether or not such county officer was empowered or authorized to secure, obtain, or contract for the rendition of any such service rendered or labor performed, where the person holding such claim has presented the same in due time in the manner provided by law, prior to the passage of this act; provided, that such claims shall not exceed the sum of two hundred and fifty dollars for any one year.

History: En. Sec. 1, Ch. 88, L. 1911.

4609. Account must be filed prior to session. No account must be necessarily passed upon by the board, unless made out as prescribed in the preceding section and filed by the clerk prior to the session at which it is asked to be heard.

History: En. Sec. 4287, Pol. C. 1895; re-en. Sec. 2946, Rev. C. 1907. Cal. Pol. C. Sec. 4073.

4610. Appeals. Whenever a claim against a county is disallowed in whole or in part, or when any taxpayer of the county is not satisfied with any allowance made by the board, the claimant or such taxpayer may appeal from the decision of the board to the district court for the county, by causing a written notice of appeal to be served on the clerk of the board, within thirty days after the making of the decision or allowance, and executing a bond to the county, with surety to be approved by the clerk of the board, conditioned to prosecute such appeal to effect and to pay all costs that may be adjudged against the appellant.

History: Ap. p. Sec. 25, p. 503, Bannack Stat.; re-en. Sec. 25, p. 437, Cod. Stat. 1871; amd. Sec. 2, p. 63, L. 1874; re-en. Sec. 359, 5th Div. Rev. Stat. 1879; re-en. Sec. 764, 5th Div. Comp. Stat. 1887; amd. Sec. 4288, Pol. C. 1895; re-en. Sec. 2947, Rev. C. 1907. Cal. Pol. C. Sec. 4075.

Where a taxpayer took an appeal to the district court from an allowance by a board of county commissioners of a claim against a county under a statute similar to the above, and thereafter a judgment by default was rendered by such court upon the failure of the board to appear, adjudging such claim illegal and setting aside the allowance of the same, without a trial or inquiry of any character respecting its merits, such judgment was unauthorized and constituted no defense to an application for a writ of mandamus to compel the payment by the county treasurer of a warrant issued in payment of such claim. State ex rel. Cope v. Minar, 13 Mont. 1, 4, 31 Pac. 723.

On an appeal by a taxpayer from the allowance by the commissioners of a claim against the county under a similar statute, service of the notice of appeal upon the claimant whose bill was allowed was not considered necessary to give the district court jurisdiction, but it was the duty of the court, after acquiring jurisdiction, to give the claimant notice of the pendency of the case and an opportunity to be heard before rendering judgment. Twohy v. Board of Commrs. of Granite County, 17 Mont. 461, 464, 43 Pac. 494.

Where an appeal was taken by a taxpayer from the allowance by the commissioners of a bill against the county, and a notice of appeal was served upon the county clerk, and the clerk thereupon transmitted the proceedings in the case, with the copy of the notice of appeal, to the district court, all of which was done under statutes similar to those now in force, it was held that the clerk thereby waived any irregularity or insufficiency of the service of the notice. Twohy v. Board of Commrs. of Granite County, 17 Mont. 461, 463, 43 Pac. 494.

An appeal may be taken by a taxpayer from one or more items of a claim against the county allowed by the commissioners, without appealing from the whole of the allowance. Twohy v. Board of Commrs. of Granite County, 17 Mont. 461, 464, 43 Pac. 494.

A claimant against a county has the right to maintain an independent action on a claim rejected by the board of commissioners in view of section 9035. Greeley v. Cascade County, 22 Mont. 580, 586, 57 Pac. 274.

In the case of claims against counties, the claimant, or the objecting taxpayer, and the county are the real parties in interest, and therefore adversary parties. State ex rel. Hackshaw v. District Court, 48 Mont. 477, 480, 138 Pac. 1100.

On appeal from an order of the board of county commissioners allowing or disallowing a claim under this and the following section, the parties are the county and the claimant, or, in a taxpayer's suit, the county and the objecting taxpayer. Albers v. Barnett, 53 Mont. 71, 79, 161 Pac. 518.

When the auditor has disapproved a claim, the board must disallow it so that the claimant may proceed to enforce it against the county by appeal to the district court. State ex rel. Dolin v. Major, 58 Mont. 140, 151, 192 Pac. 618.

Cited or applied as section 4288, Political Code, in Independent Publishing Co. v. County of Lewis and Clark, 30 Mont. 83, 84, 75 Pac. 860; as section 2947, Revised Codes, in State ex rel. Hackshaw v. District Court, 48 Mont. 477, 480, 138 Pac. 1100; Thien v. Wiltse, 49 Mont. 189, 194, 141 Pac. 146.

4611. Duty of clerk on appeals. The clerk of the board, upon an appeal being taken, must immediately give notice thereof to the county attorney and must make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, with the clerk of the district court; and such appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in like manner.

History: Ap. p. Sec. 26, p. 504, Bannack Stat.; re-en. Sec. 26, p. 437, Cod. Stat. 1871; re-en. Sec. 360, 5th Div. Rev. Stat. 1879; re-en. Sec. 765, 5th Div. Comp. Stat. 1887; amd. Sec. 4289, Pol. C. 1895; re-en. Sec. 2948, Rev. C. 1907.

Appeals from actions of boards of county commissioners are prosecuted and tried like appeals from a justice of the peace. State ex rel. Seres v. District Court; 19 Mont. 501, 504, 48 Pac. 1104.

The language of the last clause of this section can mean no more than that the court may try de novo the question whether the action of the board in its allowance or disallowance was correct, and so declare. The board is not a court, and its action is not tantamount to a judgment. Its refusal to allow a claim is not conclusive, even though the claimant does not appeal. Greeley v. Cascade County, 22 Mont. 580, 586, 57 Pac. 274; Albers v. Barnett, 53 Mont. 71, 80, 161 Pac. 518.

The jurisdiction of the district court on appeal from an order made by county commissioners allowing or disallowing a claim against the county is limited to the determination of the question whether the action of the board was correct and to a declaration affirming or reversing it, with a judgment for costs. Albers v. Barnett, 53 Mont. 71, 80, 161 Pac. 518.

4612. Warrants—Specification—Presentation and payment. Warrants drawn by order of the board on the county treasurer for the current expenses during each year must specify the liability for which they are drawn and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

History: En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907. Cal. Pol. C. Sec. 4076.

An action cannot be maintained against a county on a county warrant. Greeley v. Cascade County, 22 Mont. 580, 588, 57 Pac. 274.

Constitutionality as to pre-existing warrants of statute making validity of warrants dependent on registration, see note in 5 Ann. Cas. 259.

4613. Annual examination of warrants by board. The board, at its annual March session, or oftener if necessary, must examine the county warrants returned by the county treasurer, by comparing each warrant with the record of warrants issued in the county clerk's office. The board must cause to be entered on said record, opposite to the entry of each warrant issued, the date when the same was canceled; and make a list of the warrants so canceled, specifying the number, date, amount, and the person to whom the same was payable, and enter the same on the minutes of the board. The board must cause to be canceled all county warrants that have remained one year or more uncalled for in the county clerk's office, the same to be canceled in the same manner as other county warrants. At the same time the county treasurer must deliver to the board all warrants or vouchers that he may have in his possession for moneys disbursed by him as treasurer, and the clerk must receipt for the same.

History: Ap. p. Sec. 28, p. 504, Bannack Stat.; amd. Sec. 28, p. 438, Cod. Stat. 1871; re-en. Sec. 362, 5th Div. Rev. Stat. 1879; re-en. Sec. 767, 5th Div. Comp. Stat. 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, Rev. C. 1907.

CHAPTER 19.

COUNTY FINANCES, BONDS, AND WARRANTS.

Section 4614. Refunding Bonds.
4615. Form and Execution of Bond.
4616. Notice of Sale to Be Published.
4617. Disposition of Proceeds of Sale of Bonds.
4618. Validation of Refunding Bonds Previously Issued.
4619. Redeemed Bonds, etc., to Be Canceled.
4620. County Commissioners to Print Bonds.
4621. Notice of Redemption to Be Published.
4622. Bond Fund to Be Provided.
4623. County Treasurer to Pay Bonds and Interest.
4624. Record to Be Kept.
4625. County Warrants—Interest.
4626. Lost Bond or Warrant.
4627. Indemnity to Be Given.
4628. Duplicate Bonds, How Given.
4629. What Notice Imparted.
4630. Duty of County Treasurer in Reference to Lost Bonds.
4631. County Commissioners to Transfer Funds.
4632. Contingent Fund—How Made.
4633. Surplus of Contingent Fund.
4634. Certain Bonds Legalized.
4635. Same.
4636. County Bonds and Warrants Issued for Highways and Bridges Legalized.
4637. County Warrants Issued for Highways and Bridges Legalized.
4638. Validation of Highway Elections and Bonds.
4639. Preceding Section Not Applicable to Actions to Test Validity of Proceedings.

4614. Refunding bonds. The board of county commissioners of any county is hereby vested with the power and authority to issue and negotiate, on the credit of the county, coupon bonds to an amount sufficient to enable the county to redeem all legal outstanding bonds, warrants, or orders; or for the purchase of necessary public building sites, and for the construction of necessary public buildings, public highways, and bridges, and for the ordinary and necessary expenses of the county authorized by the general laws of this state, and also for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county, or the change of any county boundary lines, not exceeding in the aggregate, including outstanding bonded indebtedness, five per cent. of the value of the taxable property within such county, to be ascertained by the last assessment for state and county taxes previous to issuing such bonds. Such bonds are redeemable and payable at such time not longer than twenty years after the date thereof, as the board determines, and the interest which such bonds bear must be fixed by the board, not exceeding six per cent. per annum, and be represented by interest coupons payable semiannually on the first days of January and July of each year.

History: Ap. p. Sec. 808, 5th Div. Comp. Stat. 1887; re-en. Sec. 4240, Pol. C. 1895; amd. Sec. 1, Ch. 41, L. 1905; re-en. Sec. 2905, Rev. C. 1907; amd. Sec. 1, Ch. 32, L. 1915. Cal. Pol. C. Sec. 4048.

Note.—See Edwards v. County of Lewis and Clark, 53 Mont. 359, 165 Pac. 297, for history of other early acts. See California Political Code, section 4048.

This section confers the power, among others, to issue bonds for the purchase of necessary building sites, and for the construction of necessary buildings; and the interest, not exceeding six per cent., must be made payable on the first days of January and July of each year. Morse v. Granite County, 44 Mont. 78, 89, 92, 119 Pac. 286.

The amendment made to this section by the act of February 26, 1915, did not alter in any respect the provisions authorizing the county commissioners to issue bonds for refunding or retiring outstanding indebtedness, and under the rule of construction provided by the codes, the portion of the section relating to that subject is to be considered as having been the law from the time when it was first enacted. Edwards v. County of Lewis and Clark, 53 Mont. 359, 367, 165 Pac. 297.

The authority of the board of county commissioners to issue refunding bonds in excess of ten thousand dollars must be determined by reference to this section and section 4717. Edwards v. County of Lewis and Clark, 53 Mont. 359, 367, 368, 165 Pac. 297.

Refunding bonds as indebtedness within meaning of debt limit provisions, see notes in 37 L. R. A. (N. S.) 1099; L. R. A. 1917E, 451.

4615. Form and execution of bond. The board must fix the denomination of each bond issued under this article, and prescribe the form thereof; and each bond and all coupons attached thereto must be signed by the chairman of the board and the treasurer of the county; and each bond and coupon must be countersigned by the county clerk, and each bond sealed by him; provided, a lithographic or engraved facsimile of the signatures of the chairman of the board, treasurer, and county clerk may be affixed to the coupons, only, when so recited in the bond. Each bond issued must be registered by the county treasurer in a book provided for that purpose, which must show the number and amount of each bond, and when and to whom issued.

History: En. Sec. 1, p. 133, L. 1899; re-en. Sec. 2906, Rev. C. 1907. Cal. Pol. C. Sec. 4048.

County bonds issued to provide funds for a highway system, which included a free ferry, were not invalid because the form of the bonds omitted reference to ferries, ferries being a mere portion of the highway. Reid v. Lincoln County, 46 Mont. 31, 61, 125 Pac. 429. See Hefferlin v. Chambers, 16 Mont. 349, 350, 40 Pac. 787; Yegen v. Board of County Commrs., 34 Mont. 79, 83, 85 Pac. 740; Jenkins v. Newman, 39 Mont. 77, 80, 101 Pac. 625; Morse v. Granite County, 44 Mont. 78, 90, 119 Pac. 286.

4616. Notice of sale to be published. When the board issues any bonds authorized by this article, it is its duty to sell the same and give notice by advertisement in some newspaper published in the county, or if there be no newspaper published in the county, then in any newspaper published in an adjoining county, for a period of not less than thirty days prior to the time said bonds are to be sold; such advertisement must be for sealed proposals, which must state the amount of such bonds offered for sale, and the person offering the highest price therefor, in conformity with the requirements of the notice of sale, is entitled to receive the amount of such bonds which he offers to buy; but no bonds must be sold for any price less than the par value thereof; provided, however, that the board may effect an exchange of such county bonds to take up its legal outstanding indebtedness, or issue same to meet its obligation to another county incident to the creation of a new county, change of county boundary, or on county division, without publishing the notice herein provided for.

History: En. Sec. 4242, Pol. C. 1895; re-en. Sec. 2907, Rev. C. 1907; amd. Sec. 2, Ch. 32, L. 1915. Cal. Pol. C. Sec. 4049.

When the board of county commissioners issues any bonds, it is the duty of the board to sell the same and give notice by advertisement of the time of sale, but there is nothing in the law which requires the form of bonds to be adopted prior to the advertisement; it is not necessary to give the form of the bonds in the advertisement, or even a description thereof. Reid v. Lincoln County, 46 Mont. 31, 61, 125 Pac. 429.

4617. Disposition of proceeds of sale of bonds. The proceeds derived from the sale of bonds authorized to be issued by this article must be paid into the county treasury, and must be applied to the payment of the legal bonds, warrants, or orders of the county which may be outstanding or unpaid in the order in which said bonds, warrants, or orders become due, or applied in liquidation of its indebtedness incident to the creation of a new county, county division, or change of county boundary lines. But the board may, at any lawful meeting, provide by resolution for the exchange of any bonds issued under the provisions of this article to take up any outstanding county bonds then due and subject to payment, and in order to redeem and pay any legal county warrants or orders of the county issued prior to a day to be fixed by the board and entered of record in the minutes of its proceedings. In the making of such exchange by the issuance and delivery of bonds to take up any such legal outstanding indebtedness of the county, the board is vested with judgment and discretion to issue such bonds in such manner as may appear to the advantage and benefit of the county, and is hereby authorized to issue and deliver same in such manner and upon such terms as are deemed for the best interest and advantage of the county. The exchange when made must be made dollar for dollar with accrued interest thereon. And the board may advertise the privilege to so exchange bonds then due, and warrants and orders of the county issued prior to the day so fixed, in some newspaper printed and published in the county, or, if there be no newspaper published in the county, then in a newspaper published in an adjoining county for such period as the board may designate, in the event that the board shall determine it to be to the best interest and advantage of the county to delay proceedings respecting the proposed liquidation of outstanding indebtedness until such publication has been made. The board is also authorized, upon the same conditions and restrictions herein prescribed, to issue such bonds against the county in order to liquidate any indebtedness which may be occasioned because of the creation of a new county, county division, or change of county boundary lines.

History: En. Sec. 4243, Pol. C. 1895; re-en. Sec. 2908, Rev. C. 1907; amd. Sec. 3, Ch. 32, L. 1915. Cal. Pol. C. Sec. 4049.

4618. Validation of refunding bonds previously issued. All bonds which have heretofore been issued by any county of the state of Montana by virtue and under authority of section 4614 of this code, for the purpose of funding or refunding outstanding indebtedness of such county, which bonds have been so issued without the question of issuing the same, or the question of funding or refunding such outstanding indebtedness, having been first submitted to and approved by the electors of such county, be, and the same are hereby legalized and validated and declared to be legal and valid and binding obligations of the county issuing the said bonds; provided, however, that this act shall only apply to such issue or issues of funding or refunding bonds which, at the time of the issuance thereof, together with other existing indebtedness of the respective county did not exceed the constitutional limit of the total indebtedness of such county.

History: En. Sec. 1, Ch. 5, Ex. L. 1918.

4619. Redeemed bonds, etc., to be canceled. All bonds, coupons, warrants, or orders which are called in or redeemed, or paid under the provisions of this article, and in lieu of which coupon bonds are issued, must be canceled in the same manner in which county warrants are canceled, and the board must preserve, in a book provided for that purpose, a correct description of such bonds, coupons, warrants, or orders so canceled, and the amount of the principal and interest paid to redeem the same, and a copy of such record must be transmitted to the county treasurer.

History: Sec. 2909, Rev. C. 1907.

Note.—Sections 4619 to 4623 appeared in substance as sections 812 to 817, Fifth Division Compiled Statutes 1887; enacted as sections 4244 to 4248, Political Code 1895; appearing as sections 2909 to 2913, Revised Codes 1907.

4620. County commissioners to print bonds. The board must cause suitable bonds, with coupons attached, to be printed or lithographed, and must pay therefor out of any moneys in the treasury of such county not otherwise approriated.

History: Sec. 2910, Rev. C. 1907. See also history of Sec. 4619.

4621. Notice of redemption to be published. When the board is prepared to redeem any bonds or pay any legal outstanding indebtedness of the county, it must cause a notice to be published in the newspapers mentioned in section 4616 of this code, that within thirty days from the date of such notice it will redeem or pay such indebtedness, briefly describing the same; such notice must be sent by mail to the owner or holder of such indebtedness, in case the board has notice or knowledge of the address of such owner or holder; and if, at the expiration of the said thirty days, the holder or holders fail or neglect to present the same for payment, interest thereon must cease; but the county treasurer must at all times thereafter be ready to redeem the same on presentation.

History: Sec. 2911, Rev. C. 1907. See also history of Sec. 4619.

Cited or applied as section 2911, Revised Codes, in Morse v. Granite County, 44 Mont. 78, 92, 119 Pac. 286.

4622. Bond fund to be provided. The board issuing bonds under the provisions of this article must, annually, at the time of levying taxes, levy upon the taxable property, in addition to all other taxes, a sum sufficient to pay the interest on all the bonds issued under the provisions of this article, as the same becomes due, and also a sum sufficient to provide for the redemption of the bonds as the same become due or are called in for payment, according to the conditions thereof, and such tax when collected must be set apart in a fund known as the "bond fund," and used for no other purpose than the payment of such bonds and interest accruing thereon.

History: Sec. 2912, Rev. C. 1907. See also history of Sec. 4619.

Cited or applied as section 2912, Revised Codes, in Morse v. Granite County, 44 Mont. 78, 92, 119 Pac. 286.

4623. County treasurer to pay bonds and interest. The county treasurer must pay the interest upon the bonds authorized to be issued under the provisions of this article when the same become due, on the presentation to him of the proper coupons therefor; and all bonds and coupons which may be paid by the county treasurer must be returned by the treasurer to the county clerk at his next settlement after such payment:

and the county clerk must cancel said bonds and coupons in the manner provided by law for the cancelation of county warrants.

History: Sec. 2913, Rev. C. 1907. See also history of Sec. 4619.

4624. Record to be kept. It is the duty of the county treasurer, upon taking up county orders for the purpose in this article mentioned, to keep a record of the same, to cancel said orders, and to make a report thereof to the board at each regular meeting of the board, and to the county clerk.

History: En. Sec. 4249, Pol. C. 1895; re-en. Sec. 2914, Rev. C. 1907.

4625. County warrants—Interest. All county warrants, after having been presented to the county treasurer and by him indorsed, "Not paid for want of funds in the treasury," from and after the date of presentation and indorsement draw interest at the rate of six per cent. per annum.

History: En. Sec. 1, p. 99, L. 1899; re-en. Sec. 2915, Rev. C. 1907.

Under the act of February 8, 1865, authorizing county commissioners to pay interest on county warrants, it was held that the neglect of the county treasurer to indorse a county warrant, "not paid for want of funds in the treasury," does not release the county from its liability to pay the interest authorized by statute, and that the indorsement should show that the warrant had been presented for payment at a certain time and payment refused for want of funds in the treasury. Territory ex rel. Largey v. Gilbert, 1 Mont. 371, 375, 378.

Interest on county warrants, see 3 Ann. Cas. 459.

4626. Lost bond or warrant. The board is authorized, upon satisfactory proof that any original bond, warrant, or coupon has been lost or destroyed, to issue to the owner or holder of such bond, warrant, or coupon a duplicate thereof, which will take the place in order of registration and payment of such original bond, warrant, or coupon, and in all cases supersede and take the place of such original.

History: Sec. 2916, Rev. C. 1907.

Note.—Sections 4626 to 4630 were enacted as sections 1 to 5, p. 83, Laws of 1881; re-enacted as sections 4251 to 4255, Political Code 1895; re-enacted sections 2916 to 2920, Revised Codes 1907.

4627. Indemnity to be given. Before issuing such duplicate bond, warrant, or coupon, the board must require the person demanding the same to execute and deliver to the treasurer of the county a bond, payable to the county, in double the amount of the bond, warrant, or coupon, with at least two good and sufficient sureties, who must be required to justify as in case of attachment, the conditions of such bond being that the principal and sureties therein will indemnify and save harmless the county from all loss, costs, or damages by reason of the issuing of the duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant, or coupon, all moneys received upon such duplicate.

History: Sec. 2917, Rev. C. 1907. See also history of Sec. 4626.

4628. Duplicate bonds, how given. The chairman of the board, at the time of issuing any duplicate bond, warrant, or coupon, must write across or upon the face thereof the word "duplicate," in red ink.

History: En. Sec. 2918, Rev. C. 1907. See also history of Sec. 4626.

4629. What notice imparted. The word "Duplicate" upon any bond warrant, or coupon imparts notice to all persons that the same is issued subject to the provisions of this article.

History: Sec. 2919, Rev. C. 1907. See also history of Sec. 4626.

4630. Duty of county treasurer in reference to lost bonds. It is the duty of the county treasurer, upon the production to him of any original bond, warrant, or coupon, by the lawful owner or holder thereof, to assign by indorsement and to deliver to him the bond mentioned in section 4627, and such owner or holder may maintain an action in his own name upon such bond for the recovery of any moneys paid upon such duplicate, but the delivery of such bond does not relieve or exonerate the county from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying bond to pay the same.

History: Sec. 2920, Rev. C. 1907.

4631. County commissioners to transfer funds. The board is authorized to transfer all surplus moneys that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of the county, or to appropriate said surplus moneys to the payment of the outstanding indebtedness of the county; but no moneys belonging to the school fund must be taken therefrom except for school purposes.

History: En. Sec. 371, 5th Div. Rev. Stat. 1887; re-en. Sec. 4256, Pol. C. 1895; Stat. 1879; re-en. Sec. 775, 5th Div. Comp. re-en. Sec. 2921, Rev. C. 1907.

4632. Contingent fund—How made. The board must set aside a sum not less than one nor more than twenty-five per cent. of the county fund, annually, which is known as the "contingent fund," to defray incidental expenses of the county; and if a surplus of such contingent fund so set aside remains, it must be paid out on registered warrants as other county funds at the expiration of each quarterly settlement.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907.

4633. Surplus of contingent fund. If a surplus remains in the contingent fund at the end of the year, such surplus must be transferred to the general fund.

History: En. Sec. 4258, Pol. C. 1895; re-en. Sec. 2923, Rev. C. 1907.

4634. Certain bonds legalized. All bonds issued previous to February 1, 1895, by any county of the state of Montana, by virtue and under authority of chapter XL, of the fifth division of the Compiled Statutes of Montana, and all acts and parts of acts amendatory thereof, for the purpose of funding or refunding any outstanding indebtedness of such county, be, and the same are, hereby legalized and declared to be valid and binding obligations of the respective counties issuing such bonds; and all elections held for the purpose of issuing bonds, under said chapter, or any acts or parts of acts amendatory thereof, or under the act approved March 4, 1891, entitled "An act to amend sections 790, 795, 796, and 808 of the fifth division of the Compiled Statutes of Montana," are hereby legalized and declared to be valid. And all bonds authorized to be issued under said chapter XL, or any act or acts amendatory thereof, or under said act approved March 4, 1891, and also duly authorized by an election held pursuant to the provisions of the statutes of the state of Montana, and said act approved March 4, 1891, are hereby authorized to be issued, and are hereby made legal and binding obligations of their respective

counties issuing such bonds; provided, however, that this act shall only apply to such issue or issues of the bonds which, at the time of the issuance thereof, together with the existing indebtedness of the respective counties did, and do not exceed the constitutional limit of the total indebtedness of such county.

History: En. Sec. 4259, Pol. C. 1895; re-en. Sec. 2924, Rev. C. 1907.

4635. Same. All bonds issued previous to January 5, 1893, by any county of the state of Montana (by virtue and authority of chapter XL of the fifth division of the Compiled Statutes of Montana, and all acts and parts of acts amendatory thereof), for the purpose of funding or refunding outstanding indebtedness of such county, be, and the same are hereby legalized and declared to be valid and binding obligations of the respective county issuing the said bonds; provided, however, that this act shall apply only to such issue or issues of bonds, which at the time of issuance thereof, together with other existing indebtedness of the respective county, did not exceed the constitutional limit of the total indebtedness of such county.

History: En. Sec. 4260, Pol. C. 1895; re-en. Sec. 2925, Rev. C. 1907.

4636. County bonds and warrants issued for highways and bridges legalized. All warrants which have been heretofore issued by any county in this state, under authority of the board of county commissioners of the county, for the purpose of paying for the construction of highways, bridges, or public buildings, and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid and binding obligations of the respective counties issuing the same; and all bonds heretofore issued by the board of county commissioners of the county, pursuant to an election regularly held for the purpose of authorizing an issue of bonds for any of said purposes, or for the purpose of redeeming any of said warrants so issued, and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid.

History: En. Sec. 1, Ch. 10, L. 1907; Sec. 2926, Rev. C. 1907.

4637. County warrants issued for highways and bridges legalized. All warrants which have been issued by any county of the state, under authority of the board of county commissioners of the county, for the purpose of paying for the construction of public highways and public highway bridges, and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid and binding obligations of the respective counties issuing the same; and all bonds issued or sold by the board of county commissioners of the county, pursuant to an election held for the purpose of authorizing an issue of bonds for the purpose of constructing public highways and public highway bridges, and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid.

History: En. Sec. 1, Ch. 95, L. 1911.

4638. Validation of highway elections and bonds. When heretofore proceedings have been taken by the board of county commissioners of any county in this state ordering the submission to the electors of the

question of issuing the bonds of the county for the construction of necessary highways and bridges within the county, and an election has been had on said question, such proceedings so taken, and such election so held, and any bonds of such county hereafter issued pursuant thereto and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid.

History: En. Sec. 1, Ch. 129, L. 1913.

4639. Preceding section not applicable to actions to test validity of proceedings. This act shall not apply to any actions now pending in which the validity of said proceedings, election, or bonds is called in question.

History: En. Sec. 2, Ch. 129, L. 1913.

CHAPTER 20.

INDEBTEDNESS FOR SEED-GRAIN—DROUGHT RELIEF.

Section 4640. Counties Where Applicable—Petition to County Commissioners.
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4676. Construction of Law.
4677. Extension of Time of Payment for Seed-Grain.
4678. Delinquent Tax Penalty to Be Canceled.
4679. Payment of Indebtedness Within Extended Period—Penalty for Failure to Make Payment.

4640. Counties where applicable—Petition to county commissioners. Whenever there has been a total or partial failure of crops by reason of drought, hail, or other misfortune, in any county of the state, it shall be lawful for the board of county commissioners of such county, upon being petitioned so to do, to purchase seed-grain of such kinds as may be necessary and to furnish and supply such seed-grain to the inhabitants of such county who are engaged in the occupation of farming, and who are financially unable to procure seed-grain, and who require such seed-grain in order to enable them to plant and sow crops at the next ensuing planting season. Such petition must be in writing and signed by not less than one hundred freeholders residing in such county, and must be filed with the county clerk of such county; provided, however, that the signature need not be appended to one paper, but each signer shall add to his signature, his postoffice address and the number of his voting precinct, and all such papers when bound or fastened together and filed shall constitute and be considered as one petition.

History: En. Sec. 1, Ch. 19, Ex. L. 1918.

The seed-grain law of 1915, in so far as it sought to create an indebtedness by a county bond issue in excess of ten thousand dollars, upon a mere petition, without the approval of the qualified electors, and no provision for an election having been made, was declared unconstitutional in State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 170 Pac. 942.

Validity of statute providing for supply of seed grain by government, see note in 7 L. R. A. (N. S.) 1196.

4641. Meeting of county commissioners to consider petition—Notice of meeting. Upon the filing of such petition with the county clerk, such officer must forthwith call a special meeting of the board of county commissioners of such county to consider such petition, and the date fixed for such meeting shall be not more than five days after the filing of such petition. Written notice of the calling of such special meeting shall be given each member of the board by the county clerk by delivering such notices personally or by registered mail; provided, however, that if any one member shall fail to attend such meeting by reason of not receiving such notice, or for any other reason, the other two members of said board may hold such meeting; and provided further, that notice of such meeting may be dispensed with by the unanimous consent of all of the members of such board, which consent must be entered on the minutes of such meeting.

History: En. Sec. 2, Ch. 19, Ex. L. 1918.

4642. Order granting petition after investigation—Minutes of board. At such meeting the board shall examine such petition and make, or cause to be made, such investigation as may be necessary for the board to ascertain and determine whether or not it is necessary that such county supply and furnish any of the inhabitants of such county with seed-grain, in order to enable them to plant and sow crops at the next ensuing planting season, and if a majority of the board shall find and determine from such investigation that it is necessary for such county to do so, then said board shall make an order granting such petition, and shall make an estimate of the quantity of seed-grain of different kinds which is required for such purpose, and the amount of indebtedness the county will be required to incur in order to furnish and supply the same. The finding and determination of the board, the order granting the petition, the estimate of

the quantity of seed-grain required, and the amount of indebtedness necessary to be incurred for such purpose, shall be entered on the minutes of the board.

History: En. Sec. 3, Ch. 19, Ex. L. 1918.

4643. Purchase and furnishing of seed-grain. If the estimate of the board of county commissioners of the amount of indebtedness which such county will be required to incur in order to supply and furnish such seed-grain does not exceed the sum of ten thousand dollars, and, together with the then existing indebtedness of such county, does not exceed the constitutional limit of indebtedness, the board of county commissioners shall proceed to purchase such seed-grain and to furnish and supply the same, in the manner hereinafter provided, to applicants therefor who are inhabitants of such county engaged in the occupation of farming, and who are financially unable to procure seed-grain for planting and sowing crops at the next ensuing planting season; provided, however, that such county shall not incur an indebtedness for such purpose in excess of ten thousand dollars, except as hereinafter provided.

History: En. Sec. 4, Ch. 19, Ex. L. 1918.

4644. Submission of question to electors when amount required exceeds ten thousand dollars. If the estimate of the board of county commissioners of the amount of indebtedness which the county will be required to incur in order to supply and furnish such seed-grain exceeds the sum of ten thousand dollars, the board must forthwith call a special election for the purpose of submitting to the electors of such county the question of whether or not such county shall incur an indebtedness to the amount of such estimate, or if the amount of such estimate, together with the then existing indebtedness of such county, will exceed the constitutional limit of indebtedness, then in any amount less than the amount of such estimate, and which will not, together with the then existing indebtedness of such county, exceed the constitutional limit of indebtedness, for the purpose of furnishing and supplying seed-grain to the inhabitants of such county who are engaged in the occupation of farming, and who are financially unable to procure seed-grain for planting and sowing crops at the next ensuing planting season; provided, however, that such election may be held at the same time as any other special election called for any purpose.

History: En. Sec. 5, Ch. 19, Ex. L. 1918.

4645. Notice of election—Publication and posting of proclamation. Said special election shall be called for a day not less than fifteen days nor more than thirty days after the day on which the order is made by such board for the holding of such special election, and the board shall give notice of the calling of such election by issuing an election proclamation, which proclamation shall be published two successive times in the newspaper published in such county having the contract for publishing official notices of such county, if such newspaper be published weekly, but if it be published daily, then eight successive insertions thereof; and copies of such proclamation shall be posted in three public places in each voting precinct in such county at least ten days before the day on

which such election is to be held. Said proclamation shall clearly state the amount of indebtedness to be incurred, the purpose for which said indebtedness is to be incurred, the day on which such election is to be held, and the hours when the polls will be open, and no other notice shall be given of the calling or holding of such election.

History: En. Sec. 6, Ch. 19, Ex. L. 1918.

4646. General election laws applicable to conduct of election. Said election, except as herein otherwise provided, shall be held and conducted, and the returns thereof made and canvassed, in all respects in the manner prescribed by law in regard to the submission of questions to the electors of the county under the general election law.

History: En. Sec. 7, Ch. 19, Ex. L. 1918.

4647. Persons entitled to vote—Duties of judges of election. None of the provisions of sections 566 and 567 of this code shall apply to said election, but the county clerk shall close registration for such election at five o'clock p. m. on the eleventh day before the day on which said election is to be held, and all electors whose names shall appear on the registration books of such county at the time the same are closed for such election shall be entitled to vote at such special election; provided, however, that if any person whose name does not appear on the register of voters for the precinct in which such person resides shall request the judges of election for such precinct to permit him to vote at such election, such judges shall enter the name of such person upon the register of voters for such precinct upon such person taking the oath, answering the questions, and complying with such other provisions of section 554 of this code as are required for registration, and thereupon such person shall be permitted to vote at such election. The judges of election for each election precinct are hereby designated and appointed deputy registrars, within their respective election precincts, for the purpose of carrying out the provisions of this section, and shall have all the powers and perform all of the duties of the registrar authorized and required by chapter one hundred twenty-two, acts of the fourteenth legislative assembly. The judges of election shall, at the same time and in the same manner the election returns of such election are delivered or mailed to the county clerk, deliver or mail to the county clerk all affidavits and registry cards made and filled out before them at such election. The county clerk shall provide such election judges with a suitable number of blank affidavits and registry cards for use in their respective precincts during such election.

History: En. Sec. 8, Ch. 19, Ex. L. 1918.

4648. Form of ballots. The ballots for such special election shall conform as near as possible with the ballots used at general elections, and shall have printed thereon in fair sized legible type and black ink, in one or more lines as required, the words "For incurring an indebtedness not exceeding the sum of (stating such sum), for the purpose of purchasing seed-grain to be furnished and supplied by the county to the inhabitants of the county who are engaged in the occupation of farming, and who are financially unable to procure such seed-grain and who require such seed-grain in order to enable them to plant and sow crops at the

next ensuing planting season,'' and thereunder in one or more lines, as required, the words ''Against incurring an indebtedness not exceeding the sum of (stating such sum), for the purpose of purchasing seed-grain to be furnished and supplied by the county to the inhabitants of the county who are engaged in the occupation of farming, and who are financially unable to procure such seed-grain, and who require such seed-grain in order to enable them to plant and sow crops at the next ensuing planting season.'' And there shall be before the word ''For'' and before the word ''Against,'' each, a square space of sufficient size to place a cross or X therein.

History: En. Sec. 9, Ch. 19, Ex. L. 1918.

4649. Purchasing and furnishing seed-grain after approval by electors. If a majority of the votes cast at such special election are in favor of such indebtedness being incurred by such county, then the board of county commissioners shall proceed to purchase seed-grain and to furnish and supply the same, in the manner hereinafter provided, to applicants therefor who are inhabitants within such county engaged in the occupation of farming, and who are financially unable to procure seed-grain; provided, however, that no indebtedness shall be incurred for such purpose in excess of the amount authorized by such special election.

History: En. Sec. 10, Ch. 19, Ex. L. 1918.

4650. Method of purchase, quantity, and price. The board of county commissioners shall not be required to advertise for bids for the furnishing of such seed-grain to the county, nor to purchase the total amount of seed-grain required from any one individual, copartnership, firm, association, or corporation, nor to purchase at one time the whole amount or quantity required, but such seed-grain must be purchased at the lowest price at which suitable seed-grain can be obtained, and may be purchased from different individuals, copartnerships, firms, associations, and corporations, and at such times and in such amounts and quantities as the same may be required from time to time.

History: En. Sec. 11, Ch. 19, Ex. L. 1918.

4651. Warrants for payment of seed-grain. In payment for seed-grain purchased by such county under the provisions of this act, warrants shall be ordered drawn against a fund to be known as the ''seed-grain fund,'' which said warrants shall be registered by the county treasurer of such county, and shall bear interest at the rate of not to exceed seven per cent. per annum from the date of registration thereof, until called for payment by the county treasurer.

History: En. Sec. 12, Ch. 19, Ex. L. 1918.

4652. Issue, sale, or exchange of bonds for funding warrants. Whenever there are any warrants outstanding drawn against the ''seed-grain fund,'' and there is insufficient money in such fund to pay said warrants with the interest thereon, the board of county commissioners, whenever such board deems it advisable to do so, may issue and sell or exchange bonds of said county for the purpose of funding such outstanding warrant indebtedness; provided, however, that it shall not be necessary for the

board of county commissioners to submit to the electors of the county the question of whether or not such bonds shall be issued and sold or exchanged for the purpose of funding such outstanding warrant indebtedness.

History: En. Sec. 13, Ch. 19, Ex. L. 1918.

4653. Denomination, rate of interest, and period of bonds. Such bonds shall be in denominations of one thousand dollars, shall bear a rate of interest to be fixed by the board, not exceeding seven per cent. per annum, represented by interest coupons payable semiannually at such place and at such times as shall be determined by the board, and all such bonds shall become due and payable in not less than two nor more than five years from the date thereof, the date of maturity to be fixed by the board.

History: En. Sec. 14, Ch. 19, Ex. L. 1918.

4654. Form and execution of bonds and coupons—Registration of bonds. The board must prescribe the form of such bonds, and each bond and all coupons attached thereto must be signed by the chairman of the board and by the county treasurer, and each bond and coupon must be countersigned by the county clerk, and each bond sealed by him; provided, a lithographic or engraved facsimile of the signature of the chairman of the board, county treasurer, and county clerk may be affixed to the coupons only when so recited in the bond. Each bond issued must be registered by the county treasurer in a book provided for that purpose, which must show the number and amount of each bond, and when and to whom issued.

History: En. Sec. 15, Ch. 19, Ex. L. 1918.

4655. Printing or lithographing of bonds. The board must provide suitable bonds, with coupons attached, to be printed or lithographed, and must pay therefor out of the seed-grain fund.

History: En. Sec. 16, Ch. 19, Ex. L. 1918.

4656. Laws applicable to advertising, sale, or exchange of bonds, etc. All such bonds must be advertised for sale, sold, or exchanged, the proceeds thereof applied, and said bonds and interest coupons redeemed and paid, and record thereof kept in the manner provided by sections 4616, 4617, 4619, 4621, 4623, and 4624 of these codes.

History: En. Sec. 17, Ch. 19, Ex. L. 1918.

4657. Tax levy for payment of warrants. When warrants have been drawn and issued against said seed-grain fund, and such warrant indebtedness has not been funded by the issuance and sale or exchange of bonds as provided in this act, the board of county commissioners must, at the time and in the manner other taxes are levied, levy a tax upon the taxable property in said county, in addition to other taxes, sufficient to pay such outstanding warrants and the interest thereon; provided, however, that the board shall not be required to levy during any one year an amount sufficient to pay all of such outstanding warrant indebtedness and interest, but may levy such tax during succeeding years; provided, further, that such tax shall be in such amount during each year that all of said warrants with the interest thereon shall be fully paid within three years.

Such tax, when collected, shall be paid into the seed-grain fund, and shall be used for no other purpose than the payment of warrants drawn against such fund and the interest thereon.

History: En. Sec. 18, Ch. 19, Ex. L. 1918.

4658. Tax levy for payment of bonds. If such warrant indebtedness has been funded by the issuance and sale or exchange of bonds in the manner provided by this act, the board of county commissioners must, annually, at the time and in the manner other taxes are levied, levy a tax upon the taxable property in such county, in addition to other taxes, sufficient to pay the interest on all such bonds as the same becomes due, and also sufficient to provide a proportionate amount of the total amount required for the redemption of such bonds as the same become due or are called in for payment, according to the conditions thereof, and such tax, when collected, must be set apart in a fund known as the "seed-grain bond fund" and used for no other purpose than the payment of such bonds and interest accruing thereon.

History: En. Sec. 19, Ch. 19, Ex. L. 1918.

4659. Application for seed-grain—Contents. All inhabitants of such county, engaged in the occupation of farming, and who, by reason of such partial or total failure of crops or other misfortunes, are financially unable to procure seed-grain for planting and sowing crops at the next ensuing planting season, desiring to avail themselves of the benefits of this act, shall file with the county clerk of the county in which such applicant resides, an application duly sworn to before said county clerk or some other officer authorized to administer oaths, which application shall contain a true statement of the number of acres the applicant has plowed or prepared for seeding; how many acres the applicant intends to have plowed or prepared for seeding; how many bushels and what kind of grain he will require to seed the ground so prepared, or to be prepared as aforesaid; how many bushels of grain the applicant harvested the preceding season; the amount and kind of seed-grain in his possession; that said applicant has not procured and is financially unable to procure the necessary seed-grain for the next ensuing planting season; that he desires the same for seed and for no other purpose, and that he will not sell or dispose of the same or any part thereof, but will use the same and the whole thereof in seeding the land so prepared, or to be prepared for crop, at the next ensuing planting season. Said applicant shall also contain a true and full description of all real and personal property owned by the applicant, if any, and the incumbrances thereon; and a true description by government subdivisons of the land upon which the seed-grain is to be sown; if the applicant is a homesteader, a description of the land embraced in his homestead entry, and the date of the filing of his homestead application; and if the applicant is a renter or tenant, the name and postoffice address of the owner of the land on which the seed-grain is to be sown. All applications shall be consecutively numbered and shall be open to public inspection, and no application shall be considered by the board of county commissioners unless made out and filed as prescribed in this section. If

the applicant is a renter or tenant, the owner of the land shall also sign the application, unless the same be waived by the board of county commissioners, which waiver must be indorsed on the application and signed by the chairman of the board.

History: En. Sec. 20, Ch. 19, Ex. L. 1918.

4660. Powers and duties of county commissioners relative to applications. The board of county commissioners shall constitute a board of examination and adjustment, and shall examine and adjust and approve or disapprove all applications filed for seed-grain under the provisions of this act. Said board shall meet at such time or times as the board may deem necessary at the regular meeting place of the board of county commissioners, and examine and consider separately each and every application filed, and determine who are entitled to receive seed-grain from such county, and the amount to which each applicant is entitled; provided, however, that no one applicant shall be entitled to receive more than one hundred fifty bushels of seed-wheat, or the equivalent thereof in value of other kinds of seed-grain. On each application shall be indorsed the approval or disapproval of the board, and if approved, the quantity and kinds of seed-grain for which the same is approved, which indorsement shall be signed by the chairman of the board, and all applications shall, immediately after being acted upon by the board, be delivered to the county clerk.

History: En. Sec. 21, Ch. 19, Ex. L. 1918.

4661. Duty of county clerk—Contract of applicant—Conditions. The county clerk shall, as soon as said board has delivered the applications to him, upon demand of each applicant whose application has been approved by said board, issue to such applicant an order for the number of bushels of each kind of seed-grain which has been allowed to said applicant, unless otherwise directed by the board of county commissioners or chairman thereof; provided, however, that said order must not be delivered until the applicant shall have signed a contract in duplicate, which contract shall have the same force and effect as a promissory note, acknowledged in the same manner as deeds are acknowledged, to the effect that such applicant, for and in consideration of.....bushels of seed-grain received from.....county, promises to pay to said county.....dollars, the amount of the cost of said seed-grain, together with interest thereon from the date of said contract until said amount is paid, at the rate of not exceeding seven per cent. per annum; that the same shall be a lien upon all property, both real and personal, owned by such applicant, if he be the owner of any real property, which property must be particularly described therein, and shall also be a lien upon all crops grown from said seed-grain; that the amount thereof shall become due and payable on the first day of October following the harvesting of the crop grown from said seed-grain; provided, however, that the amount due may be paid at any time prior to said date, and that if not paid by the twentieth day of October following the harvesting of the crop grown from said seed-grain, if the applicant is the owner of property,

either real or personal, the amount thereof shall be levied as a tax against such property and collected at the same time and in the same manner as other taxes are collected; provided, further, that if the applicant is a renter or tenant, unless the same be waived by an order of the board of county commissioners indorsed on said contract, said contract shall provide that the amount specified therein, with interest thereon, shall be and constitute a lien against the land upon which said seed-grain is sown, which land shall be described therein, and such contract shall also be signed by the owner of such land.

History: En. Sec. 22, Ch. 19, Ex. L. 1918.

4662. Disposition of contract—Lien of county upon property of applicant—Nature and scope of lien. One of the contracts provided for by the preceding section shall be delivered to the county treasurer, who shall file the same in his office without charge, and the other shall be filed in the office of the county recorder, and upon the filing of such contract in the office of the county recorder, without charge, the county shall have and acquire a just and valid lien upon all of the real and personal property owned by the applicant, and upon all crops grown from such seed-grain, and upon the land upon which seed-grain is to be sown, if the owner of such land has signed such contract, to the amount due the county upon such contract, which lien shall be prior to all liens and incumbrances against or upon said property, except liens and incumbrances filed or recorded in the office of the county recorder of such county prior to the filing of such contract, and except liens of threshermen for threshing, and liens of laborers for planting and harvesting the crop grown from such seed-grain; and the filing of such contract shall be full and sufficient notice to all persons of the existence and extent of said lien upon said crops and property, and such lien shall continue in force until the amount specified in such contract, with the interest thereon, shall be fully paid; provided, however, that such seed-grain lien shall not apply to or be prior to or superior to renewals of mortgages, which mortgages are prior liens at the time such seed-grain lien attaches.

History: En. Sec. 23, Ch. 19, Ex. L. 1918.

4663. Foreclosure of lien. If the person receiving such seed-grain is a renter or tenant, and is not the owner of any property subject to taxation, and the owner of the land upon which such seed-grain was sown has not signed such contract, and the amount due on such contract is not paid to the county treasurer by January first of the year following the year in which the crops grown from said seed-grain are harvested, the county treasurer shall, if ordered to do so by the board of county commissioners after the said first day of January, deliver to the sheriff of such county a full, true, and correct copy of the contract of such person, and such sheriff must immediately demand from the person or persons signing such contract, payment of the amount due thereon, and if the same is not paid to the sheriff upon such demand being made, the sheriff must forthwith seize and sell, in the manner provided by law for sale of personal property under execution, a sufficient amount of grain or other

property belonging to such person to pay the amount due on such contract, together with interest and costs and expenses of seizure and sale.

History: En. Sec. 24, Ch. 19, Ex. L. 1918.

4664. Entry of amount of indebtedness upon tax-rolls and collection of tax. If the amount specified in said contract with the interest thereon is not paid by the twentieth day of October of the year in which the crop grown from said seed-grain is harvested, it shall be the duty of the county treasurer of such county to enter the amount of such indebtedness upon the tax-rolls of such county for that year as a tax upon all property, real and personal, which is described in said contract as being subject to the lien thereof, which tax shall be collected at the time and in the same manner as other taxes are collected, and if such tax becomes delinquent, said property shall be sold for delinquent taxes at the same time and in the same manner that property is sold for delinquent taxes.

History: En. Sec. 25, Ch. 19, Ex. L. 1918.

4665. Entry of satisfaction when amount is paid. Whenever the amount due on any such contract is paid to the county treasurer, it shall be the duty of such county treasurer to indorse on the contract on file in his office the amount paid thereon, with the date of payment, and to make the same indorsement on the contract filed in the office of the county clerk, and such indorsement shall be a satisfaction and release of the lien created thereby.

History: En. Sec. 26, Ch. 19, Ex. L. 1918.

4666. Duty to market crop and make payment. Each and every person who has received seed-grain under the provisions of this act shall, as soon as his crops grown therefrom are harvested and threshed, market and sell a sufficient amount of the grain grown from such seed-grain to pay the amount then due on his contract, and pay the amount received therefrom to the county treasurer of such county.

History: En. Sec. 27, Ch. 19, Ex. L. 1918.

4667. Disposal of crop contrary to law—Penalties—Title to grain. Any person or persons who shall, contrary to the provisions of this act, sell, transfer, take, or carry away, or in any manner dispose of the seed-grain, or any part thereof, furnished by the county under the provisions of this act, or shall use or dispose of said seed-grain, or any part thereof, for any other purpose than that of planting or sowing the same as stated in the application on which the same was furnished by the county, or shall sell, transfer, take, or carry away, or in any manner dispose of the crop, or any portion thereof, grown from such seed-grain, except as provided in the preceding section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall pay a fine of not less than one hundred dollars nor more than five hundred dollars, or may be imprisoned in the county jail for a term of not more than six months, or may be both so fined and imprisoned; and whoever under any of the provisions herein shall be guilty of false swearing shall be deemed to have committed perjury, and shall, upon conviction thereof, suffer the penalties of that crime.

Upon the filing of said contract in the office of the county recorder, and the planting and sowing of said seed-grain, the title and right of possession to the growing crop and the grain grown from such seed-grain shall be in the county until the amount specified in such contract, with the interest thereon, shall be fully paid, and any seizure thereof or interference therewith, except by the applicant and those in his employ for the purpose of harvesting, threshing, and marketing and selling the same to pay the amount due on such contract shall be deemed a conversion thereof, and the county may recover treble damages against the person or persons so converting the same.

History: En. Sec. 28, Ch. 19, Ex. L. 1918.

4668. Arrest and prosecution for violation of law. It shall be the duty of the members of the board of county commissioners, constables, sheriffs, and county attorneys of the several counties furnishing seed-grain under the provisions of this act, having any knowledge of a violation of any of the provisions of this act, to make complaint thereof to a justice of the peace, and said justice shall thereupon issue a warrant for the arrest of the offender, and proceed to hear and determine the matter, or to bind the offender over to appear before the district court, as the case may be.

History: En. Sec. 29, Ch. 19, Ex. L. 1918.

4669. Duty of sheriff to seize grain under certain circumstances. If the sheriff shall be informed by any county or township officer, or shall have reason to believe that any person who has received seed-grain from the county under the provisions of this act is about to remove from such county, or is about to sell and dispose of the grain grown from such seed-grain, with the intention of defrauding the county out of the amount due on such contract, it shall be his duty to immediately seize and sell, in the manner provided by law for the sale of personal property under execution, a sufficient amount of such grain to pay the amount due on such contract, together with the costs and expenses of such seizure and sale.

History: En. Sec. 30, Ch. 19, Ex. L. 1918.

4670. Pro rata distribution of seed-grain—Power of board to disapprove application or revise allowances. If more seed-grain is applied for than can be supplied by the board of county commissioners under the provisions of this act, a pro rata distribution shall be made among those who shall be found entitled to the benefits of this act. The board shall have the right to refuse and disapprove any application which it may deem improper to grant, and may revise its adjustment of applications at any time before final distribution.

History: En. Sec. 31, Ch. 19, Ex. L. 1918.

4671. Seed-grain to be furnished at actual cost—Violation a misdemeanor. It shall be the duty of the commissioners providing seed-grain under the provisions of this act to furnish the same to the applicants at the actual cost thereof to the county, with transportation and handling

charges added, if any there be, and any person requiring or extorting from any applicant a greater price shall be deemed guilty of a misdemeanor.

History: En. Sec. 32, Ch. 19, Ex. L. 1918.

4672. Disposition of money collected on grain contracts. All money received by the county treasurer in payment for seed-grain furnished under the provisions of this act, and in payment of interest thereon, shall, if the warrant indebtedness incurred by the county in the purchase of such seed-grain has not been funded by the issuance and sale or exchange of bonds, be paid into and become a part of the seed-grain fund, but if such warrant indebtedness has been funded by the issuance and sale or exchange of bonds, then such money shall be paid into the seed-grain bond fund.

History: En. Sec. 33, Ch. 19, Ex. L. 1918.

4673. When tax levy shall be dispensed with—Limitation to tax levy. In case the amount of money received by the county treasurer in any one year in payment for seed-grain furnished under the provisions of this act shall be sufficient to pay all outstanding warrants and interest thereon, if such warrant indebtedness has not been funded by the issuance and sale or exchange of bonds, or shall be sufficient to pay the interest on and place in the bond fund a proportionate amount of the total amount required for the payment and redemption of the bonds, if such warrant indebtedness has been funded by the issuance and sale or exchange of bonds, then no tax shall be levied for such purpose in that year, and in no year shall there be a greater tax levied than will, together with the balance then on hand in the county treasury, be sufficient to pay the interest and principal of all warrants or bonds then outstanding.

History: En. Sec. 34, Ch. 19, Ex. L. 1918.

4674. Transfer of funds from general fund for payment of interest. If such warrant indebtedness shall be funded by the issuance and sale or exchange of bonds, and there shall at any time be insufficient money in the seed-grain bond fund with which to pay any interest on such bonds when the same becomes due, the board of county commissioners may order that sufficient money for such purpose be transferred from the general fund of the county to the seed-grain bond fund, but such amount so ordered transferred shall, whenever there is thereafter sufficient money in the seed-grain bond fund, be, by order of the board of county commissioners, retransferred to the general fund.

History: En. Sec. 35, Ch. 19, Ex. L. 1918.

4675. Transfer of seed-grain fund to general fund. Any balance remaining in the seed-grain fund of any county, after the necessity for aiding needy farmers shall have passed, and all warrants and bonds issued under the provisions of this act shall have been paid and retired, shall be by the county commissioners transferred to the general fund of such county.

History: En. Sec. 36, Ch. 19, Ex. L. 1918.

4676. Construction of law. This act and all of its provisions shall be liberally construed so as to effectuate its purpose, and a failure to give

any of the notices herein provided for, or to perform any of the acts herein required, within the exact time prescribed, shall not invalidate any election held hereunder, or any warrants or bonds issued; provided, there has been a substantial compliance with the provisions of this act except as to time.

History: En. Sec. 37, Ch. 19, Ex. L. 1918.

4677. Extension of time of payment for seed-grain. The board of county commissioners of any county in this state is hereby authorized upon the written application of any farmer procuring seed-grain under the provisions of sections 4640 to 4676 of this code, to make an extension of the time of payment of the indebtedness of such farmer to the county until the thirty-first day of December in the year following the year in which said loan was made; provided, however, that, upon a similar application, the time of payment of such indebtedness may be extended to the thirty-first day of December of the year following any extension of time previously granted. The county clerk is hereby authorized and directed to provide the necessary blanks for applications for extension, and to assist any applicant in preparing such applications for presentation to the board of county commissioners. The making of any such extension shall rest in the discretion of the board of county commissioners.

History: En. Sec. 1, Ch. 53, L. 1919; amd. Sec. 1, Ch. 1, Ex. L. 1919.

4678. Delinquent tax penalty to be canceled. Upon making such extension in the time of payment of the indebtedness to the county, the clerk of the board of county commissioners shall direct the county treasurer not to add the usual statutory penalty to the amount of the delinquent tax due and owing to the county on account of such seed-grain indebtedness, and if such penalty has already been added by the county treasurer to the amount of such tax, such penalty shall be canceled.

History: En. Sec. 2, Ch. 53, L. 1919.

4679. Payment of indebtedness within extended period—Penalty for failure to make payment. Any farmer, the payment of whose indebtedness to the county on account of such seed-grain loan has been extended by the board of county commissioners, may pay and discharge his indebtedness to the county by paying the principal of such indebtedness, together with interest thereon at the rate of seven per cent. per annum from the date of such seed-grain contract to the date of payment; provided, however, that such payment be made within the time so extended; and, if such payment is not made within the period of time as extended, the county treasurer shall enter the same as delinquent taxes, adding the usual statutory penalty, and the property shall be sold for delinquent taxes at the same time and in the same manner that property is sold for delinquent taxes, but, any person holding or owning any of the liens or incumbrances mentioned as excepted in section 4662 of this code, may pay the taxes upon the property covered by such lien or incumbrance, without payment of such seed-grain indebtedness.

History: En. Sec. 3, Ch. 53, L. 1919; amd. Sec. 1, Ch. 1, Ex. L. 1919.

CHAPTER 21.

INDEBTEDNESS FOR GENERAL DROUGHT RELIEF.

Section 4680. Power of County Commissioners to Provide Relief for Drought Sufferers, etc.
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4680. Power of county commissioners to provide relief for drought sufferers, etc. To enable the several counties of the state of Montana to provide relief for their inhabitants, who by reason of misfortune are entitled to the aid of society, the boards of county commissioners of all counties in this state, upon petition as hereinafter provided for, are hereby authorized to purchase and provide seed-grain, feed, provisions, and other necessary supplies, and to furnish the same to the inhabitants of their several counties who, by reason of drouth, hail, or other unfavorable climatic conditions, have been rendered financially unable to procure the same.

History: En. Sec. 1, Ch. 8, Ex. L. 1919.

4681. Petitions for relief—Signatures. Petitions for such relief must be in writing and signed by not less than one hundred freeholders residing in a county, and must be filed with the county clerk of such county; provided, however, that the signatures need not be appended to one paper,

but each signer shall add to his signature his postoffice address and the number of his voting precinct, and all such papers when bound or fastened together and filed shall constitute and be considered as one petition.

History: En. Sec. 2, Ch. 8, Ex. L. 1919.

4682. Special meeting of board for consideration of petitions—Notice of meeting. Upon the filing of such petition with the county clerk, such officer must forthwith call a special meeting of the board of county commissioners of such county to consider such petition, and the date fixed for such meeting shall be not more than five days after the filing of such petition. Written notice of the calling of such special meeting shall be given each member of the board by the county clerk, by delivering such notices personally or by registered mail; provided, however, that if any one member shall fail to attend such meeting by reason of not receiving such notice, or for any other reason, the other two members of said board may hold such meeting; and provided, further, that notice of such meeting may be dispensed with by the unanimous consent of all of the members of such board, which consent must be entered on the minutes of such meeting.

History: En. Sec. 3, Ch. 8, Ex. L. 1919.

4683. Proceeding at meeting for consideration of petitions—Order granting petition. At such meeting the board shall examine such petitions and make or cause to be made such investigation as may be necessary for the board to ascertain and determine whether or not it is necessary that such county supply and furnish any of its inhabitants with seed-grain, feed, provisions, or other supplies. If a majority of the board shall find and determine from such investigation that it is necessary for such county to do so, the board shall make an order granting such petition, and shall make an estimate of the quantity of seed-grain, feed, provisions, or other supplies required for such purpose, and also of the amount of indebtedness the county will be required to incur in order to supply the same. The findings and determination of the board, together with its estimates, and the order granting the petition, shall be entered on the minutes of the board.

History: En. Sec. 4, Ch. 8, Ex. L. 1919.

4684. Purchase of supplies and furnishing of relief—Limit to amount of indebtedness. If the said estimate of the amount of indebtedness required to be incurred does not exceed the sum of ten thousand dollars, and, together with the then existing indebtedness of such county, does not exceed the constitutional limit of indebtedness, the board of county commissioners shall proceed to purchase the seed-grain, feed, provisions, or other supplies, and to furnish and supply the same in the manner hereinafter provided. Said relief shall be furnished to applicants therefor of the class specified in this act, who are inhabitants of such county, and who have filed the application and statement hereinafter specified; provided, however, that such county shall not incur an indebtedness for such purpose in excess of ten thousand dollars, except as hereinafter provided.

History: En. Sec. 5, Ch. 8, Ex. L. 1919.

4685. Special election when amount required exceeds ten thousand dollars or constitutional limit. If the estimate of the board of county commissioners of the amount of indebtedness which the county will be required to incur in order to supply and furnish the relief herein provided for exceeds the sum of ten thousand dollars, the board must forthwith call a special election for the purpose of submitting to the electors of such county the question of whether or not such county shall incur an indebtedness to the amount of such estimate, or if the amount of such estimate, together with the then existing indebtedness of such county, will exceed the constitutional limit of indebtedness, then in any amount less than the amount of such estimate, and which will not, together with the then existing indebtedness of such county, exceed the constitutional limit of indebtedness, for the purpose of furnishing and supplying the relief herein provided for to the inhabitants of such county, and who are financially unable to procure the same; provided, however, that such election may be held at the same time as any other special election called for any purpose.

History: En. Sec. 6, Ch. 8, Ex. L. 1919.

Where additional county indebtedness authorized by a favorable vote of the electors, together with existing indebtedness, did not exceed five per cent. of its assessed valuation, it was the plain legal duty of the board of county commissioners to act under the authority thus conferred, and mandamus lies to compel its performance. State ex rel. Galles v. Board of County Commrs. et al., 56 Mont. 387, 185 Pac. 456.

4686. Time of holding election and notice—Contents of election proclamation. Said special election shall be called for a day not less than fifteen days nor more than thirty days after the day on which the order is made by such board for the holding of such special election, and the board shall give notice of the calling of such election by issuing an election proclamation, which proclamation shall be published two successive times in the newspaper published in such county having the contract for publishing official notices of such county, if such newspaper be published weekly, but if it be published daily, then eight successive insertions thereof, and copies of such proclamation shall be posted in three public places in each voting precinct in such county at least ten days before the day on which such election is to be held. Said proclamation shall clearly state the amount of indebtedness to be incurred, the purpose for which said indebtedness is to be incurred, the day on which such election is to be held, and the hours when the polls will be open, and no other notice shall be given of the calling or holding of such election.

History: En. Sec. 7, Ch. 8, Ex. L. 1919.

4687. Conduct of election. Said election, except as herein otherwise provided, shall be held and conducted, and the returns thereof made and canvassed in all respects in the manner prescribed by law in regard to the submission of questions to the elector of a county under the general election law.

History: En. Sec. 8, Ch. 8, Ex. L. 1919.

4688. Registration of voters, etc. None of the provisions of sections 566 and 567 of this code shall apply to said election, but the county clerk shall close registration for such election at five o'clock p. m. on the eleventh day before the day on which said election is to be held, and all

electors whose names shall appear on the registration books of such county at the time the same are closed for such election shall be entitled to vote at such special election; provided, however, that if any person whose name does not appear on the register of voters for the precinct in which such person resides, shall request the judges of election for such precinct to permit him to vote at such election, such judges shall enter the name of such person upon the register of voters for such precinct upon such person taking the oath, answering the questions, and complying with such other provisions of section 554 of this code as are required for registration, and thereupon such person shall be permitted to vote at such election. The judges of election for each election precinct are hereby designated and appointed deputy registrars, within their respective election precincts, for the purpose of carrying out the provisions of this section, and shall have all the powers and perform all of the duties of the registrar authorized and required by chapter one hundred twenty-two, acts of the fourteenth legislative assembly. The judges of election shall, at the same time and in the same manner the election returns of such election are delivered or mailed to the county clerk, deliver or mail to the county clerk all affidavits and registry cards made and filled out before them at such election. The county clerk shall provide such election judges with a suitable number of blank affidavits and registry cards for use in their respective precincts during such election.

History: En. Sec. 9, Ch. 8, Ex. L. 1919.

4689. Form of ballot. The ballots for such special election shall conform as near as possible with the ballots used at general elections, and shall have printed thereon in fair-sized legible type and black ink, in one or more lines as required, the words "For incurring an indebtedness not exceeding the sum of (stating the amount) for the purpose of purchasing seed-grain, feed, provisions, and other necessary supplies to be furnished and supplied by the county to its inhabitants who are financially unable to procure the same, and who have been reduced to such condition by reason of drouth, hail, or other unfavorable climatic conditions." And thereunder, in one or more lines as required, the words "Against incurring an indebtedness not exceeding the sum of (stating the amount) for the purpose of purchasing seed-grain, feed, provisions, and other necessary supplies to be furnished and supplied by the county to its inhabitants who are financially unable to procure the same, and who have been reduced to such condition by reason of drouth, hail, or other unfavorable climatic conditions." There shall be placed before the word "for" and before the word "against," each, a square space of sufficient size to place a cross or "X" therein.

History: En. Sec. 10, Ch. 8, Ex. L. 1919.

4690. Duty of commissioners to furnish relief when majority vote favors measure. If a majority of the votes cast at such special election are in favor of such indebtedness being incurred, then the board of county commissioners shall proceed to purchase and procure the seed-grain, feed, provisions, or other supplies, and to furnish and supply the same in the manner hereinafter provided to applicants therefor who

are inhabitants of the county, who are in need of such relief, who have made application therefor as hereinafter provided, who are financially unable to procure such relief, and who have been reduced to such condition by reason of drouth, hail, or other unfavorable climatic conditions; provided, however, that no indebtedness shall be incurred for such purpose in excess of the amount authorized by such special election.

History: En. Sec. 11, Ch. 8, Ex. L. 1919.

4691. Mode of purchasing supplies. The board of county commissioners shall not be required to advertise for bids for the furnishing of the relief herein provided for to the county, nor to purchase the total amount required from any one individual, copartnership, firm, association, or corporation, nor to purchase at one time the whole amount or quantity required, but such articles must be purchased at the lowest price at which they can be obtained, and may be purchased from different individuals, copartnerships, firms, associations, and corporations, and at such times and in such amounts and quantities as the same may be required from time to time.

History: En. Sec. 12, Ch. 8, Ex. L. 1919.

4692. Warrants upon "special relief fund." In payment for the articles purchased by such county under the provisions of this act, warrants shall be ordered drawn against a fund to be known as the "special relief fund," which said warrants shall be registered by the county treasurer of such county, and shall bear interest at the rate of not to exceed seven per cent. per annum from the date of registration thereof until called for payment by the county treasurer.

History: En. Sec. 13, Ch. 8, Ex. L. 1919.

4693. Issue, sale, or exchange of county bonds to fund outstanding warrants. Whenever there are any warrants outstanding drawn against the special relief fund, and there is insufficient money in such fund to pay said warrants with the interest thereon, the board of county commissioners, whenever such board deems it advisable to do so, may issue and sell or exchange bonds of said county for the purpose of funding such outstanding warrant indebtedness provided, however, that it shall not be necessary for the board of county commissioners to submit to the electors of the county the question of whether or not such bonds shall be issued and sold or exchanged for the purpose of funding such outstanding warrant indebtedness.

History: En. Sec. 14, Ch. 8, Ex. L. 1919.

This act contemplates that the active management of the fund created by a bond issue for the relief of drought sufferers, shall be confided to the judgment and discretion of the board of county commissioners, and that therefore, under the rule above, a plan whereby purchases of seed and supplies were to be made by the applicant for relief, instead of by the board, the applicant to determine the quality and price thereof, was a departure from the mode prescribed by the act and not permissible. State ex rel. Nelson v. Timmons, 57 Mont. 602, 189 Pac. 871.

4694. Denomination, interest and term of bonds. Such bonds shall be in denomination of one thousand dollars, shall bear a rate of interest to be fixed by the board, not exceeding seven per cent. per annum, represented by interest coupons payable semi-annually at such place and at

such times as shall be determined by the board, and all of such bonds shall become due and payable in not less than five nor more than ten years from the date thereof, the date of maturity to be fixed by the board.

History: En. Sec. 15, Ch. 8, Ex. L. 1919; amd. Sec. 1, Ch. 82, L. 1921.

4695. Form, execution, and registration of bonds. The board must prescribe the form of such bonds, and each bond and all coupons attached thereto must be signed by the chairman of the board and by the county treasurer, and each bond and coupon must be countersigned by the county clerk, and each bond sealed by him; provided, a lithographic or engraved facsimile of the signature of the chairman of the board, county treasurer, and county clerk may be affixed to the coupons only when so recited in the bond. Each bond issued must be registered by the county treasurer in a book provided for that purpose, which must show the number and amount of each bond, and when and to whom issued.

History: En. Sec. 16, Ch. 8, Ex. L. 1919.

4696. Printing of bonds. The board must provide suitable bonds, with coupons attached, to be printed or lithographed, and must pay therefor out of the special relief fund.

History: En. Sec. 17, Ch. 8, Ex. L. 1919.

4697. Laws applicable to sale or other disposition of bonds. All such bonds must be advertised for sale, sold, or exchanged, the proceeds thereof applied, and said bonds and interest coupons redeemed and paid, and record thereof kept in the manner provided by sections 4616, 4617, 4619, 4621, 4623, and 4624 of this code.

History: En. Sec. 18, Ch. 8, Ex. L. 1919.

4698. Tax levy for payment of warrants upon special relief fund. When warrants have been drawn and issued against said special relief fund, and such warrant indebtedness has not been funded by the issuance and sale or exchange of bonds as provided in this act, the board of county commissioners must, at the time and in the manner other taxes are levied, levy a tax upon the taxable property in said county in addition to other taxes sufficient to pay such outstanding warrants and the interest thereon; provided, however, that the board shall not be required to levy during any one year an amount sufficient to pay all of such outstanding warrant indebtedness and interest, but may levy such tax during succeeding years; provided, further, that such tax shall be in such amount during each year that all of said warrants with interest thereon shall be fully paid within three years. Such tax, when collected, shall be paid into the special relief fund, and shall be used for no other purpose than the payment of warrants drawn against such fund and interest thereon.

History: En. Sec. 19, Ch. 8, Ex. L. 1919.

4699. Tax levy to prove a "special relief bond fund." If such warrant indebtedness has been funded by the issuance and sale or exchange of bonds in the manner provided by this act, the board of county commissioners must, annually, at the time and in the manner other taxes are levied, levy a tax upon the taxable property in such county in addition to other taxes, sufficient to pay the interest on all such bonds, as the same

becomes due, and also sufficient to provide a proportionate amount of the total amount, required for the redemption of such bonds as the same become due, or are called in for payment, according to the conditions thereof, and such tax when collected must be set apart in a fund known as the "special relief bond fund" and used for no other purpose than the payment of such bonds and interest accruing thereon.

History: En. Sec. 20, Ch. 8, Ex. L. 1919.

4700. Application for relief—Contents. All inhabitants of such county, who by reason of drouth, hail, or other unfavorable climatic conditions, are financially unable to procure the relief herein authorized, and who desire to avail themselves of the benefits of this act, shall file with the county clerk of the county in which such applicant resides, an application duly sworn to before said county clerk or some other officer authorized to administer oaths. Said application shall state that because of misfortune resulting from drouth, hail, or other unfavorable climatic conditions (stating the precise condition responsible for the misfortune), the applicant has not procured and is financially unable to procure the seed-grain, feed, provisions, or other supplies applied for; that the applicant desires the same for his own use or support, or for the use or support of his family or dependents residing in the state of Montana; that such relief is needed at once; that the same cannot be procured from any other source known to the applicant; and that the applicant will not sell or dispose of the same or any part thereof. In case the application be for seed-grain, it shall also state the following matters, to-wit: The number of acres owned by applicant; the number of acres plowed or prepared for seeding; the number of acres intended to be plowed or prepared for seeding; the amount and kind of grain required; the amount and kind of grain, if any, harvested by applicant the preceding season, and the amount and kind of grain, if any, in his possession. Said application shall also in such case contain an agreement that the applicant will use the seed-grain furnished and all thereof in seeding his land at the next ensuing planting season. Said application shall also in all cases contain a true and full description of all real and personal property owned by the applicant, if any, and the incumbrances thereon, together with a true description of the land upon which seed-grain is agreed to be sown. No application shall be considered by the board of county commissioners unless made out and filed as prescribed in this section.

History: En. Sec. 21, Ch. 8, Ex. L. 1919.

4701. Duties of county commissioners with respect to applications. The board of county commissioners shall constitute a board of examination and adjustment, and shall examine and adjust and approve or disapprove all applications filed under the provisions of this act. Said board shall meet at such time or times as the board may deem necessary at the regular meeting place of the board of county commissioners, and examine and consider separately each and every application filed, and determine who are entitled to receive relief from such county, and the amount to which each applicant is entitled; provided, however, that no one applicant shall be entitled to receive relief exceeding in value the sum of one thousand dollars. On each application shall be indorsed the

approval or disapproval of the board, and if approved, the quantity and kinds of relief for which the same is approved, which indorsement shall be signed by the chairman of the board, and all applications shall, immediately after being acted upon by the board, be delivered to the county clerk.

History: En. Sec. 22, Ch. 8, Ex. L. 1919.

4702. Duty of county clerk to issue orders for relief, when—Promissory note of applicant—Refusal of relief—Security to be furnished, when. The county clerk shall, as soon as said board has delivered the applications to him, upon demand of each applicant whose application has been approved by said board, issue to such applicant an order for the relief which has been allowed to said applicant, unless otherwise directed by the board of county commissioners, or chairman thereof. The applicant for relief shall, before receiving such order, execute to the county and deliver to the board of county commissioners his promissory note, and if a married man same shall be indorsed by his wife, for the cost of the seed-grain, feed, provisions, or other supplies ordered to be delivered to him. Such note shall bear interest at the rate of six per cent., and shall in ordinary cases be due in one year from its date; provided, however, that in all cases it shall be optional with the board of county commissioners, in the exercise of its discretion, to authorize the giving of said note for a longer period of time, or to modify the conditions of said note in any manner deemed advisable by the board; provided, further, that in all cases where applications are made for seed-grain under the terms of this act, it shall be the duty of the board of county commissioners to investigate the financial condition and prospects of the applicant. If, after such investigation, the board is satisfied that the applicant is the owner of land or other property upon which he is able to give security for the relief extended, or that there is a reasonable probability that the applicant will be able to repay the amount of said relief out of his crop to be raised the ensuing year, it shall be optional with said board to refuse relief under the terms of this act, and to require the applicant to avail himself of the terms of the seed-grain law, being sections 4640 to 4676 of this code. It is expressly declared that the purpose of this act is to extend relief to financially destitute persons only, and that in all cases where applicants for seed-grain are unable to give the contract and security provided for in said sections above named, that he shall be required to obtain relief under the terms of said act; provided, further, that in those counties where no provision has been made for seed distribution under the seed-grain law provided in sections 4640 to 4676 of this code, the board of county commissioners shall investigate the financial conditions and prospects of the applicant, and request such security from the applicant as they see fit.

History: En. Sec. 23, Ch. 8, Ex. L. 1919.

4703. Penalty for disposing of supplies and false swearing. Any person who shall sell, transfer, or in any manner dispose of any seed-grain, feed, provisions, or other supplies, or any part thereof, furnished to him by the county under the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less

than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment, and any person who shall be guilty of false swearing in his application for relief under the terms of this act shall be deemed to have committed perjury, and shall upon conviction suffer the penalties of that crime.

History: En. Sec. 24, Ch. 8, Ex. L. 1919.

4704. Violations of law to be prosecuted. It shall be the duty of boards of county commissioners, constables, sheriffs, and county attorneys to diligently inquire into and prosecute all violations of any of the provisions of this act.

History: En. Sec. 25, Ch. 8, Ex. L. 1919.

4705. Pro rata distribution of relief—Control of county commissioners over applications—Relief furnished at actual cost. If more relief is applied for than can be supplied by the board of county commissioners of any county under the provisions of this act, a pro rata distribution shall be made among those who shall be found entitled to the benefits of this act. The board shall have the right to refuse or disapprove any application which it may deem improper to grant, and may revise its adjustment of applications at any time before final distribution. All relief shall be furnished at actual cost including transportation and handling charges.

History: En. Sec. 26, Ch. 8, Ex. L. 1919.

4706. Moneys received by county treasurer payable into what funds. All money received by the county treasurer in payment for relief furnished under the provisions of this act, and in payment of interest thereon, shall, if the warrant indebtedness incurred by the county in the purchase of such seed-grain has not been funded by the issuance and sale or exchange of bonds, be paid into and become a part of the special relief fund, but if such warrant indebtedness has been funded by the issuance and sale or exchange of bonds, then such money shall be paid into the special relief bond fund.

History: En. Sec. 27, Ch. 8, Ex. L. 1919.

4707. Tax levy may be dispensed with when—Annual levy limited to what amount. In case the amount of money received by the county treasurer in any one year in payment for articles furnished under the provisions of this act shall be sufficient to pay all outstanding warrants and interest thereon, if such warrant indebtedness has not been funded by the issuance and sale or exchange of bonds, or shall be sufficient to pay the interest on and place in the bond fund a proportionate amount of the total amount required for the payment and redemption of the bonds, if such warrant indebtedness has been funded by the issuance and sale or exchange of bonds, then no tax shall be levied for such purpose in that year, and in no year shall there be a greater tax levied than will, together with the balance then on hand in the county treasury, be sufficient to pay the interest and principal of all warrants or bonds then outstanding.

History: En. Sec. 28, Ch. 8, Ex. L. 1919.

4708. Transfer of moneys from general fund to special relief bond fund. If such warrant indebtedness shall be funded by the issuance and sale or exchange of bonds, and there shall at any time be insufficient money in the special relief bond fund with which to pay any interest on such bonds when the same becomes due, the board of county commissioners may order that sufficient money for such purpose be transferred from the general fund of the county to the special relief bond fund, but such amount so ordered transferred shall, whenever there is thereafter sufficient money in the special relief bond fund, be, by order of the board of county commissioners, retransferred to the general fund.

History: En. Sec. 29, Ch. 8, Ex. L. 1919.

4709. Transfer of unused funds in special relief fund to general fund. Any balance remaining in the special relief fund of any county, after the necessity for aiding needy farmers shall have passed, and all warrants and bonds issued under the provisions of this act shall have been paid and retired, shall be, by the county commissioners, transferred to the general fund of such county.

History: En. Sec. 30, Ch. 8, Ex. L. 1919.

4710. Liberal construction of law. This act and all of its provisions, shall be liberally construed so as to effectuate its purpose, and a failure to give any of the notices herein provided for, or to perform any of the acts herein required within the exact time prescribed, shall not invalidate any election held hereunder, or any warrants or bonds issued, provided there has been a substantial compliance with the provisions of this act except as to time.

History: En. Sec. 31, Ch. 8, Ex. L. 1919.

4711. Construction of law in relation to seed-grain law of 1918. It is expressly declared that this act does not repeal or in any way modify or affect the provisions of sections 4640 to 4676 of this code, but that in so far as the furnishing of seed-grain is concerned, this act is cumulative to the former act, and provides an additional method by which seed-grain relief may be procured by those in destitute circumstances.

History: En. Sec. 32, Ch. 8, Ex. L. 1919.

A special election called to determine whether indebtedness should be incurred by a county to aid drought sufferers, held on application for injunction, not to have been invalidated by failure to post the required notice in certain precincts owing to the interruption of the mail and impassability of the roads caused by a storm, where the electors had been advised of the election through the medium of newspapers, where fraud was not charged, the number of electors voting greatly exceeding the number of votes cast at a preceding election held for the same purpose at which the proposition was defeated. State ex rel. Nelson v. Timmons, 57 Mont. 602, 189 Pac. 871.

CHAPTER 22.

BOND ISSUE AND TAX LEVY FOR BRIDGE CONSTRUCTION.

Section 4712. Petition for Construction of Bridge—Submission of Question of Bond Issue.
4713. Increased Tax Levy for Road and Bridge Construction.
4714. Submission of Question to Electors.
4715. Majority Vote Required.
4716. Collection of Tax.

4712. Petition for construction of bridge—Submission of question of bond issue. The county commissioners of any county in the state of Montana, whenever a petition signed by ten per cent. of the resident taxpayers of the county is filed with the county clerk and recorder, shall cause to be submitted to the voters of the county, on the same date as is held the next general election following the filing of the said petition, the question of whether or not the county shall issue bonds for an amount exceeding ten thousand dollars, for the purpose of securing money to construct a bridge at or near such a place in the county as is designated by the petition; provided, however, that said petition shall be filed with the county clerk and recorder not later than seventy-five days previous to the date of the holding of any general election; provided, further, that whenever a petition or petitions are filed with the county clerk and recorder praying that the question or questions of issuing bonds for the construction of more than one bridge in the same locality in a county be submitted to a vote, the county commissioners shall select and cause to be submitted to a vote only one of said questions. This act, however, shall not preclude the county commissioners from submitting more than one bridge bonding question to a vote at the same election, in case separate ballots are provided for each such question.

History: En. Sec. 1, Ch. 56, L. 1919.

4713. Increased tax levy for road and bridge construction. The board of county commissioners may, in their discretion, for the purpose of constructing roads and bridges, make an increased levy upon the taxable property of the county of ten mills or less; provided, that such proportion of the funds derived under the provision of this act as are expended on state and main highways shall be expended under plans approved by the state highway commission.

History: En. Sec. 1, Ch. 160, L. 1919.

4714. Submission of question to electors. Before such increased levy shall be made, the question shall be submitted to a vote of the people at some general or special election, and shall be submitted in the following form, inserting the number of mills proposed to be levied:

"Shall there be an increased levy of.....mills upon the taxable property of the county of....., state of Montana, for the purpose of constructing roads and bridges?

☐	Yes.
☐	No."

History: En. Sec. 2, Ch. 160, L. 1919.

4715. Majority vote required. A majority of the votes cast shall be necessary to adopt such measure.

History: En. Sec. 3, Ch. 160, L. 1919.

4716. Collection of tax. Such levy shall be collected in the same manner as other road taxes are collected.

History: En. Sec. 4, Ch. 160, L. 1919.

CHAPTER 23.

QUESTION OF RAISING MONEY TO BE SUBMITTED TO A VOTE.

Section 4717. Commissioners Not to Borrow Money Except as Herein Provided.
4718. Commissioners to Determine Amount Necessary.
4719. Notice of Election to Be Given.
4720. Ballots—What to Contain.
4721. When Loan May Be Made.
4722. Form of Ballots—Voting.

4717. Commissioners not to borrow money except as herein provided. The board of county commissioners must not borrow money for any of the purposes mentioned in this title, or for any single purpose to an amount exceeding ten thousand dollars, without the approval of a majority of the electors of the county, and without first having submitted the question of a loan to a vote of such electors; provided, that it shall not be necessary to submit to the electors the question of borrowing money to refund outstanding bonds, or for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

History: En. Sec. 4270, Pol. C. 1895; re-en. Sec. 2933, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1919.

The meaning of this section and section 5, article XIII, of the constitution, declaring that counties shall not incur any indebtedness in an amount exceeding $10,000, without the approval of a majority of the electors "voting at an election," etc., coupled with section 4721, providing that such a loan may be made "if a majority of the votes cast" is in favor of it, is the same, and the approval of a majority of the electors voting at an election to determine whether a proposed indebtedness shall be incurred was sufficient to legalize a bond issue. Morse v. Granite County, 44 Mont. 78, 95, 96, 119 Pac. 286.

Though the language of this section deviates from that employed in section 5 of article XIII of the constitution, it was evidently enacted in pursuance thereof, and must be held to mean the same. Morse v. Granite County, 44 Mont. 78, 95, 96, 119 Pac. 286.

The board of county commissioners cannot borrow money to refund outstanding indebtedness exceeding ten thousand dollars, by the issuance of bonds or otherwise, without having first obtained the approval of the electors of the county. Edwards v. Lewis and Clark County, 53 Mont. 359, 368, 165 Pac. 297.

The term, "incur indebtedness or liability," as used in section 5, article XIII, of the constitution, is not synonymous with the term "borrow money" used in this section; the former having to do with the creation of new indebtedness, while the latter deals with borrowing money through the instrumentality of issuing bonds for any of the purposes mentioned in the title of which the section forms a part. Edwards v. County of Lewis and Clark, 53 Mont. 359, 369, 370, 165 Pac. 297.

The restraint laid upon the legislature by the constitutional provision, limiting the amount of new indebtedness that a county could incur, did not operate to prevent it from imposing upon counties further limitations in the management of county finances. Edwards v. County of Lewis and Clark, 53 Mont. 359, 379, 165 Pac. 297.

Cited or applied as section 4270, Political Code, before amendment, with succeeding sections, in Tinkel v. Griffin, 26 Mont. 426, 429, 68 Pac. 859; as section 2933, Revised Codes, in State ex rel. Rowe v. Kehoe, 49 Mont. 582, 592, 144 Pac. 162; State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 399, 170 Pac. 942; Parker v. City of Butte, 58 Mont. 531, 533, 193 Pac. 748.

4718. Commissioners to determine amount necessary. Whenever it is necessary to submit to a vote of the electors of the county the question of

making a loan, the board must first determine the amount necessary to be raised.

History: En. Sec. 4271, Pol. C. 1895; re-en. Sec. 2934, Rev. C. 1907.

Upon submitting the question of a bond issue to the voters, the determination by the board of the amount of the issue is a necessary prerequisite to the validity of subsequent proceedings, and in so doing the board may proceed upon its own initiative and determine the necessity of the loan, without waiting the filing of a petition. Morse v. Granite County, 44 Mont. 78, 90, 119 Pac. 286.

Where the board of county commissioners has determined the amount necessary for the general purpose of a proposed bond issue, such as the erection of a courthouse, it is not required, before submitting the question to a vote, to ascertain the cost of a suitable site for the building, nor that of the necessary furnishings. Morse v. Granite County, 44 Mont. 78, 90, 91, 119 Pac. 286.

The only question which the board of county commissioners was required to submit to the electors upon the proposition of procuring funds to erect a court-house was whether a loan in the amount found necessary should be effected for such purpose. Morse v. Granite County, 44 Mont. 78, 91, 92, 93, 119 Pac. 286; Carlson v. City of Helena, 39 Mont. 82, 102 Pac. 39, 17 Ann. Cas. 1233, distinguished.

Cited or applied as section 4271, Political Code, in Tinkel v. Griffin, 26 Mont. 426, 429, 68 Pac. 859.

4719. Notice of election to be given. Notice of the election, clearly stating the amount to be raised and the object of the loan, must be given, and the election held and conducted, and the returns made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907.

This section has no reference to the printed form of the ballot, but merely requires that the provisions of the general election law touching the qualifications of the voters, the appointment of judges and clerks, the secrecy of the ballot, and the method of voting should be observed. Tinkel v. Griffin, 26 Mont. 426, 430; 68 Pac. 859.

A constitutional restriction that a board of county commissioners shall not incur any indebtedness or liability, above a designated amount, is a limitation upon the authority of the board; it has no reference to the power of the people. Reid v. Lincoln County, 46 Mont. 31, 57, 125 Pac. 429.

The provision of this section, that the notice of election shall clearly state the object of the loan, means the general object of the loan. It is not necessary to specify all of the details. So long as a reasonably comprehensive notice is given, the courts have no power to declare it insufficient. Reid v. Lincoln County, 46 Mont. 31, 57, 125 Pac. 429. See Mansur v. City of Polson, 45 Mont. 585, 593, 125 Pac. 1002.

The order and notice for a special election held for the issuance of bonds to create a highway system, with bridges, which included public ferries, was not invalid because merely stating those purposes generally, and not mentioning ferries, a "ferry" being a mere incident or movable portion of a highway where it crosses a stream. Reid v. Lincoln County, 46 Mont. 31, 57, 58, 125 Pac. 429. Distinguished in State ex rel. Kehoe v. Stromme, 49 Mont. 25, 27, 139 Pac. 1002.

Cited or applied as section 2935 Revised Codes, with other sections, in State ex rel. Cryderman v. Wienrich, 54 Mont. 390, 399, 170 Pac. 942.

4720. Ballots—What to contain. There must be written or printed on the ballots the words "For the loan" and "Against the loan," and in voting the elector must vote for the proposition he prefers by making an X opposite the proposition.

History: En. Sec. 4273, Pol. C. 1895; re-en. Sec. 2936, Rev. C. 1907.

In an election held for the incurring of indebtedness by the issue of bonds for the erection and furnishing of a county courthouse, ballots on which were printed the words "for the loan" and "against the loan," without specifying the nature and purpose of the proposed loan, were held sufficient. Tinkel v. Griffin, 26 Mont. 426, 430, 68 Pac. 859; Reid v. Lincoln County, 46 Mont. 31, 61, 125 Pac. 429.

4721. When loan may be made. If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds, or otherwise, as may seem best for the interests of the county.

History: En. Sec. 4274, Pol. C. 1895; re-en. Sec. 2937, Rev. C. 1907.

Cited or applied as section 4274, Political Code, in Tinkel v. Griffin, 26 Mont. 426, 429, 68 Pac. 859; as section 2937, Revised Codes, in Morse v. Granite County, 44 Mont. 78, 94, 119 Pac. 286.

4722. Form of ballots—Voting. Hereafter whenever, in due course of law, in the manner and form required by law and according to the provisions and requirements of law, any question or proposition of or relating to bonded indebtedness, or of issuing bonds or of refunding, increasing, or creating a bonded indebtedness is submitted, ordered submitted, or to be submitted to the electors of any county, at a general or other election, when, at the same time, candidates for national, state, or county office or offices are to be voted upon or for by the qualified electors of such county, such question or proposition relating to bonds or bonded indebtedness shall not be placed or printed upon the official ballots furnished electors at such election for the purpose of voting for candidates for any office or offices, and containing the names of candidates for office or offices to be voted for at such election, but the county commissioners shall authorize, and the county clerk shall have printed and furnished to election judges and officials in each voting precinct of such county, separate ballots therefor, equal in number to the official ballots so furnished, and containing the names of such candidates for office. Said separate ballots shall be white in color and of convenient size, being only large enough to contain the printing herein required to be done and placed thereon, and shall have printed thereon in fair-sized, legible type and black ink, in one line or more, as required, the words "For" said bonding proposition (stating it and the terms thereof explicitly and at length), and thereunder the words "Against" said bonding proposition (stating it and the terms thereof explicitly and at length in like manner, as above); and there shall be before the word "For" and before the word "Against," each, a square space of sufficient size to place a plain cross or X therein, and such arrangement shall be in this manner:

☐	For (stating propositions.)
☐	Against (stating propositions.)

Such separate ballots shall be kept, stamped, given out, received, counted, returned, and disposed of by election judges in like manner as other official ballots herein referred to. Each qualified elector offering to vote and permitted to vote shall, at the time he is offered by the election judges an official ballot bearing the names of candidates for office, be handed one of the separate ballots above described, and he may then and there, in a booth as provided by law, and not otherwise, vote on such separate ballot for or against said proposition by placing a cross or X before the word "For" or the word "Against," in the vacant square provided therefor; and such separate ballot shall be returned to the

election judges by the voter, with said other official ballot, if the voter chooses to vote for candidates for office and is entitled to do so. The election judges shall deposit said separate ballot on the bonding proposition, separate from the voter's other official ballot, in the ballot-box.

History: En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907.

The ballot, in a special election to authorize the issuance of county bonds for a public highway system in a county, which recited that the issue was the bonding of the county in a designated amount to provide funds for a system of public highways, bridges, and free ferries, said bonds to be payable in twenty years and redeemable in fifteen, was sufficient under this section. Reid v. Lincoln County, 46 Mont. 31, 59, 125 Pac. 429. See Tinkel v. Griffin, 26 Mont. 426, 429, 68 Pac. 859.

Cited or applied as section 2938, Revised Codes, in Morse v. Granite County, 44 Mont. 78, 89, 119 Pac. 286.

CHAPTER 24.

COUNTY OFFICERS—ENUMERATION, QUALIFICATIONS, BONDS, AND GENERAL PROVISIONS.

Section 4723. General Qualifications for County Office.
4724. Same for District and Township Offices.
4725. County Officers Enumerated.
4726. Township Officers.
4727. Offices United and Consolidated.
4728. County and Other Officers, When Elected and Term of Office.
4729. Election and Terms of County Commissioners.
4730. District Judges and Justices of the Peace—Election and Term of Office.
4731. County and Township Officers May Generally Appoint Deputies at Discretion.
4732. Mode of Making Appointments of Assistants.
4733. Official Mention of Principal Officer Includes Deputies.
4734. Vacancies—How Filled.
4735. Keep Office at County Seat.
4736. What Offices to Be Kept Open at County Seat—District Judge and His Chambers.
4737. Civil Penalty for Misconduct in Office Attaches to Official Bond.
4738. County Officers May Administer Oaths.
4739. Absence of County Officers From State.
4740. Certain Officers Prohibited From Practicing Law, etc.
4741. Classification of Counties.
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4723. General qualifications for county office. No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907. Cal. Pol. C. Sec. 4101.

4724. Same for district and township offices. No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907. Cal. Pol. C. Sec. 4102.

4725. County officers enumerated. The officers of a county are:
A treasurer;
A county clerk;
A clerk of the district court;
A sheriff;
A county auditor, except in the sixth, seventh, and eighth class counties;
A county attorney;
A surveyor;
A coroner;
A public administrator;
An assessor;
A county superintendent of common schools;
A board of county commissioners.

History: En. Sec. 4312, Pol. C. 1895; re-en. Sec. 2957, Rev. C. 1907; amd. Sec. 1, Ch. 112, L. 1913. Cal. Pol. C. Sec. 4103.
Related section: 4824.
Cited or applied as section 4312, Political Code, before amendment, in State ex rel. Donyes v. Board of Commrs. of Granite County, 23 Mont. 250, 252, 58 Pac. 439; State ex rel. McGinniss v. Dickinson, 26 Mont. 391, 394, 68 Pac. 468.

4726. Township officers. The officers of townships are two justices of the peace, two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907. Cal. Pol. C. Sec. 4104.

4727. Offices united and consolidated. The county clerk is clerk of the board of county commissioners and ex-officio recorder. The treasurer is collector of taxes.

History: En. Sec. 4314, Pol. C. 1895; re-en. Sec. 2959, Rev. C. 1907. Cal. Pol. C. Sec. 4105.

4728. County and other officers, when elected and term of office. All elective county and township officers, except county commissioners, must be elected at the general election to be held in the year 1894, and at the general election to be held every second year thereafter, and must take office on the first Monday of January next succeeding their election, except county treasurer, whose term begins on the first Monday of March next succeeding his election, and hold office for two years.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907. Cal. Pol. C. Sec. 4109.

4729. Election and terms of county commissioners. The election and terms of office of county commissioners are provided for in the constitution.

History: En. Sec. 4316, Pol. C. 1895; re-en. Sec. 2961, Rev. C. 1907.

4730. District judges and justices of the peace—election and term of office. The election and terms of office of district judges and justices of the peace are provided for in the Code of Civil Procedure.

History: En. Sec. 4317, Pol. C. 1895; re-en. Sec. 2962, Rev. C. 1907. Cal. Pol. C. Sec. 4110.

4731. County and township officers may generally appoint deputies at discretion. Every county and township officer, except county commis-

sioner and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office, but no compensation or salary must be allowed any deputy except as provided in this code.

History: En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907. Cal. Pol. C. Sec. 4112.

The provisions of this and the following section have no application to the appointment by the court of counsel to assist a county attorney in prosecuting persons charged with crime. State v. Whitworth, 26 Mont. 107, 117, 66 Pac. 748.

Cited or applied as section 4318, Political Code, with other sections, in Jobb v. County of Meagher, 20 Mont. 424, 428, 51 Pac. 1034.

4732. Mode of making appointments of assistants. The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing, and filed in the office of the county clerk.

History: En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907. Cal. Pol. C. Sec. 4113.

Cited or applied as section 4319, Political Code, with other sections, in Jobb v. County of Meagher, 20 Mont. 424, 429, 51 Pac. 1034; State v. Whitworth, 26 Mont. 107, 117, 66 Pac. 748.

4733. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

History: En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907. Cal. Pol. C. Sec. 4114.

Whether deputy is public officer, see note in Ann. Cas. 1913C, 88.

4734. Vacancies, how filled. All vacancies in county and township offices, except county commissioner, are filled by appointment made by the county commissioners. Appointees hold until the vacancies are filled by election.

History: En. Sec. 4321, Pol. C. 1895; re-en. Sec. 2966, Rev. C. 1907. Cal. Pol. C. Sec. 4115.

The general power to fill vacancies is lodged in the board, and though such power is always to be narrowly construed, in case a vacancy is not specifically provided for, it should be exercised in order to prevent an interregnum in the office and the consequent suspension of the public business. State ex rel. Rowe v. Kehoe, 49 Mont. 582, 590, 144 Pac. 162.

Where a person has been elected to succeed himself as county assessor, but dies after his election and before the beginning of the new term, another person appointed immediately after his death to fill the vacancy holds office only until the expiration of the original term of the deceased, and such appointee must, when the new term begins, surrender the office to one appointed to fill the office for the new term. State ex rel. Dunne v. Smith, 53 Mont. 341, 343, 163 Pac. 784.

4735. Keep office at county seat. All county officers must keep their offices at the county seat.

History: En. Sec. 4322, Pol. C. 1795; re-en. Sec. 2967, Rev. C. 1907. Cal. Pol. C. Sec. 4116.

4736. What offices to be kept open at county seat—District judge and his chambers. The sheriff, the county clerk, the clerk of the district court, the treasurer, and county attorney must keep their offices open for the transaction of business from nine o'clock a. m. until five o'clock p. m. continuously every day in the year, except holidays, and at any other time when business requires it.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907. Cal. Pol. C. Sec. 4116.

4737. Civil penalty for misconduct in office attaches to official bond. Whenever, except in criminal prosecutions, any special penalty, forfeiture, or liability is imposed on any officer for non-performance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907. Cal. Pol. C. Sec. 4117.

4738. County officers may administer oaths. Every officer mentioned in section 4725, and every justice of the peace, may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907. Cal. Pol. C. Sec. 4118.

4739. Absence of county officers from state. A county officer must, in no case, absent himself from the state for a period of more than sixty days, and for no period without the consent of the board of county commissioners, and if he does so absent himself he forfeits his office.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907. Cal. Pol. C. Sec. 4120.

4740. Certain officers prohibited from practicing law, etc. Sheriffs, clerks, and constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors-at-law, or having as a partner a lawyer or one who acts as such.

History: En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907. Cal. Pol. C. Sec. 4121.

4741. Classification of counties. For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, as follows:

First class. All counties having such a taxable valuation of fifty millions of dollars or over;

Second class. All counties having such a taxable valuation of more than thirty millions and less than fifty millions of dollars;

Third class. All counties having such a taxable valuation of more than twenty millions and less than thirty millions of dollars;

Fourth class. All counties having such a taxable valuation of more than fifteen millions and less than twenty millions of dollars;

Fifth class. All counties having such a taxable valuation of more than ten millions and less than fifteen millions of dollars;

Sixth class. All counties having such a taxable valuation of more than five millions and less than ten millions of dollars;

Seventh class. All counties having such a taxable valuation of less than five millions of dollars;

Provided, however, that there shall be no reclassification of counties until after March 10, 1921, except in counties from which territory has been taken by the creation of new counties since January 1, 1919.

History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919.

When a portion of one county is attached to another county, the last assessment on the territory so attached may be ascertained by reference to the assessment-books

of the former county in determining the classification of the latter county as established by the assessed valuation of property within its boundaries. State ex rel. Herford v. Cook, 14 Mont. 201, 202, 36 Pac. 44.

4742. County commissioners to designate class. The several boards of county commissioners must, at their regular session in September, 1906, make an order designating the class to which such county belongs, as determined by the assessed valuation of such county for the year 1906, under the provisions of this act, and in each even numbered year thereafter; provided, that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding.

History: En. Sec. 4331 Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907.

Cited or applied as section 4331, Political Code, before amendment, in State ex rel. McGinnis v. Dickinson, 26 Mont. 391, 392, 68 Pac. 468; as section 2975, Revised Codes, in State ex rel. Hauswald v. Ellis, 52 Mont. 505, 507, 159 Pac. 414; State ex rel. Fadness v. Eie, 53 Mont. 138, 147, 162 Pac. 164.

4743. Official bonds. The bonds of county officers are fixed by sections 466 and 467 of this code.

Note.—New section recommended by code commissioner.

4744. Quarterly inspection of official bonds. At the regular quarterly meetings of all boards of county commissioners in this state, in March and September of each year, every board of county commissioners shall carefully examine all official bonds of all county and township officials of its county, then in force and effect, and investigate the qualifications and financial condition and liability of all sureties thereon and their sufficiency; and, if it appear to the satisfaction of any such board of county commissioners, or a majority of the members thereof, that any surety upon any such bond within and for its county has, since the approval and acceptance of such bond, died or withdrawn therefrom, or removed from the state, or disposed of all of his property in this state, or become insane, insolvent, financially embarrassed, or not good and responsible for the amount of his liability thereon, such board of county commissioners shall immediately cause the clerk of said board, for it, to notify in writing the judge of the district court of that district of its action and conclusion, and all facts in connection therewith and the reasons thereof; and said judge shall forthwith take cognizance thereof and investigate such matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make such bond good and sufficient, according to the requirements of law in the premises, and ample security for the amount thereof.

History: En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907.

4745. County officers must report fees. It is the duty of all county officers, justices of the peace, and constables to make a report in writing, under oath, to the board of county commissioners, on the first Mondays of March, June, September, and December, showing in detail all fees, emoluments, and compensation received, and moneys disbursed by them in their official capacity during the quarter preceding the making of each report.

History: En. Sec. 4336, Pol. C. 1895; re-en. Sec. 2981, Rev. C. 1907.

Note.—Earlier act regulating reports of county officers, pp. 232, 233, Laws of 1891.

4746. Board of county commissioners must examine reports. It is the duty of the board to examine the reports, and if the report of an officer is found correct, the chairman of the board must write on the back of the same the words, "Approved and ordered filed," and sign his name thereto. If any report is found not correct, it must be returned to the officer with a statement of its insufficiency, and the report must be corrected and returned to the board, and then, if found correct, filed as aforesaid.

History: En. Sec. 4337, Pol. C. 1895; re-en. Sec. 2982, Rev. C. 1907.

4747. Clerk must report to state officer. It is the duty of the clerk of the board, within ten days after the adjournment of each regular session, to report in tabular form to the state auditor from the information contained in such reports, the amounts so received and for what purposes received, and moneys disbursed and for what purposes disbursed, which reports must be filed in the office of the state auditor.

History: En. Sec. 4338, Pol. C. 1895; re-en. Sec. 2983, Rev. C. 1907.

4748. Auditor must make report. The state auditor must publish such reports in tabular form in the state auditor's and state treasurer's reports. Such reports shall show, in tabular form, the amounts received and moneys disbursed by each officer in each county, and the sources from which said amounts were received.

History: En. Sec. 4339, Pol. C. 1895; re-en. Sec. 2984, Rev. C. 1907.

4749. Penalties. Every officer who fails to comply with or violates any of the provisions of this chapter is punishable as provided in section 10950 of the Penal Code.

History: En. Sec. 4340, Pol. C. 1895; re-en. Sec. 2985, Rev. C. 1907.

CHAPTER 25.

COUNTY TREASURER.

Section 4750. Duties of County Treasurer.
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4752. Mode of Redeeming Warrants.
4753. Registry of Warrants—Interest.
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4755. What It Must State, and How Published.
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4763. When He Must Sue County Attorney.
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4766. Money From Coroner in Treasury May Be Demanded Within Six Years.
4767. Deposit of Public Funds.
4768. County Commissioners May Suspend Treasurer.
4769. No Commissions Allowed.
4770. Books and Vouchers Subject to Inspection.
4771. Must Permit State Examiner and County Clerk to Examine Books.
4772. His Duty as Collector of Taxes.

4750. Duties of county treasurer. The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys

by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;

2. Keep an account of the receipt and expenditures of all such moneys in books provided for the purpose, in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;

3. So keep his books that the amount received and paid out on account of separate funds or specific appropriations is exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;

4. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county clerk;

5. Disburse the county moneys only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law;

6. Keep all school moneys in a separate fund, and keep a separate account of their disbursement to the several school districts which are entitled to receive them, according to the apportionment of the county superintendent of common schools;

7. Notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform him of the amount of school moneys belonging to any other fund subject to apportionment;

8. Pay all warrants drawn on county or district school moneys, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly indorsed by the holders;

9. Make, annually, during the month of September of each year, a financial report for the last preceding year ending with August 31st, to the county superintendent in such form as may be required by him.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907. Cal. Pol. C. Sec. 4144.

The owner of a warrant which the treasurer refuses to pay cannot obtain a money judgment against the county in an action on the warrant. Greeley v. Cascade County, 22 Mont. 580, 588, 57 Pac. 274.

The phrase, "or as otherwise provided by law," in the fifth subdivision of this section, includes juror's certificates, and the restriction as to the power of payment by the treasurer applies as well to them as to other claims against the county. In re Farrell, 36 Mont. 254, 261, 92 Pac. 785; County of Silver Bow v. Davies, 40 Mont. 418, 426, 107 Pac. 81.

The provisions of this section are mandatory. The use of the word "only" in the fifth subdivision limits the power of the treasurer to pay out the money of the county, both as to the amount and the precedent conditions of payment. In re Farrell, 36 Mont. 254, 261, 92 Pac. 785. See also County of Silver Bow v. Davies, 40 Mont. 418, 426, 107 Pac. 81.

The duty of a county treasurer to account for and pay over the moneys paid directly to him by members of the public, as revenue due the county, or directed by a court or by statute to be deposited with him for safe-keeping, is clearly statutory, and his liability for dereliction in this respect is a liability created by statute. Gallatin County v. United States F. & G. Co., 50 Mont. 55, 62, 144 Pac. 1085.

Cited or applied as section 2986, Revised Codes, in Gallatin County v. United States F. & G. Co., 50 Mont. 55, 62, 144 Pac. 1085.

4751. Must receipt for money. When any money is paid to the county treasurer, he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the county clerk, who

must charge the treasurer therewith and give the person paying the same a receipt.

History: En. Sec. 4351, Pol. C. 1895; re-en. Sec. 2987, Rev. C. 1907. Cal. Pol. C. Sec. 4146.

4752. Mode of redeeming warrants. When a warrant is presented for payment, if there is money in the treasury for that purpose, he must pay the same, and write on the face thereof "Paid," the date of payment, and sign his name thereto.

History: En. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907. Cal. Pol. C. Sec. 4147.

4753. Registry of warrants—Interest. When any warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must indorse thereon, "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant bears six per cent. per annum interest.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899, re-en. Sec. 2989, Rev. C. 1907. Cal. Pol. C. Sec. 4148.

4754. Notice of redemption of warrants. When there are sufficient moneys to pay the warrants drawing interest, the treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the courthouse door, stating therein that he is ready to pay such warrants. From the first publication or posting of such notice such warrants cease to draw interest.

History: En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990, Rev. C. 1907. Cal. Pol. C. Sec. 4149.

4755. What it must state and how published. In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail, but give notice only that county warrants presented for payment prior to such date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

History: En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907. Cal. Pol. C. Sec. 4150.

4756. Priority in payment of warrants. Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of moneys in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer, and upon the receipts of moneys into the treasury not otherwise appropriated, he must set apart the same, or so much thereof as is necessary for the payment of such warrants.

History: Ap. p. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec. 2992, Rev. C. 1907. Cal. Pol. C. Sec. 4151.

4757. Warrants must be registered in name of payee. The county treasurer must not register any county order or warrant in the name of any person other than the payee thereof, except at the request of such payee, or his agent, assignee, or legal representative, whose authority must

be produced to the treasurer in writing, and he must not pay any order or warrant except to the payee thereof, or to his agent, assignee, or legal representative, whose authority must be in writing and delivered to him, and must be returned with such order or warrant, when paid, to the board of county commissioners.

History: En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907.

4758. Funds reserved sixty days therefor. If such warrants be not re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the treasurer applied to the payment of unpaid warrants next in order of registry. The board of county commissioners may, on application and presentation of warrants properly indorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

History: En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907. Cal. Pol. C. Sec. 4152.

4759. Notation on warrant of interest paid. When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon, and enter on his account the amount of such interest distinct from the principal.

History: En. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907. Cal. Pol. C. Sec. 4153.

4760. Settlements, how made—Monthly and annually. The treasurer must settle his accounts relating to the collection, care and disbursement of public revenue, of whatsoever nature and kind, with the county clerk, on the first Monday of each month. For the purpose of making such settlements he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the county clerk's receipt therefor. He must make a full settlement of all accounts with the county clerk, annually, on the first Monday of January, in the presence of the county commissioners, who have control thereof.

History: En. Sec. 4360, Pol. C. 1895; re-en. Sec. 2996, Rev. C. 1907. Cal. Pol. C. Sec. 4154.

4761. Report to board of commissioners each session. Each county treasurer must make a detailed report, at every regular meeting of the board of county commissioners of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear.

History: En. Sec. 4361, Pol. C. 1895; re-en. Sec. 2997, Rev. C. 1907. Cal. Pol. C. Sec. 4155.

4762. Penalty for not reporting. If any county treasurer neglects or refuses to settle or report, as required in the preceding section, he for-

feits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the board of county commissioners must institute suits for the recovery thereof.

History: En. Sec. 4362, Pol. C. 1895; re-en. Sec. 2998, Rev. C. 1907. Cal. Pol. C. Sec. 4156.

4763. When he must sue county attorney. If the county attorney refuses or neglects to account for and pay over money received by him, as required by the fifth subdivision of section 4819, the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action, in addition to the amount so received, fifty per cent. thereon by way of damages.

History: En. Sec. 4363, Pol. C. 1895; re-en. Sec. 2999, Rev. C. 1907. Cal. Pol. C. Sec. 4157.

4764. When he must sue coroner. If the coroner, or any justice of the peace acting as coroner, fails to deliver to the treasurer, within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the public administrator or other legal representative of the decedent, as required by section 4850, the treasurer must proceed against the coroner, or justice acting as coroner, to recover the same by civil action in the name of the county.

History: En. Sec. 4364, Pol. C. 1895; re-en. Sec. 3000, Rev. C. 1907. Cal. Pol. C. Sec. 4158.

4765. Disposition of property received from coroner. The treasurer, upon receiving from the coroner, or justice acting as coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in like manner he must, within thirty days, sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

History: En. Sec. 4365, Pol. C. 1895; re-en. Sec. 3001, Rev. C. 1907. Cal. Pol. C. Sec. 4159.

4766. Money from coroner in treasury may be demanded within six years. If the money in the treasury is demanded within six years by the legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of county commissioners.

History: En. Sec. 4366, Pol. C. 1895; re-en. Sec. 3002, Rev. C. 1907. Cal. Pol. C. Sec. 4160.

4767. Deposit of public funds. It shall be the duty of the county treasurer to deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in his county subject to national supervision or state examination, as the board of county commissioners shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half per centum per annum, payable quarter-annually. The treasurer shall take from such banks such security in public bonds or other securities, or indemnity bonds, as the board of county commissioners of such county may prescribe, approve, and deem fully sufficient

and necessary to insure the safety and prompt payment of all such deposit on demand.

When more than one such bank is available in any county, such deposits shall be distributed ratably among all such banks qualifying therefor, substantially in proportion to the paid-in capital of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of the county treasurer to prorate all such deposits among all the banks in his county qualified to receive same as in this act provided, to the end that an equitable distribution of such deposits be maintained. If no such bank exists in the county, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys, or any portion thereof, shall be deposited under the terms of this act in the bank or banks most convenient to such county, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter-annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balances in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank, nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners and delivered to the treasurer. All interest paid and collected on such deposits shall be credited to the general fund of the county. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913. Cal. Pol. C. Sec. 4161.

That a county treasurer was following a custom established by his predecessor in depositing public moneys in bank, without requiring the security prescribed by statute, was no defense to a suit by the county to have the bank declared a trustee ex maleficio of such moneys for its benefit, and to be decreed entitled to preference in the distribution of the assets of the bank then in the hands of a receiver. Yellowstone Co. v. First Trust & Savings Bank, 46 Mont. 439, 451, 128 Pac. 596.

Where a county treasurer has county funds on deposit in a bank, in compliance with this section, the moneys so deposited constitute a general deposit and make of the county a general creditor of the bank. In case of the bank's failure, it must, under these circumstances, either share alike with other general creditors in the distribution of the bank's assets, or look to the surety for relief. Yellowstone Co. v. First Trust & Savings Bank, 46 Mont. 439, 449, 128 Pac. 596.

Where a county treasurer had county funds on deposit in a bank in the sum of thirty-three thousand dollars, without first having exacted an indemnity bond, and the bank later furnished bond in the sum of twenty-five thousand dollars, the legal effect of such latter action was a redeposit of a sum equal to one-half the amount of the bond, and neither its validity nor sufficiency was impaired by the wrongful act of the treasurer in keeping on deposit

a sum in excess of the latter amount. Yellowstone Co. v. First Trust & Savings Bank, 46 Mont. 439, 449, 128 Pac. 596.

The keeping of county funds on deposit to the extent of $20,500, excess over and above the sum of $12,500 secured by bond, as required by this section, was unlawful and without the county's consent, and as to such excess, the bank, chargeable with knowledge of the unlawful conduct of the county treasurer, and therefore an active participant in the wrong, became a trustee ex maleficio, for the use and benefit of the county. Yellowstone Co. v. First Trust & Savings Bank, 46 Mont. 439, 450, 128 Pac. 596.

The fact that neither the county commissioners nor the state examiner, whose duty it was to ascertain the depositaries of county funds and inquire into the sufficiency of the bonds held to secure them, interposed any objection to a county treasurer's wrongful conduct in depositing county funds in a bank without exacting any security, did not constitute an estoppel on the part of the county to claim that his act was wrongful. Yellowstone Co. v. First Trust & Savings Bank, 46 Mont. 439, 451, 128 Pac. 596.

A county, not having authority to empower its treasurer to make a general deposit of its funds without requiring security as provided by statute, cannot ratify the treasurer's wrongful act in doing so, and therefore is not estopped to assert that such act was wrongful because of its presumed ratification thereof. Yellowstone Co. v. First Trust & Savings Bank, 46 Mont. 439, 451, 128 Pac. 596.

Liability of public officer for loss of public money, see notes in 17 Ann. Cas. 929; Ann. Cas. 1914C, 492; 36 L. R. A. (N. S.) 285.

4768. County commissioners may suspend treasurer. Whenever any action based upon official misconduct is commenced against any county treasurer, the board of county commissioners may, in its discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

History: En. Sec. 4368, Pol. C. 1895; re-en. Sec. 3004, Rev. C. 1907. Cal. Pol. C. Sec. 4162.

4769. No commissions allowed. In case of the death of any county treasurer, his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representative of such predecessor.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907. Cal. Pol. C. Sec. 4163.

4770. Books and vouchers subject to inspection. The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and grand jury.

History: En. Sec. 4370, Pol. C. 1895; re-en. Sec. 3006, Rev. C. 1907. Cal. Pol. C. Sec. 4164.

4771. Must permit state examiner and county clerk to examine books. The treasurer must permit the state examiner and county clerk or the board of county commissioners to examine his books and count the money in the treasury, whenever any of them may wish to make an examination or counting.

History: En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907. Cal. Pol. C. Sec. 4165.

4772. His duty as collector of taxes. His duties as collector of taxes are prescribed in sections 1996 to 2443 of this code.

History: En. Sec. 4372, Pol. C. 1895; re-en. Sec. 3008, Rev. C. 1907.

CHAPTER 26.

SHERIFF.

Section 4773. "Process" and "Notice" Defined.
4774. Duties of Sheriff.
4775. Must Appoint Under-Sheriff.
4776. Duties of Under-Sheriff.
4777. Action May Be Prosecuted Against Executors.
4778. Return by Mail to Another County.
4779. Return Prima Facie Evidence.
4780. Penalty for Non-Return of Process.
4781. Liability for Refusing to Levy or Sell.
4782. Damages for Refusing to Pay Over Money.
4783. Liability for Permitting an Escape.
4784. Liability for a Rescue.
4785. No Action for Escape or Rescue After Return or Recapture.
4786. Direction to Sheriff Must Be in Writing.
4787. When Office of Sheriff Deemed Vacant.
4788. When Sheriff Justified in Executing Process.
4789. Officer to Exhibit Process.
4790. Sheriff to Act as Crier.
4791. Service on Sheriff, How Made.
4792. Coroner to Execute Process When Sheriff Is a Party.
4793. Elisors to Act in Cases Designated.
4794. Other Duties of Sheriff.

4773. "Process" and "notice" defined. "Process," as used in this article, includes all writs, warrants, summons, and orders of courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer, or when required by law to be served independently of such proceeding.

History: En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907. Cal. Pol. C. Sec. 4175.

4774. Duties of sheriff. The sheriff must:

1. Preserve the peace;

2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or have committed a public offense;

3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

4. Attend all courts, except justices' and police courts, at their respective terms or sessions held within his county, and obey their lawful orders and directions;

5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;

6. Take charge of and keep the county jail and the prisoners therein;

7. Indorse upon all notices and process the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

8. Serve all process or notices in the manner prescribed by law;

9. Certify under his hand upon the process or notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

History: En. Sec. 4381, Pol. C. 1895; re-en. Sec. 3010, Rev. C. 1907. Cal. Pol. C. Sec. 4176.

Where a sheriff had employed a number of men, sworn in as deputy sheriffs, to guard railroad strikers, after having as-

sured the company that he was able to enforce the peace without such aid, and the company had agreed to pay for such services, the company was liable for such payment, notwithstanding the statutory provision empowering the sheriff to call to his aid such persons as may be necessary to suppress unlawful assemblies, and the provision prohibiting a sheriff from demanding for official services any greater fees than are allowed by law. Sullivan v. U. & N. Ry. Co., 11 Mont. 236, 243, 28 Pac. 307.

Cited and applied as section 4381, Political Code, in Sears v. Gallatin County, 20 Mont. 462, 464, 52 Pac. 204, 40 L. R. A. 405; as section 3010, Revised Codes, in State ex rel. Hillis v. Sullivan, 48 Mont. 320, 324, 137 Pac. 392; State v. Driscoll, 49 Mont. 558, 565, 144 Pac. 153.

Liability of sheriff to individuals for misfeasance or nonperformance of official duties, see note in 95 A. S. R. 96.

Right of sheriff to call posse comitatus, see note in 44 A. S. R. 136.

Liability of sheriff for lynching of prisoner, see notes in 19 Ann. Cas. 889; Ann. Cas. 1913D, 636; 95 A. S. R. 128.

Liability of sheriff where mob inflicts death on prisoner, see note in 1 Ann. Cas. 491.

Burden of proof in action against officer for failure to execute and return process, see note in Ann. Cas. 1912D, 732; 3 L. R. A. (N. S.) 420.

Liability of sheriff for failure to execute process when failure due to acts or instructions of plaintiff or his agent or attorney, see note in 4 Ann. Cas. 979.

Mandamus to compel execution of writ or other process by sheriff, see note in Ann. Cas. 1913D, 569.

4775. Must appoint under-sheriff. The sheriff must, as soon as may be after he enters upon the duties of his office, appoint some person under-sheriff to hold during the pleasure of the sheriff. Such under-sheriff has the same powers and duties as a deputy sheriff.

History: En. Sec. 851, 5th Div. Comp. Stat. 1887; amd. Sec. 4382, Pol. C. 1895; re-en. Sec. 3011, Rev. C. 1907.

Cited or applied as section 4382, Political Code, in Jobb v. County of Meagher, 20 Mont. 424, 429, 51 Pac. 1034.

Liability of sheriff or his bond for the defaults and misfeasances of his assistants or deputies, see note 1 A. L. R. 236; 95 A. S. R. 129.

4776. Duties of under-sheriff. Whenever a vacancy occurs in the office of sheriff, the under-sheriff must in all things execute the office of sheriff until a sheriff is elected or appointed and duly qualified. Any default, misfeasance, or malfeasance of such under-sheriff in the meantime, as well as before, is a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the conditions of the bond given by him to the sheriff.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907.

4777. Action may be prosecuted against executors. Any action for default or misconduct of any sheriff, his under-sheriff, jailer, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

History: En. Sec. 4384, Pol. C. 1895; re-en. Sec. 3013, Rev. C. 1907.

4778. Return by mail to another county. When process or notices are returnable to another county, the sheriff may inclose such process or notice in an envelope, addressed to the officer who sent them, and deposit it in the postoffice, prepaying postage.

History: En. Sec. 4385, Pol. C. 1895; re-en. Sec. 3014, Rev. C. 1907. Cal. Pol. C. Sec. 4177.

4779. Return prima facie evidence. The return of the sheriff, upon process or notices, is prima facie evidence of the facts in such return stated.

History: En. Sec. 4386, Pol. C. 1895; re-en. Sec. 3015, Rev. C. 1907. Cal. Pol. C. Sec. 4178.

4780. Penalty for non-return of process. If the sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

History: En. Sec. 4387, Pol. C. 1895; re-en. Sec. 3016, Rev. C. 1907. Cal. Pol. C. Sec. 4179.

4781. Liability for refusing to levy or sell. If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property.

History: En. Sec. 4388, Pol. C. 1895; re-en. Sec. 3017, Rev. C. 1907. Cal. Pol. C. Sec. 4180.

4782. Damages for refusing to pay over money. If he neglects or refuses to pay over, on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with twenty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered by such person.

History: En. Sec. 4389, Pol. C. 1895; re-en. Sec. 3018, Rev. C. 1907. Cal. Pol. C. Sec. 4181.

Code, in Oppenheimer v. Regan, 32 Mont. 110, 79 Pac. 695.

Cited or applied as section 4389, Political Code, in Oppenheimer v. Regan, 32 Mont. 110, 79 Pac. 695.

Liability of sheriff for failure to pay over money, see note in 95 A. S. R. 110.

4783. Liability for permitting an escape. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;

4. Upon being sued for damages for an escape or rescue, he may introduce evidence in mitigation or exculpation.

History: En. Sec. 4390, Pol. C. 1895; re-en. Sec. 3019, Rev. C. 1907. Cal. Pol. C. Sec. 4182.

Liability of officer for voluntary escape of prisoner, see note in Ann. Cas. 1913C, 694; 95 A. S. R. 115.

4784. Liability for a rescue. He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

History: En. Sec. 4391, Pol. C. 1895; re-en. Sec. 3020, Rev. C. 1907. Cal. Pol. C. Sec. 4183.

4785. No action for escape or rescue after return or recapture. An action cannot be maintained against a sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after

his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the sheriff.

History: En. Sec. 4392, Pol. C. 1895; re-en. Sec. 3021, Rev. C. 1907. Cal. Pol. C. Sec. 4184.

4786. Direction to sheriff must be in writing. No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing signed by the attorney of the party or by the party.

History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907. Cal. Pol. C. Sec. 4185.

4787. When office of sheriff deemed vacant. When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant.

History: En. Sec. 4394, Pol. C. 1895; re-en. Sec. 3023, Rev. C. 1907. Cal. Pol. C. Sec. 4186.

4788. When sheriff justified in executing process. A sheriff, or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

History: En. Sec. 4395, Pol. C. 1895; re-en. Sec. 3024, Rev. C. 1907. Cal. Pol. C. Sec. 4187.

In an action against a sheriff for the value of personal property sold under execution issued against the property of a third person, the officer cannot justify under the execution, without proving the existence of a valid judgment. Ford v. McMaster, 6 Mont. 240, 241, 11 Pac. 669; Marcum v. Coleman, 8 Mont. 196, 200, 19 Pac. 394; Palmer v. McMaster, 10 Mont. 390, 394, 25 Pac. 1056.

4789. Officer to exhibit process. The officer executing such process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

History: En. Sec. 4396, Pol. C. 1895; re-en. Sec. 3025, Rev. C. 1907. Cal. Pol. C. Sec. 4188.

4790. Sheriff to act as crier. The sheriff in attendance upon court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear before the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction.

History: En. Sec. 4397, Pol. C. 1895; re-en. Sec. 3026, Rev. C. 1907. Cal. Pol. C. Sec. 4189.

Cited and construed as section 3026, Revised Codes, with other sections, in State ex rel. Hillis v. Sullivan, 48 Mont. 320, 324, 137 Pac. 392.

4791. Service on sheriff, how made. Service of a paper, other than a process, upon the sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

History: En. Sec. 4398, Pol. C. 1895; re-en. Sec. 3027, Rev. C. 1907. Cal. Pol. C. Sec. 4190.

4792. Coroner to execute process when sheriff is a party. When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county.

History: En. Sec. 4399, Pol. C. 1895; re-en. Sec. 3028, Rev. C. 1907. Cal. Pol. C. Sec. 4191.

4793. Elisors to act in cases designated. Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge thereof, and denominated an elisor, in the following cases:

1. When the sheriff and coroner are both parties;

2. When either of these officers is a party and the process is against the other; and

3. When either of these officers is a party and there is a vacancy in the office of the other; or, when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or the judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause would not act promptly or impartially. When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process. The court or judge may at any time on its own motion appoint an elisor.

History: En. Sec. 4400, Pol. C. 1895; re-en. Sec. 3029, Rev. C. 1907. Cal. Pol. C. Sec. 4192.

4794. Other duties of sheriff. The sheriff must perform such other duties as are required of him by law.

History: En. Sec. 4401, Pol. C. 1895; re-en. Sec. 3030, Rev. C. 1907. Cal Pol. C. Sec. 4193.

CHAPTER 27.

COUNTY CLERK.

Section 4795. County Clerk as Ex-Officio Recorder to Procure Record Books.
4796. What to Be Recorded.
4797. Recordation of Certain Instruments Declared Proper.
4798. Same—Validation of Such Instruments.
4799. Indexes to Be Kept.
4800. Index to Maps and Plats.
4801. To Record Decrees of Partition.
4802. Filing of Copy to Impart Notice.
4803. Must Keep a Map Book.
4804. May Keep Two or More Indexes in the Same Volume.
4805. Duty on Receipt of Instrument to Be Recorded.
4806. Recorded Instrument to Be Indorsed.
4807. To Make Searches.
4808. Liable for Neglect of Certain Duties.
4809. Fees to Be Prepaid.
4810. Records Open to Inspection.
4811. Duties of the County Clerk.
4812. Warrants to Be Numbered.
4813. Other Duties.
4813a. Duty of County Clerk.
4814. Annual Report of County Clerk.

4795. County clerk as ex-officio recorder to procure record books. The county clerk, as ex-officio recorder, must procure such books for records

as the business of his office requires, but orders for the same must first be obtained from the board of county commissioners. He has the custody and must keep all the books, records, maps, and papers deposited in his office.

History: En. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907. Cal. Pol. C. Sec. 4234.

4796. What to be recorded. He must, upon payment of his fees for the same, record, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved;
2. Certificates of births and deaths;
3. Wills devising real estate admitted to probate;
4. Official bonds;
5. Transcripts of judgments which by law are made liens upon real estate;
6. Instruments describing or relating to the separate property of married women, and sole trader judgments;
7. All orders and decrees made by the district court in probate matters affecting real estate which are required to be recorded;
8. Notice of pre-emption claims;
9. Notice and declaration of water rights;
10. Assignments for the benefit of creditors;
11. Affidavits of annual work done on mining claims;
12. Notices of mining locations and declaratory statement;
13. Estrays and lost property;
14. A book containing appraisement of state lands;
15. Such other writings as are required or permitted by law to be recorded; provided, nothing herein shall be construed as preventing the recording or copying of such instruments, separately, upon a single or loose page or pages of a book, if such page or pages shall immediately become a part of such book or volume, which, when completed, shall be firmly bound and the pages thereof securely locked or sealed into the volume.

History: En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917. Cal. Pol. C. Sec. 4235.

4797. Recordation of certain instruments declared proper. All instruments which have heretofore been filed for record in the several recorders' offices of the state of Montana, including all instruments which were offered for record pursuant to the previous section, which have been recorded in the offices of the recorders of the several counties by being correctly copied, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by the use of prepared blank forms, or by being so inscribed or printed on a single loose leaf or leaves of a book, which leaf or leaves have heretofore or are to become a permanent part of any such book or volume, which, when completed, has or shall have the pages thereof securely

locked, sealed, or bound into the volume, shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

History: En. Sec. 1, Ch. 138, L. 1917.

4798. Same—Validation of such instruments. And all such instruments as have been recorded in accordance with the requirements of the foregoing section are hereby expressly validated, in so far as validation may be necessary to establish them as correctly or legally recorded instruments for all purposes.

History: En. Sec. 2, Ch. 138, L. 1917.

4799. Indexes to be kept. Every county clerk, as ex-officio recorder, must keep:

1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

3. Two indexes of mortgages, labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of Mortgagor," "Names of mortgagees," "Dates of mortgages," "Where recorded," "When filed," "When canceled";

4. Two indexes of mortgages, labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of Mortgagees," "Names of mortgagors," "Date of mortgage," "Where recorded," "When filed," "When canceled";

5. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—Mortgagees," "Releases of mortgages of personal property—Mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of release, "Where recorded," or "Where filed," "Date of mortgages released," "Where mortgages released are recorded," or if personal property, "When filed";

6. An index of powers of attorney, labeled "Powers of attorney," each page divided into five columns, headed respectively: "Names of parties executing powers," "To whom powers are executed," "Date of powers," "Date of recording," "To whom powers are executed";

7. An index of leases, labeled "Leases," each page divided into four columns, headed respectively; "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded";

8. An index of leases, labeled "Lessees," each page divided into four columns respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded";

9. An index of marriage certificates, labeled "Marriage certificate—Men," each page divided into six columns, headed respectively: "Men

married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

10. An index of marriage certificates, labeled "Marriage certificates—Women," each page divided into six columns, headed respectively: "Women married," (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

11. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignors," each page divided into five columns, headed respectively: "Assignors," assignees," "Instruments assigned," "Date of assignment," "When and where recorded";

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments," "Date of assignments," "When and where recorded";

13. An index of wills, labeled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded";

14. An index of official bonds, labeled "Official bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded";

15. An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices, when filed";

16. An index to transcripts of judgments, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied";

17. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When filed," "When attachments discharged";

18. An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three columns, headed respectively: "Parties to actions," "Notices, when recorded," "When filed";

19. An index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings, labeled "Certificates of sale," each page divided into four columns, headed respectively: "Plaintiff," "Defendant," "Purchaser at sale," "Date of sale";

20. An index of the separate property of married women and sole trader judgments labeled "Separate property of married women and sole traders," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded";

21. An index to affidavits for annual work done on mining claims, showing the name of the affiant, the name of the claim, where situated,

and the year when the work was done, labeled "Annual work on mining claims";

22. An index of mining claims and declaratory statements, labeled "Notices of location of mining claims and declaratory statements," each page divided into four columns, headed respectively: "Locators," "Name of claim," "Notice, when filed," "Where recorded";

23. An index to the register of births and deaths;

24. An index to notices and declarations of water rights;

25. An index to the "Estray and lost property book";

26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed;

27. A miscellaneous index, in which must be indexed papers not hereinbefore stated.

History: En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907. Cal. Pol. C. Sec. 4236.

4800. Index to maps and plats. He must keep an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted, and a general description of the same.

History: En. Sec. 4413, Pol. C. 1895; re-en. Sec. 3034, Rev. C. 1907.

4801. To record decrees of partition. He must file and record with the record of deeds, grants, and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county.

History: En. Sec. 4414, Pol. C. 1895; re-en. Sec. 3035, Rev. C. 1907. Cal. Pol. C. Sec. 4238.

4802. Filing of copy to impart notice. Every such certified copy of a judgment of partition or any other judgment, from the time of filing the same for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien holders purchase and take with like notice and effect as if such property or judgment was a duly recorded deed, grant, or transfer.

History: En. Sec. 4415, Pol. C. 1895; re-en. Sec. 3036; Rev. C. 1907. Cal. Pol. C. Sec. 4239.

4803. Must keep a map book. He must keep a well-bound book, which must contain maps of towns, villages, or additions to the same within his county, together with the description, acknowledgment, or other writing thereon.

History: En. Sec. 4416, Pol. C. 1895; re-en. Sec. 3037, Rev. C. 1907.

4804. May keep two or more indexes in the same volume. He may keep in the same volume any two or more of the indexes mentioned in section 4799 of this code, but the several indexes must be kept distinct from each other, and the volumes distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first colmn of the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a sheriff, the name of the

sheriff and the party charged in the execution must both be inserted in the index; and when an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index.

History: En. Sec. 4417, Pol. C. 1895; re-en. Sec. 3038, Rev. C. 1907. Cal. Pol. C. Sec. 4240.

No rights under a recorded instrument will be impaired or affected by the failure of a county clerk and recorder to index or enter the same, as required by statute. Palmer v. Murray, 8 Mont. 174, 183, 19 Pac. 553.

4805. Duty on receipt of instrument to be recorded. When any instrument, paper, or notice, authorized by law to be recorded, is deposited in the office of the county clerk, as ex-officio recorder, for record, he must indorse upon the same the time it was received, noting the year, month, day, hour, and minute of its reception, and must record the same without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception.

History: En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907. Cal. Pol. C. Sec. 4241.

4806. Recorded instrument to be indorsed. He must also indorse upon each instrument, paper, or notice, the time when and the book and pages in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order.

History: En. Sec. 4419, Pol. C. 1895; re-en. Sec. 3040, Rev. C. 1907. Cal. Pol. C. Sec. 4242.

4807. To make searches. He may, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

History: En. Sec. 4420, Pol. C. 1895; re-en. Sec. 3041, Rev. C. 1907. Cal. Pol. C. Sec. 4243.

4808. Liable for neglect of certain duties. If any county clerk, as ex-officio recorder, to whom an instrument, proved or acknowledged according to law, or any paper or notice which may be by law recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice, within reasonable time after receiving the same; or

2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or

3. Neglects or refuses to keep in his office such indexes as are required by this article, or to make the proper entries therein; or

4. Neglects or refuses to make the searches and to give the certificates required by this chapter; or if such searches or certificates are incomplete or defective, when such incompleteness or defect is due to his direct responsibility particularly affecting the propery in respect to which it is requested; or

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein, he is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby, and is punishable as provided in the Penal Code.

History: En. Sec. 4421, Pol. C. 1895; re-en. Sec. 3042, Rev. C. 1907. Cal. Pol. C. Sec. 4244.

Liability of county clerk for defective abstract, see note in 22 L. R. A. 99.

4809. Fees to be prepaid. He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until the fee for the same, as prescribed by law, is, if demanded, paid or tendered.

History: En. Sec. 4422, Pol. C. 1895; re-en. Sec. 3043, Rev. C. 1907. Cal. Pol. C. Sec. 4245.

Where a paper entitled to be filed is deposited with the proper custodian, and, if prepayment of the filing fee is required, the fee tendered, it is filed, the marking thereof as "filed" not constituting the filing. In re Dewar's Estate, 10 Mont. 426, 437, 25 Pac. 1025.

Under this section the county clerk may, but is not required to, demand prepayment of filing or other fees; section 4892 having to do with the payment of fees in advance, being inapplicable. Minneapolis Steel & Machinery Co. v. Thomas, 54 Mont. 132, 135, 168 Pac. 40.

Where a corporation sent its annual report to the county clerk with the request that he advise it as to his fee for filing his answer, accompanying his refusal to file it because not acknowledged, "will state that the fee for filing is one dollar," was not such a demand for prepayment as is contemplated by this section. Minneapolis Steel & Machinery Co. v. Thomas, 54 Mont. 132, 136, 168 Pac. 40.

4810. Records open to inspection. All books or records, maps, charts, surveys, and other papers on file in his office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and he must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

History: En. Sec. 4423, Pol. C. 1895; re-en. Sec. 3044, Rev. C. 1907. Cal. Pol. C. Sec. 4246.

4811. Duties of the county clerk. The county clerk must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office;

2. Act as clerk of the board of county commissioners;

3. Draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county, which have been legally examined, allowed, and ordered paid by the board of county commissioners; also for all debts and demands against the county, when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal;

4. He must keep accounts current with the treasurer, and when any person deposits with the county clerk any receipt given by the treasurer

for any money paid into the treasury, the county clerk must file such receipt and charge the treasurer with the amount thereof;

5. Make the annual statement as prescribed in section 4814 of this code.

History: En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907. Cal. Pol. C. Sec. 4204.

Cited or applied as section 3045, Revised Codes, in State ex rel. Dolin v. Major, 58 Mont. 140, 147, 192 Pac. 618.

4812. Warrants to be numbered. All warrants issued by the county clerk during each year, commencing with first Monday in January, must be numbered consecutively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must, at the time they are issued, be registered by him.

History: En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907. Cal. Pol. C. Sec. 4219.

4813. Other duties. The county clerk must keep such other records and books, and perform such other duties as are prescribed by law.

History: En. Sec. 4426, Pol. C. 1895; re-en. Sec. 3047, Rev. C. 1907. Cal. Pol. C. Sec. 4205.

4813a. Duty of county clerk. The county clerk of any county is also clerk of the county commissioners and ex-officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or as recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners, or as recorder.

History: En. Sec. 4671, Civ. C. 1895; re-en. Sec. 6233, Rev. C. 1907.

4814. Annual report of county clerk. The county clerk must annually make out and present to the board, at the regular March session, a full and complete statement of the financial condition of the county, showing:

1. The indebtedness of the county, funded and floating, the amount of each class of such indebtedness, or any part thereof;

2. The amount of moneys, if any, on hand, as shown by the statement of the previous year;

3. The amount of moneys received for taxes upon real and personal property;

4. The amount of moneys received by him for fines, penalties, and forfeitures;

5. The amount of moneys received for licenses;

6. The amount of moneys received from other sources;

7. A concise description of all property owned by the county, with an approximate estimate of the value thereof, and the amount of cash in the county treasury subject to the payment of such indebtedness.

The statement must always show the amount of moneys paid out from the different funds of the counties. The totals of the several amounts of moneys paid out must be deducted from the sums of moneys on hand at the beginning of the previous year, and moneys received during

the year by the county treasurer, and a balance must be struck. The statement must also show the assessed valuation of all real and personal property for that year, the rate of taxation, the assessed valuation of real and personal property on which taxes have not been paid, the total delinquent taxes for the year and for each preceding year.

History: Ap. p. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907.

CHAPTER 28.

CLERK OF THE DISTRICT COURT.

Section 4815. Duties and Records to Be Kept.
4816. Other Duties.
4817. Indexes to Court Records.
4818. Duties Concerning Same.

4815. Duties and records to be kept. The clerk of the district court, in addition to the duties prescribed by the Code of Civil Procedure and the Penal Code, must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office;

2. Act as clerk of the district court, and attend each term or session thereof, and upon the judges at chambers when required;

3. Issue all process and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each court a register of action, as provided in the Code of Civil Procedure, which must also state the names of the attorneys and all fees charged in each action, and a list of all the fees charged;

4. Keep for the district court, in separate volumes, an index of all suits, labeled "General index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Plaintiffs," "Defendants," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment book," "Page of minute-book of district court"; also, an index labeled "General index—defendants," each page of which must be divided into seven columns under their respective heads, alphabetically arranged as follows: "Number of suit," "Defendants," "Plaintiffs," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment book," "Page in minute-book of district court";

5. Keep a minute-book, which must contain the daily proceedings of court, which may be signed by the clerk, which minute-book must be indexed in the names of both defendant and plaintiff;

6. Keep a book called "Record of probate proceedings," which must contain all the orders and proceedings of the district court sitting in probate matters, as prescribed in the Code of Civil Procedure, which index must be indexed in the name of the deceased person, the executor or administrator, the guardian or ward;

7. Keep a book called the "Probate record book," in which must be recorded all wills, bonds, letters of administration, letters testamentary, and other papers, as prescribed in the Code of Civil Procedure, which record must be indexed in like manner as the "Record of probate proceedings";

8. Keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organization of the court have declared, or who may hereafter declare their intention to become citizens of the United States, and the date of such declaration, which book must be labeled "Declaration of intention to become citizens of the United States," and in the other of which must be entered in alphabetical order the names of all persons who have been or may be hereafter admitted citizens of the United States by the court of which he is clerk, which book must be labeled "Naturalization—Final papers," and enter in a separate column, opposite each name, the country of which such person was before a citizen or subject, the date of his admission, and the page of the minute-book or book of record containing the order admitting him a citizen;

9. Keep a book, called "Register of criminal actions," in which must be entered the title and number of the action, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, and the name of every witness, number of days in attendance, and his legal fees, and a proper index to the same;

10. Keep a book, called a "Register of probate and guardianship proceedings," in which must be entered the name of the estate, the register number, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, and the fees charged;

11. Keep an index book of persons sent to the insane asylum, as provided in section 1438 of this code;

12. Keep a fee book, in which must be shown, in an itemized form, all fees that he has received for any services rendered as such clerk;

13. Keep a book, called a "Book of jurors' certificates," in which must be contained the blank certificates and stubs to be filled, as provided in this code;

14. Keep a "Witness book," in which must be contained blank certificates and stubs to be filled, as provided in this code;

15. Keep a record of the attendance of all jurors, and of witnesses in criminal actions, and compute the mileage of each.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907. Cal. Pol. C. Sec. 4204.

Cited or applied as section 3048, Revised Codes, in State ex rel. Anderson v. District Court, 56 Mont. 244, 184 Pac. 218.

Liability of clerk of court to individuals for nonperformance of official duty, see note in 95 A. S. R. 89.

Liability of clerk of court for accepting insufficient appeal bond, see note in 44 L. R. A. (N. S.) 175.

4816. Other duties. He must keep such other records and perform such other duties as are prescribed by law.

History: En. Sec. 4441, Pol. C. 1895; re-en. Sec. 3049, Rev. C. 1907.

4817. Indexes to court records. Hereafter each clerk of court in each county of the respective judicial districts of the state shall keep, in addition to the records now required by law, a book called "General index to court records," and also a second book to be called "Inverse general index to court records." The pages of the "General index" shall be divided into eighteen columns, and the pages of the "Inverse general index" shall be divided into five columns, with heads to the respective columns as follows:

FOR THE "GENERAL INDEX" THUS:

No.	Plaintiff	Defendant	Nature of Action	Date Begun	Entries in Court Record	Pages	Date Dismissed	Date of Judgment	Amount of Judgment	Judgment Record		Judgment Docket		Execution Date Issue	Execution Book		Order of Sale		Date Appealed	Remittitur Date Filed	Remarks
										Book	Page	Book	Page		Book	Page	Book	Page			

FOR THE "INVERSE GENERAL INDEX" THUS:

No.	Defendants	Plaintiffs	Nature of Action	Date Begun

History: En. Sec. 4442, Pol. C. 1895; re-en. Sec. 3050, Rev. C. 1907.

4818. Duties concerning same. Said clerk shall cause to be made in each of said index books correct entries, under the appropriate headings, of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the "General index" and alphabetically by the name of the defendants in the "Inverse General index," continuing to make such entries in the manner aforesaid from time to time as the progress of the case may require.

History: En. Sec. 4443, Pol. C. 1895; re-en. Sec. 3051, Rev. C. 1907.

CHAPTER 29.

COUNTY ATTORNEY.

Section 4819. Duties of County Attorney.
4820. Legal Advisor of Board of County Commissioners.
4821. Authority to Sue to Recover Money Illegally Paid.
4822. Must Not Act as Attorney for Claims Against His Own County.
4823. Other Duties.

4819. Duties of county attorney. The county attorney is the public prosecutor, and must:

1. Attend the district court, and conduct, on behalf of the state, all prosecutions for public offenses, and represent the state in all matters and proceedings to which it is a party, or in which it may be beneficially interested, at all times and in all places within the limits of his county;

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed, and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration;

3. Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county;

4. Deliver receipts for money or property received in his official capacity, and file duplicates thereof with the county treasurer;

5. On the first Monday of January, April, July, and October, in each year, file with the county clerk an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months, and at the same time pay it over to the county treasurer;

6. Give when required, and without fee, his opinion in writing to the county, district, and township officers, on matters relating to the duties of their respective offices;

7. Keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907. Cal. Pol. C. Sec. 4256.

The county attorney, in his every duty, is under the supervisory powers of the attorney-general; nor is there any official act to be discharged by him in the performance of which he may not, where public interests require it, be assisted by that official. State ex rel. Nolan v. District Court, 22 Mont. 25, 30, 55 Pac. 916.

After a criminal case has been appealed to the supreme court, the duties of the county attorney therein and his power to contract expenses for the county cease. Independent Publishing Co. v. County of Lewis and Clark, 30 Mont. 83, 85, 75 Pac. 860.

Criminal cases arising under the state laws must be prosecuted in the name of the state and by the county attorney, under this section and the constitution. State ex rel. Streit v. Justice Court, 45 Mont. 375, 380, 123 Pac. 405; 48 L. R. A. (N. S.) 156.

Except when the county attorney is himself the accused, the duty devolves upon him to prosecute public offenses. State ex rel. McGrade v. District Court, 52 Mont. 371, 373, 157 Pac. 1157.

Cited or applied as section 3052, Revised Codes, in State v. Barry, 45 Mont. 582, 585, 124 Pac. 774.

4820. Legal advisor of board of county commissioners. The county attorney is the legal advisor of the board of county commissioners. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county which are unjust or illegal.

History: En. Sec. 4451, Pol. C. 1895; re-en. Sec. 3053, Rev. C. 1907. Cal. Pol. C. Sec. 4257.

4821. Authority to sue to recover money illegally paid. If the board of county commissioners, without authority of law, order any money paid as a salary, fees, or for any other purposes, and such money has been

actually paid; or if any other county officer has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of county commissioners or by law, and the same has been paid, the county attorney is empowered, and it is his duty, to institute an action in the name of the county against such person or persons to recover the money so paid, and twenty-five per cent. damages for the use thereof; and no order of the board of county commissioners therefor is necessary to maintain such suit; but when the money has not been paid on such order or warrants, it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same, and no order of the board of county commissioners is necessary to maintain such action.

History: En. Sec. 4452, Pol. C. 1895; re-en. Sec. 3054, Rev. C. 1907. Related sections 4451, 4520.

4822. Must not act as attorney for claims against his own county. The county attorney, except for his own services, must not present any claim, account, or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

History: En. Sec. 4453, Pol. C. 1895; re-en. Sec. 3055, Rev. C. 1907. Cal. Pol. C. Sec. 4258.

4823. Other duties. The county attorney must perform such other duties as are prescribed by law.

History: En. Sec. 4454, Pol. C. 1895; re-en. Sec. 3056, Rev. C. 1907.

Cited or applied as section 3056, Revised Codes, with preceding sections, in State ex rel. McGrade v. District Court, 52 Mont. 371, 375, 157 Pac. 1157.

CHAPTER 30.

COUNTY AUDITOR.

Section 4824. Office of, Created.
4825. Election—Term—Qualifications.
4826. Oath—Bond.
4827. Residence—Salary.
4828. May Administer Oath.
4829. Must Keep Records.
4830. Must Audit and Investigate Claims.
4831. Must Record List of Claims.
4832. Must Examine Books and Accounts.
4833. County Superintendent of Poor.
4834. Other Duties.

4824. Office of, created. The office of county auditor is hereby created and the same shall exist in all counties of the state of Montana of the first, second, third, fourth, and fifth classes.

Related section: 4725.

Note.—Sections 4824 to 4834 were enacted as sections 1 to 11, pp. 227-231, Laws of 1891; re-enacted as sections 4560 to 4570, Political Code 1895; appearing as sections 3100 to 3110, Revised Codes 1907. The above section changed in this code to conform to section 4725. For history of earlier acts, see State ex rel. McGinnis v. Dickson, 26 Mont. 391, 68 Pac. 468.

Cited as section 1 of the act of March 7, 1891, in State ex rel. McGinniss v. Dickinson, 26 Mont. 391, 392, 68 Pac. 468.

4825. Election—Term—Qualifications. There shall be elected in and for each county of the class named in the preceding section, at the general election to be held in November, 1892, and quadrennially thereafter, some male person to serve as county auditor of the county for which he shall be elected for the term of four years, and until his successor shall

be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of twenty-one years, and who shall not have been, for at least two years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed.

History: Sec. 3101, Rev. C. 1907. See also history of Sec. 4824.

Note.—The above section changed in this code to conform to later enactments.

Since the adoption of the suffrage amendment to the constitution, a woman, otherwise qualified, is entitled to hold the office of county auditor. Rose v. Sullivan, 56 Mont. 480, 185 Pac. 562.

Cited or applied as section 2 of the act of March 7, 1891, in State ex rel. McGinniss v. Dickinson, 26 Mont. 391, 393, 68 Pac. 468.

4826. Oath—Bond. Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such an oath as is required of other county officers, and shall execute a bond to the county in which he shall have been elected or appointed in the penal sum of fifteen thousand dollars, with at least two good and sufficient sureties, for the faithful discharge of the duties of his office; said bond shall be approved by the board of county commissioners of the county, which said bond, together with the oath of office, shall be filed with the county clerk and recorder of said county.

History: Sec. 3102, Rev. C. 1907. See also history of Sec. 4824.

4827. Residence—Salary. The county auditor shall reside and keep his principal office at the county seat of the county for which he shall have been elected or appointed, and he shall receive the annual compensation provided by law, payable quarterly by warrants drawn on the treasury of the county treasurer, and shall receive no other compensation or emolument whatsoever for any service or services rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county, other than the county seat, and then only after the same has been ordered and advised by the board of county commissioners.

History: Sec. 3103, Rev. C. 1907. See also history of Sec. 4824.

4828. May administer oath. The county auditors are hereby authorized to administer any oath or affirmation rendered necessary to the performance of the duties of their respective offices, and shall have power to issue process and compel the attendance of witnesses before them and examine into any matter they may deem necessary, and any witness attending before such auditor shall receive the same fees and mileage as witnesses attending before justices of the peace in trial or examinations in criminal cases.

History: Sec. 3104, Rev. C. 1907. See also history of Sec. 4824.

Cited or applied as section 3104, Revised Codes, in State ex rel. Dolan v. Major, 58 Mont. 140, 152, 192 Pac. 618.

4829. Must keep records. The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in his office, and each county auditor on going out of office, shall deliver over to his successor in office all documents, books, records, and property in his hands belonging to the county.

History: Sec. 3105, Rev. C. 1907. See also history of Sec. 4824.

4830. Must audit and investigate claims. It shall be the duty of persons holding claims against any county having a county auditor to present the same to the county auditor, whose duty it shall be to audit the same. The county auditor shall also investigate and examine into all claims presented to him, and report the same with his finding to the board of county commissioners at their regular session after such investigation shall have been completed, with his approval or disapproval indorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose. In all counties having a county auditor, all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers, or contracted for by the county commissioners, shall be investigated, examined, and inspected by the county auditor, who shall indorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn. In all counties having a county auditor, no claim against the county shall be paid or warrant drawn therefor unless the same shall have the approval of the county auditor; provided, however, that the judge of the district court of the county where any claim has been disapproved by the county auditor may order the payment of the same.

History: Sec. 3106, Rev. C. 1907. See also history of Sec. 4824.

The word "audit" is not used in its narrow and restricted sense, and does not limit the auditor to merely ascertaining whether the claims are in proper form and mathematically correct. State ex rel. Dolin v. Major, 58 Mont. 140, 152, 192 Pac. 618.

The board may exercise its judgment in ordering paid those claims which have the approval of the auditor, but the only power which the board has in reference to claims disapproved by him is to disallow them State ex rel. Dolin v. Major, 58 Mont. 140, 150, 192 Pac. 618.

It would seem that the proviso empowering district judges to order the payment of claims against the county after the approval by the auditor, is repugnant to section 1 of article IV of the constitution for the reason that it undertakes to cast upon district judges a power which pertains exclusively to the executive branch of the government. State ex rel. Dolin v. Major, 58 Mont. 140, 151, 192 Pac. 618.

4831. Must record list of claims. The county clerk and recorder shall return to the county auditor, within ten days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected either in whole or in part by them, which list shall be recorded by the auditor in a book kept for that purpose, and carefully preserved in his office.

History: Sec. 3107, Rev. C. 1907. See also history of Sec. 4824.

4832. Must examine books and accounts. It shall be the duty of the county auditor to make an examination of the books and accounts of the county treasurer, the county clerk and recorder, the sheriff, and clerk of the district court, and all other county and township officers, within fifteen days next preceding each regular session of the board of county commissioners at their next session immediately following such examination, unless a longer time be granted him by the board in which to report the same, and said report shall contain a full and complete statement of the moneys received and disbursed by each of the said officers since the last examination and report of the same, and for this purpose the county auditor shall have free access to all books and papers in each of said offices.

History: Sec. 3108, Rev. C. 1907. See also history of Sec. 4824.

4833. County superintendent of poor. The county auditor hereby created is also made county superintendent of the poor, whose duty it shall be, under such rules and regulations as may be prescribed by the county commissioners, to care for and examine all claims that may be made upon the county for charity; also to have, under the direction of the county commissioners, general supervision of the county poorhouse or farm.

History: Sec. 3109, Rev. C. 1907. See also history of Sec. 4824.

4834. Other duties. The county auditor shall also perform such other duties, clerical or otherwise, as he may be directed to perform by the county commissioners; provided, a reasonable amount of time must be allowed the county auditor for the performance of the duties definitely set forth in this act.

History: Sec. 3110, Rev. C. 1907. See also history of Sec. 4824.

CHAPTER 31.

COUNTY SURVEYOR.

Section 4835. Qualifications of County Surveyor and Deputies.
4836. County Surveyor to Work Under Direction of County Commissioners—Approval of Commissioners Required to Contract Indebtedness—Duties of County Surveyor.
4837. Records of Surveys and Plats, etc.
4838. Office and Equipment to Be Furnished County Surveyor.
4839. County Surveyor to Make Surveys, Keep Record of Them, Furnish Copies, etc.
4840. Surveys of Lands in Two Counties.
4841. Order for Survey Where Title to Lands in Two Counties Disputed.
4842. Courses to Be Run by True Meridian—Variation and Date to Be Noted.
4843. Surveyor to Employ Assistants, When.
4844. Appointment of Disinterested Person When County Surveyor Interested in Lands.
4845. Must Inspect Road Works.
4846. Must Not Be Interested in Contracts.
4847. Other Surveyor May Be Employed.

4835. Qualifications of county surveyor and deputies. A county surveyor shall be a professional engineer, not less than twenty-two years of age, who shall have been in active practice of his profession for at least three years, and who shall have had responsible charge of work as principal or assistant for at least one year; graduation from a school of engineering shall be considered as equivalent to two years of active practice. All deputies must also have a practical knowledge of engineering.

History: En. Sec. 1, Ch. 50, L. 1919.

4836. County surveyor to work under direction of county commissioners—Approval of commissioners required to contract indebtedness—Duties of county surveyor. The county surveyor shall work under the direction of the board of county commissioners, but shall have no power or authority to incur any indebtedness on the part of the county without the order or approval of the board of county commissioners being first obtained therefor; he shall make all surveys, establish all grades, prepare plans, specifications, and estimates; he shall report any delinquency or inefficiency of any road overseer or other person employed upon the roads within his county; he shall, from time to time, make progress reports and estimates of all work, and such other facts in relation thereto as may be

required by the state highway commission, board of county commissioners, or both.

History: En. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919.

4837. Records of surveys and plats, etc. The county surveyor shall keep in his office a record of all surveys and plats made or caused to be made by him, to be recorded in proper books provided for that purpose; and shall also keep on file and for record, in suitable plat books provided therefor, copies of all plats made or caused to be made by him, and have recorded therein a description of every public highway within the county; provided, further, that all such books of record, together with original drawings and original book or books of field notes, calculations, and computations shall be, are, and shall remain the property of the county, and preserved as such.

History: En. Sec. 3, Ch. 50, L. 1919.

4838. Office and equipment to be furnished county surveyor. The county surveyor shall be provided with suitable office, together with necessary equipment, to perform his various duties as prescribed by law.

History: En. Sec. 4, Ch. 50, L. 1919.

4839. County surveyor to make surveys, keep record of them, furnish copies, etc. The county surveyor must make any survey that may be required by order of the court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made, progressively, and preserve a copy of the field notes and calculations of each survey, indorse thereon its proper number, a copy of which, and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law. He must also keep a correct and plain record of all surveys, made by him for the county or for individuals or corporations, which pertain to the public roads or bridges, in a book provided for that purpose by the county, which shall be transmitted to his successor in office.

History: En. Sec. 4470, Pol. C. 1895; re-en. Sec. 3057, Rev. C. 1907. Cal. Pol. C. Sec. 4268.

4840. Surveys of lands in two counties. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated, and on such application being made, the county surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

History: En. Sec. 4471, Pol. C. 1895; re-en. Sec. 3058, Rev. C. 1907. Cal. Pol. C. Sec. 4269.

4841. Order for survey where title to lands in two counties disputed. When land, the title to which is in dispute before any court, is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

History: En. Sec. 4472, Pol. C. 1895; re-en. Sec. 3059, Rev. C. 1907. Cal. Pol. C. Sec. 4270.

4842. Courses to be run by true meridian—Variation and date to be noted. In all surveys the courses must be expressed according to the true

meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

History: En. Sec. 4473, Pol. C. 1895; re-en. Sec. 3060, Rev. C. 1907. Cal. Pol. C. Sec. 4271.

4843. Surveyor to employ assistants, when. If a party for whom the county survey is made does not furnish the chainmen and markers, the surveyor may employ the necessary chainmen and markers, and receive the reasonable hire of all assistants necessarily employed.

History: En. Sec. 4474, Pol. C. 1895; re-en. Sec. 3061, Rev. C. 1907. Cal. Pol. C. Sec. 4272.

4844. Appointment of disinterested person when county surveyor interested in lands. When the county surveyor is interested in any land, the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person, and the person so appointed is for the purpose authorized to administer and certify oaths. He must return such survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

History: En. Sec. 4475, Pol. C. 1895; re-en. Sec. 3062, Rev. C. 1907. Cal. Pol. C. Sec. 4275.

4845. Must inspect road works. The county surveyor shall also, at the direction of the county commissioners, direct and inspect the work and expenditures of the road supervisors; also furnish plans and specifications for road or bridge work, and he shall be chairman of all boards of road viewers.

History: En. Sec. 4476, Pol. C. 1895; re-en. Sec. 3063, Rev. C. 1907.

4846. Must not be interested in contracts. The county surveyor shall not be interested, directly or indirectly, in any contract for the construction or repair of roads or bridges under his charge, or in any claim or voucher for labor or material in connection with such repairs or construction.

History: En. Sec. 4477, Pol. C. 1895; re-en. Sec. 3064, Rev. C. 1907.

4847. Other surveyor may be employed. If the county surveyor neglect, refuse or be incompetent to perform the duties prescribed in section 4845 of this code, it shall be the duty of the board of county commissioners to employ another competent civil engineer, who shall be subject to the law governing the county surveyor.

History: En. Sec. 4478, Pol. C. 1895; re-en. Sec. 3065, Rev. C. 1907.

CHAPTER 32.

COUNTY CORONER.

Section 4848. Coroner to Hold Inquest.
4849. Coroner to Bury Body, When—Expense of Interment.
4850. To Deliver to County Treasurer Property, etc., Found on Body.
4851. Statement Before Allowing Accounts of Coroner.
4852. Justice of Peace to Act as Coroner in Certain Cases.
4853. Coroner to Discharge Duties of Sheriff, When.
4854. Must Keep Register.
4855. Stenographers for Coroners in Counties of First Class.
4856. Inquest in Case of Prisoners in State Prison.
4857. Same—Payment of Costs of Inquest.

4848. Coroner to hold inquest. The coroner must hold inquests, as provided in sections 12381 to 12392 of the Penal Code.

History: En. Sec. 4490, Pol. C. 1895; re-en. Sec. 3066, Rev. C. 1907. Cal. Pol. C. Sec. 4285.

Power of coroner to determine whether inquest shall be held, see note in 11 Ann. Cas. 1023.

Jurisdiction of coroner as regards place of holding inquest, see note in 4 Ann. Cas. 1162.

When coroner's inquest necessary or proper, see note in 21 L. R. A. 394.

Liabiltiy of coroner for acts at inquest, see note in 44 L. R. A. (N. S.) 177.

Liability for damages for performing autopsy, see note in L. R. A. 1918D, 404.

4849. Coroner to bury body, when—Expense of interment. When an inquest is held by the coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of burial, the expenses are a legal charge against the county.

History: En. Sec. 4491, Pol. C. 1895; re-en. Sec. 3067, Rev. C. 1907. Cal. Pol. C. Sec. 4286.

4850. To deliver to county treasurer property, etc., found on body. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer or the legal representatives of the deceased any money or other property found upon the dead body.

History: En. Sec. 4492, Pol. C. 1895; re-en. Sec. 3068, Rev. C. 1907. Cal. Pol. C. Sec. 4287.

4851. Statement before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;

2. The disposition made of such property.

History: En. Sec. 4493, Pol. C. 1895; re-en. Sec. 3069, Rev. C. 1907. Cal. Pol. C. Sec. 4288.

4852. Justice of peace to act as coroner in certain cases. If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner.

History: En. Sec. 4494, Pol. C. 1895; re-en. Sec. 3070, Rev. C. 1907. Cal. Pol. C. Sec. 4289.

4853. Coroner to discharge duties of sheriff, when. In the cases specified in section 4792 of this code the coroner must discharge the duties of sheriff.

History: En. Sec. 4495, Pol. C. 1895; re-en. Sec. 3071, Rev. C. 1907. Cal. Pol. C. Sec. 4290.

4854. Must keep register. It is the duty of the coroner of each county to keep an official register, to be labeled "Coroner's register," in which he must enter the date of holding all inquests, the name of the deceased, when known, and when not, such description of the deceased as may be sufficient for identification; property found on the person of the deceased, if any; what disposition of the same was made by the coroner;

the cause of death, when known, and any other information which may pertain to the identity of the deceased.

History: En. Sec. 4496, Pol. C. 1895; re-en. Sec. 3072, Rev. C. 1907.

4855. Stenographers for coroners in counties of first class. In each county of the first class, the coroner may, with consent of the county commissioners, appoint a stenographer, who shall hold such position during the pleasure of the coroner making the appointment, and who shall receive as salary the sum of one hundred dollars per month, to be paid monthly out of the contingent fund of the county upon the order of the board of county commissioners.

History: En. Sec. 1, Ch. 8, L. 1911.

4856. Inquest in case of prisoners in state prison. When a prisoner confined in the state prison shall die, the coroner of the county wherein the state prison is located may hold an inquest as provided in sections 12381 to 12392 of these codes.

History: En. Sec. 1, Ch. 122, L. 1909.

4857. Payment of costs of inquest. Whenever an inquest is held under the provisions of this act the county clerk of the county where such inquest is had shall make out a statement of all the costs incurred by the county in such inquest, properly certified by the coroner of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such inquest was had.

History: En. Sec. 2, Ch. 122, L. 1909.

What constitute "necessary expenses" incurred by coroner, see note in Ann. Cas. 1918D, 927.

CHAPTER 33.

PUBLIC ADMINISTRATOR.

4858. The powers and duties of the public administrator are defined by sections 9990 to 10017 of the Code of Civil Procedure.

Note.—New section recommended by code commissioner.

CHAPTER 34.

CONSTABLES AND JUSTICES OF THE PEACE.

Section 4859. Constables to Attend Justices' Courts.
4860. Bond of Constable.
4861. Governed by the Law Prescribing Sheriff's Duties.
4862. Duties of Justices of the Peace.
4863. Justices Not to Practice Law.

4859. Constables to attend justices' courts. Constables must attend the courts of justices of the peace within their townships whenever so required, and within their counties execute, serve, and return all process and notices directed or delivered to them by a justice of the peace of such county, or by any competent authority.

History: En. Sec. 4550, Pol. C. 1895; re-en. Sec. 3096, Rev. C. 1907. Cal. Pol. C. Sec. 4314.

4860. Bond of constable. Every constable elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, be required to execute an undertak-

ing to the state of Montana in the penal sum of two thousand dollars, with two sufficient sureties, and comply with the previous section as justices of the peace are required by law to do.

History: En. Sec. 2, p. 90, L. 1901; re-en. Sec. 3097, Rev. C. 1907.

4861. Governed by the law prescribing sheriffs' duties. All the provisions of sections 4773 to 4794 inclusive of this code, except the fourth and sixth subdivisions of section 4774, apply to constables and govern their powers, duties and liabilities.

History: En. Sec. 4551, Pol C. 1895; re-en. Sec. 3098, Rev. C. 1907. Cal. Pol. C. Sec. 4315.

Note.—The above section rewritten to conform to the arrangement of this code.

4862. Duties of justices of the peace. Justices of the peace must perform such duties as are prescribed in sections 9619 to 9724 of the Code of Civil Procedure, and such other duties as are prescribed by law.

History: En. Sec. 4552, Pol. C. 1895; re-en. Sec. 3099, Rev. C. 1907. Cal. Pol. C. Sec. 4316.

4863. Justices not to practice law. No justice of the peace shall practice law, draw contracts, conveyances, or other legal instruments or documents, nor shall they take any claim or bill for collection, nor act as a collection agent in any sense whatever, nor shall they perform any legal duties other than those prescribed by law as their official duties in the conduct of cases and proceedings in their courts. Any justice of the peace violating any of the provisions in this section shall be deemed guilty of a malfeasance in office, and shall forthwith be removed from his office of justice of the peace, and shall thereafter be disqualified from holding such office.

History: En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907.

CHAPTER 35.

SALARIES AND FEES OF COUNTY OFFICERS AND DEPUTIES, JURORS AND WITNESSES.

Section 4864. Fees Received by County Officers to Be Paid Into the County Treasury.
4865. What Officers to Receive Fees for Their Own Use.
4866. Counties Classified.
4867. Salaries of County Officers.
4868. Salaries—How Paid.
4869. Salaries of County Superintendents in Counties of the First, Second, and Third Classes.
4870. In Counties of the Fourth, Fifth, and Sixth Classes.
4871. In Counties of the Seventh and Eighth Classes.
4872. Appointment of Deputies—Payment of Salaries.
4873. Compensation Allowed Deputies and Assistants.
4874. Authority County Commissioners to Fix Compensation and Number of Deputy County Officers.
4875. Number of Deputies Allowed.
4876. Designation of Chief Deputy by County Clerk.
4877. Appointment and Compensation of Chief Deputy Assessor and Other Deputy Assessors.
4878. Extra Deputies for County Officers.
4879. Qualification of Deputy Sheriffs.
4880. Maximum Number of Deputy Treasurers, Auditors, and County Attorneys.
4881. Deputies to County Attorneys in First-Class Counties.
4882. Deputy Treasurer in Counties of First Class.
4883. Deputy Auditors in Counties of First Class.
4884. Mileage of All Officers.
4885. Mileage and Expense of Sheriff.

4886. Fees for Board of Prisoners.
4887. Fees Must Be Paid Into County Treasury, When.
4888. Statement and Affidavit of Fees Collected.
4889. Treasurer to File Affidavits and Statements.
4890. Payment of Salary Not to Be Made Until Statement and Report Filed.
4891. Board Not to Allow Compensation of Deputies Until Affidavit Filed.
4892. Fees Must Be Paid in Advance.
4893. No Fees to Be Charged State, County, or Public Officer.
4894. Fees for Naturalization.
4895. Officer Must Give Items and Receipt.
4896. Must Keep Statement Posted in His Office.
4897. Officer Must Not Receive Any Other Fees Than Those Named.
4898. May Demand Fees for Publication of Notice.
4899. Meaning of Term "Folio."
4900. Mileage—How Computed.
4901. Same.
4902. Witnesses on Behalf of State or County.
4903. Certificate of Clerk to Witness.
4904. Preceding Sections Construed.
4905. Officers to Complete the Business of Their Offices.
4906. Penalty for False Oath.
4907. Penalty for Failure to Pay Over Fees.
4908. Penalty for Making False Report.
4909. Penalty for Sheriff Falsely Representing His Mileage.
4910. Sheriff Falsely Representing His Expenses for Boarding Prisoners.
4911. Board of County Commissioners to Declare Office Vacant, When.
4912. Fees of Secretary of State and State Auditor.
4913. Fees of Clerk of Supreme Court.
4914. Fees of Notaries Public.
4915. Fees of Commissioner of Deeds.
4916. Fees of Sheriff.
4917. Fees of County Clerk.
4918. Fees of Clerk of District Court.
4919. Fees of Clerk in Probate Proceedings.
4920. Fees of County Treasurer for Tax Deed.
4921. Fees of County Surveyor.
4922. Fees of Coroner.
4923. Fees of Public Administrator.
4924. Fees of Justices of the Peace in Civil Actions.
4925. Fees, When Payable.
4926. Fees of Justices of the Peace in Criminal Actions.
4927. Miscellaneous Fees.
4928. Justices May Retain Fees, When.
4929. Salaries of Justices of the Peace in Certain Townships—Office Hours—Quarters.
4930. Collection and Disposition of Fees in Townships of Ten Thousand and Upwards—Itemized Statement.
4931. Penalty for Violation of Law.
4932. Fees of Constable.
4933. Jurors' Fees.
4934. Same—For What Time Paid.
4935. Compensation of Jurors in Court Not of Record and at Coroner's Inquests.
4936. Witnesses' Fees.
4937. Duties of Clerk as to Jurors.
4938. Duties of Clerk in Reference to Witnesses.
4939. Statement of Clerk to Be Sent to Board of County Commissioners.
4940. Clerk Must Keep a Record of Witnesses in Criminal Actions.
4941. Witnesses in Courts Not of Record.
4942. Witnesses in Criminal Actions or Coroners' Inquests.
4943. In Civil Actions Must Be Paid by Party Subpoenaing.
4944. Witness Must Be Paid in Advance in Civil Actions.
4945. In Criminal Actions Not More Than Six to Be Subpoenaed Without Order of Court.
4946. Interpreters to Be Paid as Witnesses.
4947. Expert Witnesses.
4948. County Superintendent's Traveling Expenses.
4949. County Commissioners to Audit Claims.
4950. Limitation of Chapter.

4864. Fees received by county officers to be paid into the county treasury. The salaries of all county officers are as prescribed in this chapter. No county officer, except as provided in this chapter, must receive for his own use any fees, penalties, or emoluments for any official service rendered by him, but all fees, penalties, and emoluments of every kind must be collected by him for the sole use of the county, and are public moneys belonging to the county, and must be accounted for and paid into the county treasury, as provided in this chapter, and the county treasurer must place all of such fees in the contingent fund of the county.

History: En. Sec. 4591, Pol. C. 1895; re-en. Sec. 3112, Rev. C. 1907.

The fees of the clerk in probate proceedings, exacted under section 4919, must be paid by him to the county treasurer, and they become a part of the public moneys of the county. Hauser v. Miller, 37 Mont. 22, 25, 94 Pac. 197.

Cited or applied as section 4591, Political Code, in Hogan v. Cascade County, 36 Mont. 183, 186, 92 Pac. 529.

4865. What officers to receive fees for their own use. The county surveyor, coroner, public administrator, justice of the peace, and constable may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed in this chapter. All other county officers receive salaries.

History: En. Sec. 4592, Pol. C. 1895; re-en. Sec. 3113, Rev. C. 1907.

The last sentence in this section is unnecessary, unless its purpose is to advise the people that salaried officers are not to have "fees and emoluments" other than salaries from the state or county. Scharrenbroich v. Lewis and Clark County, 33 Mont. 250, 257, 83 Pac. 482.

In this section the term "fees" means a mode of compensation different from salary. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4866. Counties classified. The counties are classified, for the purposes of this chapter, as prescribed in section 4741 of this code.

History: En. Sec. 4593, Pol. C. 1895; re-en. Sec. 3115, Rev. C. 1907.

4867. Salaries of county officers. The county officers are entitled to receive an annual compensation or salary for services according to the following classification, to-wit:

First Class.

Treasurer, three thousand five hundred dollars;
Sheriff, four thousand five hundred dollars;
Assessor, three thousand five hundred dollars;
County clerk, three thousand five hundred dollars;
County auditor, three thousand dollars;
Clerk of the district court, three thousand five hundred dollars;
County attorney, three thousand five hundred dollars.

Second Class.

Treasurer, three thousand dollars;
Sheriff, three thousand five hundred dollars;
Assessor, three thousand dollars;
County clerk, three thousand dollars;
County auditor, two thousand five hundred dollars;
Clerk of the district court, three thousand dollars;
County attorney, three thousand dollars.

Third Class.

Treasurer, three thousand dollars;
Sheriff, three thousand five hundred dollars;

Assessor, two thousand seven hundred fifty dollars;
Auditor, two thousand two hundred fifty dollars;
County clerk, three thousand dollars;
Clerk of the district court, three thousand dollars;
County attorney, three thousand dollars.

Fourth Class.

Treasurer, two thousand five hundred dollars;
Sheriff, two thousand seven hundred fifty dollars;
Assessor, twenty-five hundred dollars;
Auditor, two thousand two hundred fifty dollars;
County clerk, two thousand five hundred dollars;
Clerk of the district court, two thousand five hundred dollars;
County attorney, two thousand five hundred dollars.

Fifth Class.

Treasurer, two thousand five hundred dollars;
Sheriff, two thousand seven hundred fifty dollars;
Assessor, two thousand two hundred fifty dollars;
Auditor, one thousand seven hundred fifty dollars;
County clerk, two thousand five hundred dollars;
Clerk of the district court, two thousand five hundred dollars;
County attorney, two thousand dollars.

Sixth Class.

Treasurer, two thousand dollars;
Sheriff, two thousand two hundred fifty dollars;
Assessor, one thousand eight hundred dollars;
County clerk, two thousand dollars;
Clerk of the district court, one thousand eight hundred dollars;
County attorney, one thousand eight hundred dollars.

Seventh Class.

Treasurer, one thousand eight hundred dollars;
Sheriff, two thousand dollars;
Assessor, fifteen hundred dollars;
County clerk, one thousand eight hundred dollars;
Clerk of the district court, one thousand eight hundred dollars;
County attorney, one thousand five hundred dollars.

History: En. Sec. 3116, Rev. C. 1907; amd. Sec. 1, Ch. 221, L. 1919; amd. Sec. 1, Ch. 7, Ex. L. 1919; amd. Sec. 1, Ch. 151, L. 1921.

Cited or applied as section 4594, Political Code, in Jobb v. County of Meagher, 20 Mont. 424, 430, 51 Pac. 1034; before amendment, in Penwell v. Board of County Commrs. of Lewis and Clark County, 23 Mont. 351, 356, 59 Pac. 167; as section 3116, Revised Codes, before amendment, in Peterson v. City of Butte, 44 Mont. 401, 410, 120 Pac. 483, Ann. Cas. 1913B, 538; State ex rel. McGrade v. District Court, 52 Mont. 371, 375, 157 Pac. 1157.

4868. Salaries, how paid. The salaries must be paid quarterly out of the contingent fund of the county upon the order of the board of county commissioners, except the salary of the county attorney, which is payable quarterly, one-half from the contingent fund of the county upon the order of the board of county commissioners, and the other one-half from the state treasury upon the warrant of the state auditor, upon the presentation of a certificate from the board of county commissioners stating the amount for which the same is to be drawn.

History: En. Sec. 4595, Pol. C. 1895; re-en. Sec. 3117, Rev. C. 1907.

4869. Salaries of county superintendents in counties of the first, second, and third classes. In all counties of the first, second, and third classes, the county superintendents of schools shall be paid salaries of twenty-one hundred dollars per annum.

History: En. Sec. 1, Ch. 219, L. 1919.

4870. In counties of the fourth, fifth, and sixth classes. In all counties of the fourth, fifth, and sixth classes, the county superintendents of schools shall be paid salaries of eighteen hundred dollars per annum.

History: En. Sec. 2, Ch. 219, L. 1919.

4871. In counties of the seventh and eighth classes. In all counties of the seventh and eighth classes, the county superintendents of schools shall be paid salaries of fifteen hundred dollars per annum.

History: En. Sec. 3, Ch. 219, L. 1919.

4872. Appointment of deputies—Payment of salaries. The number of deputies allowed to county officers and their compensation must not exceed the maximum limits prescribed in this chapter. Salaries must be allowed and paid monthly upon the order of the board of county commissioners, and paid out of the contingent fund.

History: En. Sec. 4603, Pol. C. 1895; re-en. Sec. 3136, Rev. C. 1907.

Note.—A portion of the above section being no longer applicable has been omitted from this code.

The board of county commissioners has the power to determine, within the maximum limits prescribed by law, the number and compensation of deputies allowed by the sheriff. Jobb v. County of Meagher, 20 Mont. 424, 431, 432, 51 Pac. 1034; Hogan v. Cascade County, 36 Mont. 183, 185, 92 Pac. 529.

Cited or applied as section 4603, Political Code, in Jobb v. County of Meagher, 20 Mont. 424, 430, 51 Pac. 1034; Penwell v. Board of County Commrs. of Lewis and Clark County, 23 Mont. 351, 354, 59 Pac. 167.

4873. Compensation allowed deputies and assistants. The annual compensation allowed to any deputy or assistant is as follows:

Counties of the First Class.

Sheriff.

One under-sheriff, at a rate of not less than twenty-six hundred dollars.

One chief deputy and clerk, at a rate of not less than two thousand dollars.

All other deputies, at a rate of not less than eighteen hundred dollars.

Clerk and Recorder.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

All other deputies, at a rate of not less than sixteen hundred fifty dollars.

Clerk District Court.

One chief deputy, at a rate of not less than nineteen hundred and fifty dollars.

Each department deputy clerk, at a rate of not less than eighteen hundred dollars.

All other deputies, at a rate of not less than sixteen hundred fifty dollars.

Treasurer.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, at a rate of not less than sixteen hundred fifty dollars.

Assessors.

One chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, between first Monday of March and August of each year, at a rate of not less than one hundred and fifty dollars per month.

County Attorney.

Chief deputy, at a rate of not less than twenty-four hundred dollars.

Other deputies, at a rate of not less than eighteen hundred dollars.

Auditor.

One chief deputy, at a rate of not less than eighteen hundred dollars.

Other deputies, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Second and Third Class.

County Attorney.

Chief deputy, at a rate of not less than twenty-one hundred dollars.

Other deputies, at a rate of not less than eighteen hundred dollars.

Under-sheriff, at a rate of not less than nineteen hundred fifty dollars.

Each deputy sheriff, at a rate of not less than eighteen hundred dollars.

Chief deputy clerk of the district court, at a rate of not less than nineteen hundred fifty dollars.

Other deputy clerks of the district court, at a rate of not less than eighteen hundred dollars.

Chief deputy treasurer, at a rate of not less than nineteen hundred fifty dollars.

Each deputy treasurer, at a rate of not less than sixteen hundred fifty dollars.

Chief deputy clerk and recorder, at a rate of not less than nineteen hundred fifty dollars.

Each deputy clerk and recorder, at a rate of not less than sixteen hundred fifty dollars.

Chief deputy assessor, at a rate of not less than nineteen hundred fifty dollars.

Each deputy assessor or assistant assessor, at a rate of not less than sixteen hundred fifty dollars.

Each deputy auditor, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Fourth and Fifth Classes.

Under-sheriff, at a rate of not less than nineteen hundred fifty dollars.

Each deputy sheriff and jailor, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks and recorder, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks of the district court, at a rate of not less than sixteen hundred fifty dollars.

Deputy treasurer and deputy assessor allowed by law, at a rate of not less than sixteen hundred fifty dollars.

Counties of the Sixth and Seventh Classes.

Under-sheriff, at a rate of not less than eighteen hundred dollars.

Each deputy sheriff, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks and recorder, at a rate of not less than sixteen hundred fifty dollars.

Deputy clerks of the district court, at a rate of not less than sixteen hundred fifty dollars.

Each deputy treasurer and deputy assessor or assistant assessor allowed by law, at a rate of not less than sixteen hundred fifty dollars.

History: En. Sec. 3118, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1909; amd. Sec. 1, Ch. 132, L. 1911; amd. Sec. 1, Ch. 222, L. 1919.

Cited or applied as section 4596, Political Code, in Jobb v. County of Meagher, 20 Mont. 424, 430, 51 Pac. 1034; before amendment, in Penwell v. Board of County Commrs. of Lewis and Clark County, 23 Mont. 351, 352, 59 Pac. 167; Hogan v. Cascade County, 36 Mont. 183, 186, 92 Pac. 529.

4874. Authority county commissioners to fix compensation and number of deputy county officers. The boards of county commissioners in the several counties of the state shall have the power to fix the compensation allowed any deputy or assistant under this act; where any deputy or assistant is employed for a period of less than one year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not in any event be to exceed the rates fixed by this act for similar deputies or assistants; said boards of county commissioners shall likewise have the power to fix and determine the number of all deputy county officers, provided, however, that the number of said deputies shall not be greater than the maximum fixed by law.

History: En. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921.

Note.—See Jobb v. County of Meagher, 20 Mont. 424, for history of earlier acts.

While the board of county commissioners has no power to decrease the compensation of regular deputies of county officers fixed by section 4873, it has discretion, under this section, to fix the compensation of extra deputies appointed for temporary service, at any rate it may deem expedient, provided it does not exceed the rate paid the regular deputies. Modesitt v. Flathead County, 57 Mont. 209, 187 Pac. 899.

4875. Number of deputies allowed. The whole number of deputies allowed the county clerk in counties of the first and second classes must not exceed six; in counties of the third class, three; in counties of the fourth and fifth classes, two; in counties of the sixth and seventh classes, one. The whole number of deputies allowed the clerk of the district court in counties of the first and second classes must not exceed one chief deputy and deputies to the number of six; in counties of the third and fourth classes having more than one district judge, four; in counties of the third and fourth classes having one district judge, two; in counties of the fifth, sixth, seventh and eighth classes, one. The whole number of deputies allowed the sheriff is one under-sheriff, and in addition not to exceed the following number of deputies: In counties of the first and second classes, six; in counties of the third and fourth classes, two; in counties of the fifth, sixth, seventh and eighth classes, one. The sheriff in counties of the first, second and third classes may appoint two deputies, and in the fourth, fifth, sixth, seventh and eighth classes, one deputy who shall act as jailor and receive the same salary as other deputy sheriffs.

History: En. Sec. 1, Ch. 75, L. 1905; Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909, and Sec. 1, Ch. 119, L. 1909.

Note.—The foregoing section has been changed in this code to conform to the construction placed by the supreme court on the two amendatory acts of 1909 in the case of Hay v. Hindon, 40 Mont. 353, 106 Pac. 362.

The board of county commissioners has the power to determine, within the maxi-

mum limits prescribed by law, the number and compensation of deputies allowed by the sheriff. Jobb v. County of Meagher, 20 Mont. 424, 431, 432, 51 Pac. 1034; Hogan v. Cascade County, 36 Mont. 183, 185, 92 Pac. 529.

This section, prior to its amendment, was held not to create a new class of deputies, or lodge in the sheriff exclusively the power of appointment without the consent or approval of the board of county commissioners, but simply to amount to an increase of the maximum number he may appoint, subject to the approval of the board. Hogan v. Cascade County, 36 Mont. 183, 187, 92 Pac. 529.

Cited or applied as section 4597, Political Code, before amendment, in Jobb v. County of Meagher, 20 Mont. 424, 430, 51 Pac. 1034.

4876. Designation of chief deputy by county clerk. The county clerk in counties of the first class may designate one of his deputy clerks as chief deputy clerk.

History: En. Sec. 1, Ch. 53, L. 1909. See note to next section.

4877. Appointment and compensation of chief deputy assessor—Other deputy assessors. The assessor in counties of the first class may appoint one chief deputy assessor, in lieu of the regular deputy as now provided by law; and such assessor may also appoint such other deputy assessors for the months of March, April, May, June, July, and August as now provided by law.

History: En. Sec. 2, Ch. 53, L. 1909.

Note.—Reference to salary is omitted from the above section to conform to section 4873.

4878. Extra deputies for county officers. The board of county commissioners in each county is hereby authorized to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board of county commissioners, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office, and to fix the salary of such deputies appointed in excess of the maximum allowed by law; provided, such salary shall not exceed the maximum salary of deputies provided by law.

History: En. Sec. 1, Ch. 178, L. 1907; Sec. 3123, Rev. C. 1907.

4879. Qualification of deputy sheriffs. No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six months prior to the date of said appointment; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907.

4880. Maximum number of deputy treasurer, auditors and county attorneys. The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of the second, third and fourth classes, one; in counties of the fifth, sixth, seventh and eighth classes, no deputies must be allowed; provided, that the board of county commissioners may allow such deputies as may be necessary during the months of November and December of each year. In counties of the first, second and third classes, assessors may be allowed one deputy,

and during the months of March, April, May, June, July and August, not to exceed two additional deputies at a salary not exceeding one hundred dollars per month; in counties of all other classes assessors may be allowed one deputy during the months of March, April, May, June and July, at a salary not exceeding one hundred dollars per month. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907.

Note.—The above section is changed in part by sections 4873, 4874, 4877 and 4881 of this code.

Cited or applied as section 4602, Political Code, before amendment, in Jobb v. County of Meagher, 20 Mont. 424, 435, 51 Pac. 1034; Hogan v. Cascade County, 36 Mont. 183, 187, 92 Pac. 529.

4881. Deputies to county attorneys in first class counties. County attorneys in all counties of the first class shall be allowed to appoint the number of five deputies, one of which shall be the chief deputy.

History: En. Sec. 1, Ch. 8, L. 1915.

4882. Deputy treasurer in counties of first class. In counties of the first class the treasurer thereof may appoint one chief deputy, at a salary of two thousand dollars per annum; one deputy at a salary of fifteen hundred dollars per annum, and one deputy at a salary of twelve hundred dollars per annum; and said treasurer may also appoint for the months of October, November, December and January two additional deputies at a salary at the rate of one hundred dollars per month.

History: En. Sec. 1, Ch. 97, L. 1905; re-en. Sec. 3129, Rev. C. 1907.

Note.—The foregoing section has been changed in part by sections 4873 and 4874 of this code.

4883. Deputy auditors in counties of first class. In counties of the first class county auditors may appoint not to exceed two deputies.

History: En. Sec. 1, Ch. 88, L. 1905; re-en. Sec. 3130, Rev. C. 1907.

Note.—Part of above section relating to salary is omitted to conform to sections 4873 and 4874.

4884. Mileage of all officers. Members of the legislative assembly, state officers, county officers, township officers, jurors, witnesses, and other persons who may be entitled to mileage, shall be entitled to collect mileage at the rate of ten cents per mile for the distance actually traveled, and no more.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907.

State ex rel. McGrade v. District Court, 52 Mont. 371, 376, 157 Pac. 1157.

Under the law as it stood in 1898, a county surveyor was not entitled to mileage. Wade v. Lewis and Clark County, 24 Mont. 335, 337, 61 Pac. 879. See also

Meaning of "necessary travel" or "necessarily traveled" as used with respect to mileage allowance of public officers, see note in Ann. Cas. 1918D, 934.

4885. Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or at the state reform school, or insane persons at the state insane asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in

going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state board of examiners or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses. While in the discharge of his duties, both civil and criminal, except as hereinbefore provided, the sheriff shall receive ten cents per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive ten cents additional per mile, the same to be in full for transporting and dieting of such person during such transportation. The county shall not be liable for nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for team or horse hire, or any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907.

This section was held to be constitutional when applied to officers elected prior to its passage. Scharrenbroich v. Lewis and Clark County, 33 Mont. 250, 256, 260, 83 Pac. 482.

A sheriff, constable, or other peace officer, traveling in the discharge of his duties, is entitled to charge only for each mile "actually and necessarily" traveled; and a chief of police is guilty of misconduct in office in claiming and collecting mileage fees for services performed by another officer, he paying to the latter his actual traveling expenses and retaining for himself the balance of the total amount received. State ex rel. Wynne v. Examining and Trial Board, 43 Mont. 389, 399, 117 Pac. 77, Ann. Cas. 1912C, 143.

The term "fees," as used in this section, connotes mileage payable to the sheriff by the county in certain cases. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4886. Fees for board of prisoners. The fees allowed sheriffs of the several counties of the state for the board of prisoners confined in jail under their charge shall be at the rate of seventy-five cents per day for each of said prisoners, when the number of prisoners shall be twenty or less each day; and when the number of the prisoners per day shall exceed twenty and be less than fifty, then at the rate of sixty cents per day for each of said prisoners in excess of twenty per day and less than fifty per day; and when the number of the prisoners per day shall exceed fifty, then at the rate of fifty cents per day for each of said prisoners in excess of fifty per day.

History: En. Sec. 4605, Pol. C. 1895; re-en. Sec. 3138, Rev. C. 1907; amd. Sec. 1, Ch. 81, L. 1919.

The term "fees," as used in this section, designates the recompense payable by the county for boarding prisoners. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4887. Fees must be paid into county treasury, when. All salaried officers of the several counties must charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, all the fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in section 9811 of the Code of Civil Procedure; provided, however, that nothing in this section shall be held to apply to the compensation received by the sheriff as mileage

while in the performance of official duties, or for the board of prisoners or other persons while in his custody.

History: En. Sec. 4606, Pol. C. 1895; re-en. Sec. 3139, Rev. C. 1907.

The term "fees," as used in this section, imports specific charges to be collected from private individuals for particular services. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4888. Statement and affidavit of fees collected. The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer on the first Monday of the following month, and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making such payment. The affidavit must be in the following form:

State of Montana, }
County of ..... } ss.

I, ..., of the county of ....., do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants, for the month of ....., A. D. 19..., and that said fee book shows the full amount received or chargeable in said month, and since my last monthly payment; and neither myself, nor, to my knowledge or belief, any of my deputies or assistants, have rendered any official services, except for the county or state, which is not fully set out in said fee book; and that the foregoing statement thereof is a full, true, and correct copy thereof. Subscribed and sworn to before me this ..... day of ....., 19....

History: En. Sec. 4607, Pol. S. 1895; re-en. Sec. 3140, Rev. C. 1907.

The term "fees," as used in this section, imports specific charges to be collected from private individuals for particular services. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4889. Treasurer to file affidavits and statements. The treasurer must file and preserve in his office said statements and affidavits, and must issue to the officer one original and one duplicate receipt therefor, and the officer receiving said receipts must preserve one in his office and file the duplicate with the county clerk, whereupon the clerk must charge the treasurer with the amount shown by the receipt.

History: En. Sec. 4608, Pol. C. 1895; re-en. Sec. 3141, Rev. C. 1907.

4890. Payment of salary not to be made until statement and report filed. The board of county commissioners must not order the payment of the salary of any such officer until he has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that he has made the statement and settlement for that month, required in this chapter, and filed the report prescribed in section 4745 of this code.

History: En. Sec. 4609, Pol. C. 1895; re-en. Sec. 3142, Rev. C. 1907.

4891. Board not to allow compensation of deputies until affidavit filed. The board must not order the payment of the compensation of any deputy until he has signed and filed with the county clerk the following affidavit:

State of Montana, }
County of ..... } ss.

I do swear that I have rendered services as deputy ..... for the month of ....., 19..., and that I am entitled to receive the full sum of my compensation for the same for my own use and benefit, and that I have not paid, deposited, or assigned, nor contracted to pay, deposit, or assign any part of such compensation for the use of any other person, nor in any way, directly or indirectly, paid or given, nor contracted to pay or give, any reward or compensation for my appointment to office, or the emoluments thereof, to my principal or to any other person.

.....

Subscribed and sworn to before me this ..... day of ....., 19...

.....

History: En. Sec. 4610, Pol. C. 1895; re-en. Sec. 3143, Rev. C. 1907.

4892. Fees must be paid in advance. The officers mentioned in this chapter must not, in any case, perform any official services unless the fees prescribed for such services are paid in advance, and on such payment the officers must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

History: En. Sec. 4611, Pol. C. 1895; re-en. Sec. 3144, Rev. C. 1907.

The term "fees," as used in this section imports specific charges to be collected from private individuals for particular services. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

The provisions of this section are controlled by section 4809, whereby the county clerk may, but is not required to, demand prepayment of filing or other fees. Minneapolis Steel & Machinery Co. v. Thomas, 54 Mont. 132, 135, 168 Pac. 40.

4893. No fees to be charged state, county, or public officer. No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees.

History: En. Sec. 4612, Pol. C. 1895; re-en. Sec. 3145, Rev. C. 1907.

The term "fees," as used in this section, imports specific charges to be collected from private individuals for particular services. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4894. Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, a fee of two dollars and fifty cents; and no other fee shall be charged for naturalization papers, or for the record thereof.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907.

4895. Officer must give items and receipt. Every officer, upon receiving any fees for official duty or service, may be required by the person paying the same to make out in writing, and deliver to such person, a particular account of such fees, specifying for what they accrued, respectively, and must receipt the same; and if he refuse or neglect so to do when required, he is liable to the party paying the same in treble the amount so paid.

History: En. Sec. 4614, Pol. C. 1895; re-en. Sec. 3147, Rev. C. 1907.

The term "fees," as used in this section, imports specific charges to be collected from private individuals for particular services. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4896. Must keep statement posted in this office. It is the duty of each officer entitled to collect fees to keep posted in his office a plain and legible statement of the fees allowed by law; a failure so to do subjects the officer to a fine of one hundred dollars and costs, to be recovered by the county attorney in the name of the state.

History: En. Sec. 4615, Pol. C. 1895; re-en. Sec. 3148, Rev. C. 1907.

The word "fees," as used in this section, imports specific charges to be collected from private individuals for particular services. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4897. Officer must not receive any other fees than those named. The officers above named must receive no other fees for any services performed by them in any action or proceeding, or for the performance of any service for which fees are allowed; and in case of any violation of the provisions of this chapter, the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amount as damages, besides costs of suit.

History: En. Sec. 4616, Pol. C. 1895; re-en. Sec. 3149, Rev. C. 1907.

A civil suit to recover illegal fees, which had been demanded and received under color of office, can be brought against an officer who has not been convicted in a criminal action. Ming v. Truett, 1 Mont. 322, 327.

The term "fees," as used in this section, imports specific charges to be collected from private individuals for particular services. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

Exaction of unauthorized fee by public officer as extortion, see notes in Ann. Cas. 1913D, 453; 40 L. R. A. (N. S.) 802.

4898. May demand fees for publication of notice. When, by law, any publication is required to be made by an officer of any suit, process, notice, order, or other paper, the costs of the same must be first tendered by the party, if demanded, for whom such order of publication was granted, before the officer is compelled to make such publication.

History: En. Sec. 4617, Pol. C. 1895; re-en. Sec. 3150, Rev. C. 1907.

4899. Meaning of term "folio." The term "folio," when used as a measure for computing fees, means one hundred words, counting every two figures, necessarily used, as a word. Any portion of a folio, when in the whole paper there is not a complete folio, and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

History: En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907.

The term "fees," as used in this section, refers to costs of publications. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4900. Mileage—How computed. When any sheriff, constable, or coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must be allowed for less than one mile actually traveled.

History: En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907.

4901. Same. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person, under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919.

4902. Witnesses on behalf of state or county. The attorney-general or any county attorney is authorized to cause subpoenas to be issued, and compel the attendance of witnesses on behalf of the state or county, without paying or tendering fees in advance to either officers or witnesses; and any witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against, and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.

History: En. Sec. 4620, Pol. C. 1895; re-en. Sec. 3153, Rev. C. 1907.

Cited or applied as section 3153, Revised Codes, in Griggs v. Glass, 58 Mont. 476, 479, 193 Pac. 564.

4903. Certificate of clerk to witness. The clerk of any court before which any witness shall have attended on behalf of the state or county, in any civil action, must give to such witness a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated from the state or county treasurer.

History: En. Sec. 4621, Pol. C. 1895; re-en. Sec. 3154, Rev. C. 1907.

Related section: 4938.

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. County of Silver Bow v. Davies, 40 Mont. 418, 425, 107 Pac. 81.

The rule applicable to jurors' certificates applies also to witnesses' certificates; the clerk must observe the same formalities in issuing them. County of Silver Bow v. Davies, 40 Mont. 418, 426, 107 Pac. 81.

Cited or applied as section 3154, Revised Codes, in Griggs v. Glass, 58 Mont. 476, 480, 193 Pac. 564.

4904. Preceding sections construed. The provisions of the two preceding sections of this chapter shall extend to all actions and proceedings brought in the name of the attorney-general, or any other person or persons, for the benefit of the state or county.

History: En. Sec. 4622, Pol. C. 1895; re-en. Sec. 3155, Rev. C. 1907.

Cited or applied as section 3155, Revised Codes, in Griggs v. Glass, 58 Mont. 476, 480, 193 Pac. 564.

4905. Officers to complete the business of their offices. It is the duty of all officers to complete the business of their respective offices to the time of the expiration of their respective terms; and in case any officer, at the close of his term, leaves to his successor official labor to be performed, for which he has received compensation, or which it was his duty to perform, he is liable to pay to his successor the full value of such services, which may be recovered in any court of competent jurisdiction, upon action brought against him on his official bond.

History: En. Sec. 4623, Pol. C. 1895; re-en. Sec. 3156, Rev. C. 1907.

4906. Penalty for false oath. Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in section 10878 of the Penal Code.

History: En. Sec. 4624, Pol. C. 1895; re-en. Sec. 3157, Rev. C. 1907.

4907. Penalty for failure to pay over fees. Every officer who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is punishable as provided in section 11319 of the Penal Code.

History: En. Sec. 4625, Pol. C. 1895; re-en. Sec. 3158, Rev. C. 1907.

4908. Penalty for making false report. Every officer who makes a false report of the fees received by him is guilty of a felony and punishable as provided in section 10724 of the Penal Code.

History: En. Sec. 4626, Pol. C. 1895; re-en. Sec. 3159, Rev. C. 1907.

4909. Penalty for sheriff falsely representing his mileage. Every sheriff who falsely represents to the board of county commissioners or board of examiners his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty, is punishable as provided in sections 10724 and 11334 of the Penal Code.

History: En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907.

4910. Sheriff falsely representing his expenses for boarding prisoners. Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, or for furnishing food and supplies therefor, or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his custody, and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, is punishable as provided in sections 10724 and 11334 of the Penal Code.

History: En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907.

4911. Board of county commissioners to declare office vacant, when. The board of county commissioners, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon proof thereof, must declare his office vacant and appoint his successor.

History: En. Sec. 4629, Pol. C. 1895; re-en. Sec. 3162, Rev. C. 1907.
Related sections: 11588, 11702.

4912. Fees of secretary of state and state auditor. The fees of public officers in the state are as follows, which must be charged and collected for the use of the state and counties, respectively:

Secretary of State.

The fees of the secretary of state are specified in section 145 of this code.

State Auditor.

For filing and examination of the first application of any insurance company doing business as prescribed in chapter I, title IV, part IV, division I, of the Civil Code, and issuing the license thereon, fifty dollars. (See note.)

For filing each annual statement, as provided in the foregoing chapter, twenty-five dollars.

For each certificate of authority provided in said chapter, two dollars.

For license fee for assessment life insurance companies, as prescribed in section 6303 of the Civil Code, one hundred dollars.

For filing annual statement, as prescribed in section 6304 of the Civil Code, twenty-five dollars.

For making the certificate mentioned in section 6301 of the Civil Code, in addition to the necessary expenses incurred, ten dollars.

For copy of every paper filed or recorded in his office, twenty cents per folio.

For certificate and seal, fifty cents.

For filing any papers not otherwise provided for, twenty-five cents.

History: En. Sec. 4630, Pol. C. 1895; re-en. Sec. 3163, Rev. C. 1907.

Note.—The reference above given is to the Political Code of 1895, the corresponding sections of this code being 6128 to 6159.

4913. Fees of clerk of supreme court. The fees of the clerk of the supreme court are specified in section 372 of this code, and salary in section 375 of this code.

History: En. Sec. 4631, Pol. C. 1895; re-en. Sec. 3164, Rev. C. 1907.

4914. Fees of notaries public. For drawing, copying, and recording each and every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, twenty-five cents.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, unless otherwise prescribed, twenty cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, one dollar.

For each additional signature, fifty cents.

For administering an oath or affirmation, twenty-five cents.

For certifying an affidavit, with or without seal, including oath, fifty cents.

Provided, the maximum fee that can be computed or charged for drawing, copying, and recording a protest, and for drawing and serving the notices of non-payment or non-acceptance, shall be two dollars and fifty cents.

History: En. Sec. 1, Ch. 44, L. 1907; Sec. 3165, Rev. C. 1907.

A notary public who, in taking depositions, made use of a stenographer employed for that purpose by the party at whose instance they were being taken, and who merely swore the witnesses and attached his certificate to each deposition, was entitled only to the fees prescribed by statute for attaching his certificate and administering the oaths, and not to the additional sum of twenty cents per folio for transcribing the testimony allowed by this section. Coleman v. Northern Pacific Ry. Co., 41 Mont. 123, 125, 108 Pac. 582.

4915. Fees of commissioner of deeds. The fees of commissioner of deeds are the same as those prescribed for a notary public.

History: En. Sec. 4633, Pol. C. 1895; re-en. Sec. 3166, Rev. C. 1907.

4916. Fees of sheriff. For service of summons and complaint on each defendant, besides mileage, one dollar.

For levying and serving each writ of attachment or execution on real or personal property, besides mileage, one dollar.

For service of attachment on the body or order of arrest on each defendant, besides mileage, one dollar.

For service of affidavit, order, and undertaking in claim and delivery, besides mileage, one dollar.

For serving subpoena for each witness summoned, besides mileage, thirty cents.

For serving a writ of possession or restitution, two dollars.

For trial of the right of property or damages, including all services except mileage, three dollars.

For taking bond or undertaking in any case authorized by law, one dollar.

For serving every notice, rule, or order, besides mileage, on each person, one dollar.

For copy of any writ, process, or other paper, when demanded or required by law, for each folio, twenty cents.

For advertising any property for sale on execution, or under any judgment or order of sale, exclusive of the cost of publication, one dollar.

For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, such sum as the court or judge may order, not to exceed the actual expenses incurred, and no keeper must receive to exceed three dollars per day, and no keeper must be employed without an order of court, nor must be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property must be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

For each mile actually traveled in serving every writ, process, order, notice, or other paper, going and coming, ten cents.

But no mileage must be allowed on an attachment, order of arrest, order for the delivery of personal property, or any other order, notice, or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons.

When two papers are served on the same person at the same time, but one mileage must be charged.

In the service of subpoenas, but one mileage must be charged when the persons named in the subpoena live in the same place or in the same direction, but mileage may be charged for the longest distance actually traveled.

Any writ or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place. If papers are delivered for service away from the county seat, a copy or copies thereof must be furnished for service.

For actual expenses in conveying a person, when under arrest, before a magistrate or to jail, or on habeas corpus, which must be allowed by the board of county commissioners.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919.

The term "fees," as used in this section, refers to the sheriff's mileage as well as his other charges. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

Cited or applied as section 4634, Political Code, before amendment, in Jurgens v. Hauser, 19 Mont. 184, 185, 47 Pac. 809; Wade v. Lewis and Clark County, 24 Mont. 335, 339, 61 Pac. 879; as section 3167, Revised Codes, in Daly v. Kelley, 57 Mont. 306, 187 Pac. 1022.

4917. Fees of county clerk. For filing and recording each instrument of writing allowed by law to be recorded, except as hereinafter provided, for first folio, thirty cents.

For each subsequent folio or fraction thereof, fifteen cents.

For each entry in index, ten cents.

For certificate that such instrument has been filed and recorded with seal affixed, fifty cents.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, fifteen cents.

For abstract of title, when required made from original records and files, for each conveyance, incumbrance, or other instrument affecting title, fifty cents.

For a copy of any record or paper, for each folio, fifteen cents; provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison and certification of such copy, other than the fee of fifty cents for his certificate and seal.

For filing and recording each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including indexes, two dollars.

For filing and indexing each chattel mortgage, a writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, fifty cents.

For recording and platting each town site or map, for each lot up to and including one hundred, twenty-five cents.

For each additional lot in excess of one hundred, five cents.

For recording the field notes of survey of any town site, per folio, twenty-five cents.

For filing, recording, and indexing each affidavit of annual labor on mining claim, for each claim named therein, one dollar.

For filing and indexing each certificate of incorporation or annual statement of any corporation, one dollar.

For each entry of discharge or satisfaction of mortgage, lien, or other instrument on the margin of record thereof, or upon the original instrument, and noting same in index, twenty-five cents.

For administering an oath with certificate and seal, except in application for pension, or in pension certificates, for which no charge shall be made, fifty cents.

For taking and certifying an acknowledgment, with seal affixed for each signature thereto, fifty cents.

For filing and indexing each affidavit for renewal of chattel mortgage, fifty cents.

For filing and indexing each affidavit of butcher of brands of cattle slaughtered, fifty cents.

For recording and indexing transcripts in estray and lost property cases, one dollar.

For recording and indexing any land office register's final certificate, fifty cents.

For recording and indexing a real estate mortgage, short form, one dollar and fifty cents.

For recording and indexing a real estate mortgage, long form, two dollars; except when such mortgage exceeds ten folios, in which case, for every folio over ten, an additional twenty cents.

For recording and indexing quitclaim deed, short form, one dollar.

For recording and indexing warranty deed, short form, one dollar and fifty cents.

For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911.

4918. Fees of clerk of district court. At the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of five dollars, and for filing a complaint in intervention the clerk must collect from the intervenor the sum of five dollars;

And the defendant, on his appearance, must pay the sum of two dollars and fifty cents (which includes all the fees to be paid up to the entry of judgment).

On the entry of judgment in favor of plaintiff, he must pay the additional sum of two dollars and fifty cents;

And if in favor of defendant, the defendant must pay the sum of five dollars (which includes all the clerk's costs for all services rendered in any action or proceeding, except issuing execution or order of sale, and the fees for transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment).

For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of five dollars (which includes all costs up to the entry of judgment).

For entry of judgment in favor of party appealing, he must pay the sum of two dollars and fifty cents.

For entry of judgment in favor of the other party, or respondent, he must pay the sum of five dollars (which includes all the clerk's costs for all services rendered on such appeal).

For certifying transcripts on appeal, where the same are not prepared by him, five dollars, and in addition thereto, five cents per page for each page in excess of two hundred pages.

And where he prepares such transcript, in addition thereto, per folio, fifteen cents.

For preparing copies of papers in his office, per folio, fifteen cents, when certified to, in addition thereto, fifty cents for certificate and seal.

For certificate with seal, fifty cents.

For oath and jurat, with seal, fifty cents.

For administering oath, twenty-five cents.

For taking depositions, per folio, twenty cents.

For filing and docketing transcript of judgment from all other courts and issuing execution thereon, two dollars and fifty cents.

For issuing execution and all services connected therewith, one dollar.

For issuing execution or order of sale on foreclosure of liens, one dollar.

And in addition per folio, twenty cents.

For searching records of files for each year, except for suitors or their attorneys, twenty-five cents.

For transmission of records or files or transfer of cases to other courts, two dollars and fifty cents.

For filing and entering papers on transfer from other courts, five dollars.

For making, acknowledging, and procuring the signature of judge to deed of lot in town site, four dollars.

For issuing a marriage license, two dollars.

History: En. Sec. 4636, Pol. C. 1895; re-en. Sec. 3169, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1917.

As this section makes no provision for the collection of a fee for making a transcript in special proceedings, such a fee is not a necessary disbursement, and the clerk is not authorized to collect the same. State ex rel. Baker v. Second Judicial District Court, 24 Mont. 425, 427, 62 Pac. 688; State ex rel. Healy v. District Court, 26 Mont. 224, 226, 68 Pac. 470.

Transcripts on appeal may be prepared by the parties or their counsel, but the authentication must be made by the clerk, after comparison of them with the original files, by his certificate under the seal of the district court. Shadville v. Barker, 26 Mont. 45, 49, 66 Pac. 496, 761.

Cited and applied as section 4636, Political Code, before amendment, in Montana etc. Co. v. Boston etc. Min. Co., 33 Mont. 400, 403, 84 Pac. 706.

4919. Fees of clerk in probate proceedings. At the time of filing the petition for letters testamentary, of administration, or guardianship, the clerk must collect from the petitioner the sum of five dollars.

For admitting a will to probate and all services connected therewith, in addition to the above, there must be paid to the clerk the sum of five dollars.

If a will is contested, the contestant must pay to the clerk, on filing his grounds of opposition, the sum of five dollars.

And on the entry of judgment thereon, the prevailing party must pay the sum of two dollars and fifty cents.

On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of five dollars.

On entry of judgment thereon, the prevailing party must pay the sum of two dollars and fifty cents.

History: En. Sec. 4637, Pol. C. 1895; re-en. Sec. 3170, Rev. C. 1907.

Note.—So much of the above section as was declared unconstitutional has been omitted from this code. See Hauser v. Miller, 37 Mont. 22, 94 Pac. 197.

Cited or applied as section 4637, Political Code, in Hauser v. Miller, 37 Mont. 22, 23, 94 Pac. 197.

4920. Fees of county treasurer for tax deed. The county treasurer shall receive, for making and acknowledging a deed for property sold for delinquent taxes, the sum of three dollars.

History: En. Sec. 1, p. 49, L. 1899; re-en. Sec. 3171, Rev. C. 1907.

4921. Fees of county surveyor. The county surveyor is entitled to receive and collect for his own use the following fees:

For services in making a survey required by any court, or upon the application of any person, the sum of seven dollars per day, to be paid by the person making the application, and if made for the county by

order of the board of county commissioners, to be paid out of the contingent fund.

For copies and certificates, per folio, twenty cents.

For copy of any plat of survey, two dollars.

Expenses of chairmen and markers, if furnished by surveyor, not to exceed per day, three dollars (or as agreed upon).

History: En. Sec. 4639, Pol. C. 1895; re-en. Sec. 3172, Rev. C. 1907.

The term "fees," as used in this section, refers to the per diem of the county surveyor, to his charges for copies, etc., and to his expenses for chairmen and markers, whether chargeable to the county or to private individuals. State v. Story, 53 Mont., 573, 578, 165 Pac. 748.

Cited or applied as section 4639, Political Code, in Wight v. Board of Commrs. of Meagher County, 16 Mont. 479, 483, 41 Pac. 271; State ex rel. Donyes v. Board of County Commrs. of Granite County, 23 Mont. 250, 253, 58 Pac. 439; as section 3172, Revised Codes, in State ex rel. Payne v. District Court, 53 Mont. 350, 353, 165 Pac. 294.

4922. Fees of coroner. The coroner is entitled to receive and collect for his own use the following fees:

For each day engaged in holding an inquest, five dollars.

For subpoenaing each witness, including copy of subpoena, thirty cents.

For summoning each juror, including copy of summons, thirty cents.

For each oath administered, five cents.

For making transcript of testimony, per folio, fifteen cents.

For each mile actually traveled in the performance of any duty, ten cents.

For filing papers, each, five cents.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907.

The word "fees," as used in this section, refers to the per diem and other charges of the coroner which are payable by the county. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

Cited or applied as section 3173, Revised Codes, in State ex rel. Payne v. District Court, 53 Mont. 350, 353, 165 Pac. 294.

4923. Fees of public administrator. The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed executors and administrators, as provided in section 10287 of the Code of Civil Procedure.

History: En. Sec. 4641, Pol. C. 1895; re-en. Sec. 3174, Rev. C. 1907.

4924. Fees of justices of the peace in civil actions. The following is the schedule of fees which must be collected by justices of the peace in every civil action introduced in a justice court:

Two dollars and fifty cents when summons is issued, to be paid by the plaintiff.

Two dollars and fifty cents when issue is joined, to be paid by the defendant.

Two dollars and fifty cents of the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the two dollars and fifty cents for the issuance of summons shall be made for any services, including issuing and return of execution.

Two dollars and fifty cents for all services in an action where judgment is rendered by confession.

Two dollars and fifty cents for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

History: En. Sec. 1, Ch. 55, L. 1921. Note.—This and the four following sections superseded sections 3175 and 3176, Revised Codes 1907, which first appeared as section 1, chapter 52, Laws of 1903, and section 4642, Political Code 1895.

4925. Fees, when payable. All fees must be paid in advance, and no costs shall be included in any judgment until they have been paid; provided, however, that nothing herein contained shall restrict or prevent the bringing of suits in forma pauperis as provided by law.

History: En. Sec. 2, Ch. 55, L. 1921. See also note to Sec. 4924.

4926. Fees of justices of the peace in criminal actions. The following is the schedule of fees which must be collected by justices of the peace in every criminal action instituted in the justice court, to-wit:

For all services rendered as a committing magistrate where examination is waived, two dollars and fifty cents.

For all services rendered as a committing magistrate where a hearing takes place and witnesses are examined, five dollars.

For all services rendered as a magistrate on a hearing on a complaint to bind over a person to keep the peace, two dollars and fifty cents.

For all services rendered where there is a plea of guilty, two dollars and fifty cents.

For all services rendered where there is a trial, five dollars.

For taking, filing, and approving bail bond, including justification, one dollar.

For transmitting papers on appeal, and certificate, including bond and approval, one dollar and fifty cents.

For all services in issuing a search-warrant, to be paid by the person demanding same, one dollar.

The total amount of fees allowed by the board of county commissioners to any one justice of the peace in criminal cases must not exceed five hundred dollars in any one year.

History: En. Sec. 3, Ch. 55, L. 1921. See also note to Sec. 4924.

4927. Miscellaneous fees. The following miscellaneous fees shall also be collected by justices of the peace, to-wit:

For copies of papers on file or docket, per folio, twenty cents.

For taking the acknowledgment of an instrument, for the first name, one dollar.

For each additional name, fifty cents.

For administering oath and jurat, fifty cents.

For all services relating to lost or unclaimed property, as provided by sections 7694 to 7696 of the civil code, two dollars.

For performing the marriage ceremony and returning certificate to clerk of the district court, five dollars.

History: En. Sec. 4, Ch. 55, L. 1921. See also note to Sec. 4924.

4928. Justices may retain fees, when. Justices of the peace shall retain as their compensation the fees herein provided for, save and except in those townships where a stated salary is provided by law to be paid to justices of the peace; provided, however, that in all cases justices of the peace may retain the miscellaneous fees provided for in the preceding section.

History: En. Sec. 5, Ch. 55, L. 1921. See also note to Sec. 4924.

4929. Salaries of justices of the peace in certain townships—Office hours—Quarters. Justices of the peace in townships having a population of ten thousand people and not exceeding twenty thousand people shall each receive a salary of fifteen hundred dollars per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than twenty thousand people shall each receive a salary of twenty-four hundred dollars, payable monthly from the county treasury; and justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 4927 of this code; justices of the peace in townships having a population of less than ten thousand people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand people and upwards shall keep their offices open for business from nine o'clock a. m. to twelve o'clock noon, and from one o'clock p. m. to five o'clock p. m. on all judicial days, and at such other hours on judicial days as they may desire; and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion select suitable quarters for such justices, and may, in its discretion, pay for same from moneys in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917.

4930. Collection and disposition of fees in townships of ten thousand and upwards—Itemized statement. Justices of the peace in townships having a population of ten thousand people and upwards shall collect the fees prescribed by law for justices of the peace, except the fees in criminal actions other than for the issuance of search warrants, and shall pay the same into the county treasury of the county wherein they hold such office, on the first day of each month, to be credited to the contingent fund of such county; and shall also file therewith an itemized statement showing all fees received during the preceding month in connection with his office; said statement shall also state that all fees required by law to be paid in connection with matters pending before him as such justice during the preceding month have been paid to him, and by him paid into the county treasury, and listed in said itemized statement, and that he has not received or been promised, nor has any one else received or been promised for him, any other moneys, emolument, or thing whatsoever by virtue of or in connection with his office; and said statement shall be subscribed and sworn to by the justice. This section, however, shall not apply to "miscellaneous fees" excepted by section 4927, supra.

History: En. Sec. 2, Ch. 84, L. 1917.

4931. Penalty for violation of law. Any justice of the peace violating any of the provisions of this act shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months in the county jail, or both. He shall also be deemed guilty of malfeasance in office, and, in the discretion of the court, may be removed from office, in which latter case he shall thereafter be disqualified from holding such office.

History: En. Sec. 3, Ch. 84, L. 1917.

4932. Fees of constable. For serving summons, including copy on each defendant, besides mileage, fifty cents.

For serving subpoena, including copy on each person, besides mileage, twenty cents.

For all services in summoning a jury and taking charge of same, two dollars.

For all services in serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, including all copies, one dollar.

For the expense in taking and keeping possession of or preserving property under attachment, execution, or other process, the same fees and upon the same conditions as allowed to the sheriff.

For taking and receiving undertaking in any case in which he is authorized, one dollar.

For serving every notice, rule or order, besides mileage, including copy, one dollar.

For advertising any property for sale under execution, exclusive of costs of publication, one dollar.

For serving writ of possession, besides mileage, two dollars.

For all services in trial of right of property or damages, besides mileage, three dollars.

For commissions for receiving and paying over money on execution or other process where property has been levied on and sold, two per cent.; when collected without sale, one per cent.

For mileage, the same as sheriff and under the same conditions.

For executing in duplicate a certificate of sale, exclusive of the fee for filing, one dollar.

For drawing and executing a constable's deed, including acknowledgment, three dollars.

For making every arrest in a criminal proceeding, or executing a search-warrant, besides mileage, one dollar and fifty cents.

For all services in summoning and taking charge of a jury, two dollars.

For serving a subpoena, including copy on each person, besides mileage, twenty cents.

For every mile necessarily traveled in executing any warrant, serving subpoena, or taking a person before a magistrate or to jail, the same mileage as in civil actions, and under the same conditions, and in addition, in serving a subpoena or warrant, when two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but

one mileage must be charged, as provided for the mileage of sheriffs in civil actions.

When two or more persons are brought before a magistrate or to jail at the same time, or might have been so brought, the officer must be allowed but one mileage.

For conveying a person when under arrest, the actual expenses incurred in the transportation of such person must be allowed by the board of county commissioners, but the officer must pay his own expenses out of his mileage.

The total amount of fees allowed in criminal cases by the board of county commissioners must not exceed five hundred dollars in any one year. The excess must be paid into the contingent fund of the county treasury.

History: En. Sec. 4643, Pol. C. 1895; re-en. Sec. 3177, Rev. C. 1907.

The word "fees," as used in this section, refers to the charges of the constable, whether collectible from the county in criminal cases or from individuals in civil actions; it also refers to mileage as among the "fees" of the constable. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

Cited or applied as section 4643, Political Code, in Wade v. Lewis and Clark County, 24 Mont. 335, 339, 61 Pac. 879.

4933. Jurors' fees. Grand and trial jurors shall receive four dollars per day for attendance before any court of record, and ten cents per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917.

Cited or applied as section 4644, Political Code, before amendment, in Wade v. Lewis and Clark County, 24 Mont. 335, 338, 61 Pac. 879.

4934. Same—For what time paid. A juror must be paid for each day's attendance for the term or session for which he was summoned until excused. He must be paid for all Sundays and legal holidays unless he resides within ten miles from the courthouse, and all jurors residing within ten miles from the courthouse at which he is summoned to appear shall receive no compensation for Sundays or legal holidays, or for any days he may have been absent or excused from attending the court.

History: En. Sec. 2, p. 48, L. 1903; re-en. Sec. 3180, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1913.

4935. Compensation of jurors in court not of record and at coroner's inquests. Jurors in courts not of record, in both civil and criminal actions, shall receive one dollar and fifty cents per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Jurors in coroner's inquest shall receive for their services the sum of one dollar and fifty cents per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907.

Jurors in courts not of record are not allowed to receive mileage. Wade v. Lewis and Clark County, 24 Mont. 335, 339, 61 Pac. 879.

4936. Witnesses' fees. For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, three dollars. For mileage in traveling to the place of trial or hearing, each way, for each mile, ten cents; provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907.

Note.—Above section rewritten to correct grammatical errors.

A party to whom costs are awarded is entitled to mileage of witnesses who appeared and testified, although the record does not show that they were subpoenaed. McGlauflin v. Wormser, 28 Mont. 177, 182, 72 Pac. 428. See also Lynes v. Northern Pac. Ry. Co., 43 Mont. 317, 330, 117 Pac. 81, Ann. Cas. 1912C, 183.

Although witnesses are not obliged to appear at a trial held out of the county in which they reside unless the distance is less than thirty miles, if such witnesses do appear, and the court finds that their testimony was necessary, they are entitled to mileage the same as witnesses who attend in the usual way. McGlauflin v. Wormser, 28 Mont. 177, 182, 72 Pac. 428; Great Falls Meat Co. v. Jenkins, 33 Mont. 417, 422, 84 Pac. 74. See also Lynes v. Northern Pac. Ry. Co., 43 Mont. 317, 330, 117 Pac. 81, Ann. Cas. 1912C, 183.

The mileage of his witnesses which a successful party to an action may recover, under this section and section 9802, is not limited to travel from and to their place of residence; whether the mileage shall be computed from the place of residence will depend upon the circumstances of each case. Lynes v. Northern Pac. Ry. Co., 43 Mont. 317, 330, 117 Pac. 81, Ann. Cas. 1912C, 183.

The mileage of witnesses in civil actions allowed litigants under this section is limited to travel within the state. Chilcott v. Rea, 52 Mont. 134, 141, 155 Pac. 1114.

The word "fees" refers to the per diem and mileage of witnesses. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

Cited or applied as section 4648, Political Code, in Wade v. Lewis and Clark County, 24 Mont. 335, 339, 61 Pac. 879; as section 3182, Revised Codes, in Neary v. Northern Pac. Ry. Co., 41 Mont. 480, 507, 110 Pac. 266.

4937. Duties of clerk as to jurors. The clerk must give to each juror, at the time he is excused from further service, a certificate taken from a book containing a stub with a like designation, signed by himself under seal, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due, and on presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund, and the clerk must make a detailed statement containing a list of the jurors, the amount of fees and mileage earned by each, and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board, and no quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct. The clerk must keep a record of the attendance of jurors and compute the amount due for mileage, and the distance from any point to the county seat must be determined by the shortest traveled route.

History: En. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907.

This section is mandatory, both as to the duty of the clerk and of the treasurer; for the word "must" indicates that the duty of the clerk becomes imperative as soon as a juror is entitled to his pay. It also indicates that the duty of the treasurer is imperative as soon as a certificate, properly issued by the district court clerk, is presented to him. In re Farrell, 36 Mont.

254, 261, 92 Pac. 785. See County of Silver Bow v. Davies, 40 Mont. 418, 426, 107 Pac. 81.

A juror's certificate, which does not bear the seal required by this section, is void, and therefore not a subject of forgery. In re Farrell, 36 Mont. 254, 266, 92 Pac. 785. See also County of Silver Bow v. Davies, 40 Mont. 418, 425, 107 Pac. 81, and American Bonding Co. v. State Sav. Bank, 47 Mont. 332, 337, 133 Pac. 367, 46 L. R. A. (N. S.) 557; compare Choate v. Spencer, 13 Mont. 127, 132, 32 Pac. 651, 40 Am. St. Rep. 425, 20 L. R. A. 424; Sharman v. Huot, 20 Mont. 555, 557, 52 Pac. 558; Kipp v. Burton, 29 Mont. 96, 103, 74 Pac. 85, 63 Am. St. Rep. 645.

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. County of Silver Bow v. Davies, 40 Mont. 418, 425, 107 Pac. 81.

4938. Duties of clerk in reference to witnesses' certificate. The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena, and at the time any witness is excused from further attendance the clerk must give to each witness a certificate taken from a book, containing a stub with like designations signed by the clerk, under seal, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due, and on presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund.

History: En. Sec. 4649, Pol. C. 1895; re-en. Sec. 3183, Rev. C. 1907.

Related section: 4903.

This section does not require the certificates to be addressed to the treasurer; his duty requires him to pay upon their presentation. County of Silver Bow v. Davies, 40 Mont. 418, 425, 107 Pac. 81.

The clerk must observe the same formalities in issuing jurors' certificates as in issuing witnesses' certificates. County of Silver Bow v. Davies, 40 Mont. 418, 426, 107 Pac. 81.

Cited or applied as section 3183, Revised Codes, in Griggs v. Glass, 58 Mont. 476, 480, 193 Pac. 564.

4939. Statement of clerk to be sent to board of county commissioners. The clerk must make a detailed statement containing a list of the witnesses, the amount of fees and mileage earned by each, and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board, and no quarterly salary must be paid to the clerk until such statement is filed. The board must examine the statement and see that it is correct.

History: En. Sec. 4650, Pol. C. 1895; re-en. Sec. 3184, Rev. C. 1907.

The word "fees" refers to the per diem and mileage of witnesses. State v. Story, 53 Mont. 573, 578, 165 Pac. 748.

4940. Clerk must keep a record of witnesses in criminal actions. The clerk must keep a record of the attendance of witnesses in criminal cases, and compute the amount due them for mileage, and the distance from any point to the county seat must be determined by the shortest traveled route.

History: En. Sec. 4651, Pol. C. 1895; re-en. Sec. 3185, Rev. C. 1907.

Under a former statute it was held that a witness will be allowed mileage only for the shortest route, although it may appear that such is not the most convenient route. State ex rel. McMillan v. Ramsey, 11 Mont. 245, 246, 28 Pac. 258.

4941. Witnesses in courts not of record. Witnesses in courts not of record in civil actions and proceedings shall receive one dollar and fifty cents for each day's actual attendance, and ten cents for each mile

actually traveled in going from his residence by the usual traveled route to the said court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907.

4942. Witnesses in criminal actions or coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive one dollar and fifty cents per day for actual attendance, and ten cents per mile for each mile actually and necessarily traveled from his place of residence to the said court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907.

4943. In civil actions must be paid by party subpoenaing. The fees and compensation of a witness in all civil actions must be paid by the party who caused him to be subpoenaed.

History: En. Sec. 4654, Pol. C. 1895; re-en. Sec. 3188, Rev. C. 1907.

4944. Witness must be paid in advance in civil actions. No witness is obliged to attend court when subpoenaed, unless his mileage and fees for one day's attendance are tendered or paid to him on his demanding the same, nor unless his fees for attendance thereafter for each day are tendered or paid to him on demand. The fees of witnesses paid may be taxed as costs against the losing party.

History: En. Sec. 4655, Pol. C. 1895; re-en. Sec. 3189, Rev. C. 1907.

4945. Criminal actions not more than six to be subpoenaed without order of court. In criminal actions in a court of record, the clerk of the court must not issue a subpoena on behalf of the state or defendant for more than six witnesses, except upon the order of the court or judge, and such order may be made upon proper showing by affidavit or otherwise.

History: En. Sec. 4656, Pol. C. 1895; re-en. Sec. 3190, Rev. C. 1907.

It is proper for the court to require the defendant, upon request for a subpoena for additional witnesses, to disclose the materiality of their testimony. State v. O'Brien, 18 Mont. 1, 12, 43 Pac. 1091, 44 Pac. 399.

4946. Interpreters to be paid as witnesses. Interpreters and translators must receive the same fees as witnesses.

History: En. Sec. 4657, Pol. C. 1895; re-en. Sec. 3191, Rev. C. 1907.

4947. Expert witnesses. An expert is a witness and receives the same compensation as a witness.

History: En. Sec. 4658, Pol. C. 1895; re-en. Sec. 3192, Rev. C. 1907.

4948. County superintendent's traveling expenses. Each county superintendent of schools shall be paid all necessary traveling expenses actually incurred in the discharge of his or her duties.

History: Sec. 3195, Rev. C. 1907; amd. Sec. 3, Ch. 110, L. 1917.

4949. County commissioners to audit claims. The boards of county commissioners of the several counties of the state are hereby authorized and directed to audit and allow such traveling expenses of the superin-

tendent of schools of the respective counties, quarterly, and the same shall be paid out of the general fund of such county.

History: En. Sec. 2, Ch. 27, L. 1907; Sec. 3196, Rev. C. 1907.

4950. Limitation of chapter. The salary or emoluments of any officer appointed or elected prior to the time of the adoption of this code are not affected by the provisions of this chapter.

History: En. Sec. 4661, Pol. C. 1895; re-en. Sec. 3197, Rev. C. 1907.

CHAPTER 36.

OTHER COUNTY CHARGES.

Section 4951. County Charges to Be Audited.
4952. Enumeration of County Charges.
4953. Costs on Removal of Criminal Actions.
4954. Proceedings in Collection of Such Costs.

4951. County charges to be audited. Accounts for county charges of every description must be presented to the board of county commissioners to be audited as prescribed in article III, chapter II, title II, part IV, of this code.

History: En. Sec. 4680, Pol. C. 1895; re-en. Sec. 3198, Rev. C. 1907. Cal. Pol. C. Sec. 4343.

Note.—The above reference to the divisions of the Revised Codes 1907 is incorrect. The language of the section is ambiguous and might refer to either subdivisions 11 and 12 of section 4465 or to section 4605 of this code.

4952. Enumeration of county charges. The following are county charges:

1. Charges incurred against the county by virtue of any provision of this title.

2. One-half of the salary of the county attorney, and all expenses necessarily incurred by him in criminal cases arising within the county.

3. The salary and actual expenses for traveling when on official duty, and for the board of prisoners allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

4. The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

5. The accounts of the coroner of the county for such services as are provided by law.

6. All charges and accounts for services renderd by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

7. The necessary expenses incurred in the support of county hospitals and poor-farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

8. The contingent expenses necessarily incurred for the use and benefit of the county.

9. Every other sum directed by law to be raised for any county

purpose under the direction of the board of county commissioners, or declared to be a county charge.

History: En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907. Cal. Pol. C. Sec. 4344.

This section restricts the liability of the county to such expenses as may be incurred under statutory authority directly conferred or necessarily implied from the powers granted to the county. Sears v. Gallatin County, 20 Mont. 462, 465, 52 Pac. 204, 40 L. R. A. 405.

Expenses, not imposed by law, are not a charge against a county. Wade v. Lewis and Clark County, 24 Mont. 335, 340, 61 Pac. 879.

Under subdivision 3, all expenses necessarily incurred by a county attorney in prosecutions for public offenses arising in the county are a county charge. Ind. Pub. Co. v. Lewis and Clark County, 30 Mont. 83, 85, 75 Pac. 860.

4953. Costs on removal of criminal actions. When a criminal action is removed before trial, the costs accruing upon such removal and trial must be a charge against the county in which the indictment was found or information filed.

History: En. Sec. 4682, Pol. C. 1895; re-en. Sec. 3200, Rev. C. 1907. Cal. Pol. C. Sec. 4345.

Where a criminal action is removed from one county to another for trial, it is the duty of the county to which it is transferred to furnish a prosecuting officer, and if for any reason its county attorney is unable to act as such officer, and the court appoints special counsel to represent the state, the cost incident to his employment is not a proper charge against the county from which the change of venue was had. State ex rel. Cascade Co. v. Lewis and Clark County, 34 Mont. 351, 355, 86 Pac. 419.

County chargeable with expense of trial in case of change of venue, see note in Ann. Cas. 1913B, 187.

4954. Proceedings in collection of such costs. The district court of the county to which such action is removed must certify the amount of costs allowed and certified by the court to the board of county commissioners of their county, and such board of county commissioners shall audit the same and draw their warrants therefor upon the treasurer of the county from which such action was removed, and such board of county commissioners shall forward to said treasurer and board of county commissioners of the county from which said action was transferred, as aforesaid, a certified copy of the total amount allowed by the court, giving each item as certified to them by the clerk of the district court and the court; and the board of county commissioners receiving such certified copy of said costs allowed shall enter the same in their books as a charge against the treasurer of their county, and the county treasurer of the county from which such action was removed must immediately upon presentation pay said warrant out of the general fund of said county; or if, at the time of presentation, there is not sufficient moneys in the said general fund to pay the same, he must indorse upon said warrant, "Not paid for want of funds," and said warrant must be registered, and shall draw interest at the same rate and be paid in the same manner as though it had been drawn by the board of county commissioners of the county where the indictment was found or information filed.

History: En. Sec. 4683, Pol. C. 1895; re-en. Sec. 3201, Rev. C. 1907. Cal. Pol. C. Sec. 4346.

The mere certification of the costs resulting from the removal of a cause for trial from one county to another, required under this section, may not be said to have the force and effect of a judgment against the county from which the cause was removed, where no action was pending to which it was a party. State v. Lewis and Clark County, 34 Mont. 351, 356, 86 Pac. 419.

CITIES AND TOWNS, CHAPTERS 37 TO 64.

Chapter 37. General Powers of Cities and Towns.
38. Classification and Organization of Cities and Towns.
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56. Special Improvement Districts.
57. Municipal Bonds.
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59. Damage Caused by Change of Grade.
60. Vacation and Abandonment of Streets, Parks and Townsites.
61. Entry of Townsites on Public Domain for Incorporated Cities and Towns.
62. Entry of Townsites on Public Domain for Unincorporated Cities and Towns.
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CHAPTER 37.

GENERAL POWERS OF CITIES AND TOWNS.

Section 4955. General Powers.
4956. Distribution of Powers of Cities.
4957. Distribution of Powers of Towns.
4958. City and Town, How Named—General Corporate Powers.

4955. General powers. A city or town is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this chapter, or in special laws heretofore enacted.

History: En. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907. Cal. Pol. C. Sec. 4354.

A city has only such authority as is conferred upon it by express legislative declaration or necessary implication, and

where there is a fair and reasonable doubt as to the existence of a particular power, it must be resolved against the municipality and the power denied. Davenport v. Kleinschmidt, 6 Mont. 502, 527, 13 Pac. 249; City of Helena v. Kent, 32 Mont. 279, 283, 80 Pac. 258, 4 Ann. Cas. 235; State ex rel. Quintin v. Edwards, 40 Mont. 287, 303, 106 Pac. 695, 20 Ann. Cas. 239; Helena etc. Ry. Co. v. City of Helena, 47 Mont. 18, 31, 130 Pac. 446; Shapard v. City of Missoula, 49 Mont. 269, 278, 141 Pac. 544; Sharkey v. City of Butte, 52 Mont. 16, 19, 155 Pac. 266; State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 108, 173 Pac. 799.

A city has no powers except such as are conferred upon it by legislative grant, either directly or by necessary implication. Davenport v. Kleinschmidt, 6 Mont. 502, 527, 13 Pac. 249; City of Helena v. Kent, 32 Mont. 279, 283, 80 Pac. 259, 4 Ann. Cas. 235; Palmer v. City of Helena, 40 Mont. 498, 507, 107 Pac. 512; Sharkey v. City of Butte, 52 Mont. 16, 19, 155 Pac. 266.

It is the duty of a city organized under the laws of this state to establish and improve streets, and damages can be recovered by one who is injured by its negligence in permitting its streets to become and remain in a dangerous condition. Sullivan v. City of Helena, 10 Mont. 134, 141, 25 Pac 94; Snook v. City of Anaconda, 26 Mont. 128, 134, 66 Pac. 756; May v. City of Anaconda, 26 Mont. 140, 142, 66 Pac. 759; Ford v. Great Falls, 46 Mont. 292, 306, 127 Pac. 1004.

This section, taken in connection with section 4958 and subdivision 1 of section 5039, constitutes a general grant of power, as well as a limitation of power, for authority is given to the city to pass all ordinances necessary for its government and management, and such ordinances shall not contravene constitutional or statutory provisions. City of Helena v. Kent, 32 Mont. 279, 285, 80 Pac. 259, 4 Ann. Cas. 235.

When the mode of exercising any power is pointed out in the statute granting it to a municipal corporation, the mode thus prescribed must be pursued in all substantial particulars. McGillic v. Corby, 37 Mont. 249, 254, 95 Pac. 1063, 17 L. R. A. (N. S.) 1263; Carlson v. City of Helena, 39 Mont. 82, 109, 102 Pac. 39, 17 Ann. Cas. 1233; Shapard v. City of Missoula, 49 Mont. 269, 278, 141 Pac. 544.

In an action against a city to recover damages for injuries to real property, an averment in the complaint that the city "is a municipal corporation, organized and existing under the laws of the state," was sufficient as against the objection that the pleading did not state a cause of action. Judicial notice will be taken of the fact that during a certain year a city was a municipal corporation existing under the laws of this state. Drew v. City of Butte, 44 Mont. 124, 125, 119 Pac. 279.

No consistency whatever has been observed in the legislative use of the term "town." State ex rel. Powers v. Dale, 47 Mont. 227, 230, 131 Pac. 670, Ann. Cas. 1914D, 227.

The entire municipal code is to be treated as one statute whose provisions are interdependent. Brown v. Foster, 48 Mont. 114, 118, 135 Pac. 993.

Cited or applied as section 3202, Revised Codes, in Davis v. Stewart, 54 Mont. 429, 434, 171 Pac. 281.

For text treatment of selected cases relating to municipal corporations, see Cal. Jur. and 19 R. C. L. 678.

4956. Distribution of powers of cities. Every city has legislative, executive, and judicial power. Its legislative power is vested in a city council, its executive power in a mayor and his subordinate officers, and its judicial power in a police court.

History: En. Sec. 4701, Pol. C. 1895; re-en. Sec. 3203, Rev. C. 1907. Cal. Pol. C. Sec. 4355.

In the exercise of its legislative powers, a city is ruling its people, and is bound to transmit its powers of government to its successive sets of officers unimpaired. State v. Great Falls City Council, 19 Mont. 518, 534, 49 Pac. 15.

4957. Distribution of powers of towns. Every town has legislative, executive, and judicial power. Its legislative power is vested in a town council, its executive power in a mayor and his subordinate officers, and its judicial power in justices of the peace of the township in which the town is situated.

History: En. Sec. 4702, Pol. C. 1895; re-en. Sec. 3204, Rev. C. 1907.

4958. City and town, how named, general corporate powers. Every city or town organized under this title is entitled "the city of....."

(naming it), or "the town of ....." (naming it), and by such name has perpetual succession; may sue and be sued in all courts and places, and in all proceedings whatsoever, and may have and use a common seal; may purchase, receive, have, take, hold, lease, use, and enjoy property of every name or description, and dispose of the same for the common benefit; and has such other powers as are incident to municipal corporations not inconsistent with the laws of the United States or the state.

History: En. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907.

Note.—The four foregoing sections appear in part as sections 323, 324, Fifth Division Compiled Statutes 1887.

Mandamus will lie to compel a city to audit and pay a bill which it owes to a water company for the rent of hydrants, although this section provides that cities may sue or be sued. State v. Great Falls City Council, 19 Mont. 518, 537, 49 Pac. 15; State ex rel. Kaiser W. Co. v. City of Philipsburg, 23 Mont. 16, 22, 57 Pac. 405.

Cited or applied as section 4703, Political Code, in State ex rel. Tel. Co. v. Mayor of Red Lodge, 30 Mont. 338, 344, 76 Pac. 758; City of Helena v. Kent, 32 Mont. 279, 285, 80 Pac. 259, 4 Ann. Cas. 235.

Implied power of municipal corporation to borrow money, see note in 30 Am. Dec. 190.

General nature of police power of municipal corporations, see note in 104 A. S. R. 638.

Police power to regulate use of property for advertising by billboards or otherwise, see notes in 132 A. S. R. 92; 2 Ann. Cas. 897; 16 Ann. Cas. 766; Ann Cas. 1913D, 958; Ann. Cas. 1916C, 491; Ann. Cas. 1917C, 596.

Power of municipal corporation to regulate use, storage or transportation of explosives within city limits, see notes in 108 A. S. R. 356; Ann. Cas. 1918E, 145.

Power of municipality to regulate removal of garbage, see notes in 97 A. S. R. 688; 4 Ann. Cas. 281; 8 Ann. Cas. 818; 19 Ann. Cas. 1221.

Power of municipal corporation to furnish light, see note in 30 A. S. R. 225.

Power of municipal corporation to establish, limit, and regulate markets, see note in 85 Am. Dec. 286; 43 Am. Rep. 473; 23 A. S. R. 581; Ann. Cas. 1914D, 352.

Power of municipality to make criminal and punish acts already covered by statute, see note in 110 A. S. R. 149.

Power of municipal corporation to accept and administer trust, see notes in 17 Ann. Cas. 746; 10 A. L. R. 1368.

Right of municipality to exercise power of eminent domain without legislative authority, see note in Ann. Cas. 1912C, 199.

Right of municipality to exercise corporate powers extraterritorially, see notes in 7 Ann. Cas. 521; 10 Ann. Cas. 132; Ann. Cas. 1912C, 938.

Power of municipality to compel extension of waterworks system, see note in Ann. Cas. 1916D, 285.

Power of municipal corporation to offer rewards, see notes in 3 Ann. Cas. 157; 21 Ann. Cas. 62.

Power of city to dispose of surplus earth and gravel in streets, see note in 2 Ann. Cas. 596.

Power of municipality to compel removal of electric poles and wires in street, see notes in Ann. Cas. 1917E, 525, 539, 557.

Power of municipality to remove shade trees from streets, see notes in 1 Ann. Cas. 785; 16 Ann. Cas. 642; Ann. Cas. 1913C, 1013.

Power of municipality in respect to sprinkling of streets, see notes in 6 Ann. Cas. 982; 12 Ann. Cas. 611.

Right of municipality to enter into business competition with citizen, see notes in Ann. Cas. 1918B. 104; 31 L. R. A. (N. S.) 117; 51 L. R. A. (N. S.) 1143.

Right of municipality to collect tolls for use of bridge or highway, see notes in Ann. Cas. 1914D, 515; 42 L. R. A. (N. S.) 836.

Power of municipality to require railroad or street railway to stop cars at certain points, see notes in 17 Ann. Cas. 552; Ann. Cas. 1914D, 1092.

Power of municipality to require railroad to maintain flagmen at crossings, see notes in 5 Ann. Cas. 301; 6 Ann. Cas. 510.

Power of city to permit abutting owners to use street including sidewalk for the deposit, exhibition or sale of goods, see note in 6 A. L. R. 1317.

Power of municipality to permit permanent loading platforms in streets, see note in 11 A. L. R. 442.

Power of city to control private charity, see note in L. R. A. 1916D, 912.

Power of city to employ attorney, see notes in L. R. A. 1917D, 240, 251.

CHAPTER 38.

CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS.

Section 4959. Cities and Towns Classified.
4960. Basis of Classification.
4961. Organization of Cities and Towns—Petition and Census.
4662. Election—How Conducted.
4963. First Election for Officers.
4964. Officers Elected and Conduct of Election.
4965. Existing Cities Reorganized Hereunder.
4966. Such Cities Become Cities of the First or Second Class or Towns.
4967. Old Officers Continue in Office—Election.
4968. Effect of Reorganization of Cities and Towns Hereunder.

4959. Cities and towns classified. Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class; and every municipal corporation having a population of three hundred and less than one thousand is a town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907.

Cited or applied as section 3206, Revised Codes, in Davis v. Stewart, 54 Mont. 429, 434, 171 Pac. 281.

Validity of statute classifying municipalities according to differences in population, see note in 15 Ann. Cas. 856.

4960. Basis of classification. The census taken under the direction of the congress of the United States in the year eighteen hundred and ninety, and every ten years thereafter, shall be the basis upon which the respective populations of said municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such direct enumeration constitutes such basis.

History: En. Sec. 4711, Pol. C. 1895; re-en. Sec. 3207, Rev. C. 1907.

4961. Organization of cities and towns—Petition and census. Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than fifty qualified electors, residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal cor-

poration must be formed unless the number of inhabitants is three hundred or upwards.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909.

Note.—The first general municipal incorporation act was that of February 17, 1881 (Laws of 1881, pp. 13-38). This was superseded by sections 315 to 440, Fifth Division Compiled Statutes 1887. Many of the provisions of this act are so different from the present law that exact historical comparison of the several sections cannot be made.

Cited or applied as section 3208, Revised Codes, as amended, in Davis v. Stewart, 54 Mont. 429, 434, 171 Pac. 281.

4962. Election—How conducted. After filing the petition and census, if there be the requisite number of inhabitants for the formation of a municipal corporation, as required in the preceding section, the county commissioners must call an election of all the qualified electors residing in the territory, described in the petition. Said election must be held at a convenient place within the territory described in the petition, to be designated by the board, notice of which election must be given by publication in some newspaper published within the limits of the territory to be incorporated, or, if none be published therein, by posting notice in three public places within said limits. The notice must be published thirty days prior to the election, and must specify the time and place when and where the same is held, and contain a description of the boundaries of the city or town. The board must appoint judges and clerks of election, who must qualify as required by law, and after the election they must report the result to the board, together with the ballots cast at said election. The ballots used at the election must be "For incorporation" or "Against incorporation," and all elections must be conducted as provided in sections 531 to 828 of this code.

History: En. Sec. 316, Fifth Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907.

Validity of statute authorizing creation of new municipality only on ratification by voters within territory affected, see note in Ann. Cas. 1914C, 626.

4963. First election for officers. When the incorporation of a city or town is completed, the board of county commissioners must give notice for thirty days in a newspaper published within the limits of the city or town, or, if none be published therein, by posting notices in six public places within the limits of the corporation, of the time and place or places of holding the first election for offices of the corporation. At such election all the electors qualified by the general election laws of the state, and who have resided within the limits of the city or town for six months, and within the limits of the ward for thirty days preceding the election, are qualified electors and may choose officers for the city or town, to hold office as prescribed in the next succeeding section.

History: Ap. p. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4722, Pol. C. 1895; re-en. Sec. 3210, Rev. C. 1907.

The expression "preceding the election," as used in this section, is equivalent in meaning to "next preceding the election." Dowty v. Pittwood, 23 Mont. 113, 118, 57 Pac. 727.

4964. Officers elected and conduct of election. At such election there must be elected, in a city of the first class, a mayor, a police judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each

ward into which the city may be divided; in a city of the second class, a mayor, a police judge, a city treasurer, a city marshal, and two aldermen from each ward; in a town, a mayor, and two aldermen from each ward, who hold office until the first Monday of May after the first annual election, and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers. The board of county commissioners must appoint judges and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner required by law for the election of county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4723, Pol. C. 1895; re-en. Sec. 3211, Rev. C. 1907.

4965. Existing cities reorganized hereunder. All cities and towns existing or heretofore incorporated under the laws of the territory or state of Montana, either under general or special laws or charters, on the adoption of this code become and are incorporated under the provisions of this code relative to the government of cities and towns, and have the powers conferred, or that may hereafter be conferred by law, upon cities or towns of the class to which each may belong.

History: En. Sec. 5032, Pol. C. 1895; re-en. Sec. 3481, Rev. C. 1907.

Note.—The word "title" originally appearing in the above section changed to conform to arrangement of this code.

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities or towns, is clearly shown in this and other sections of the code. State ex rel. Powers v. Dale, 47 Mont. 227, 229, 230, 131 Pac. 670, Ann. Cas. 1914D, 227.

Cited or applied as section 5032, Political Code, in Drew v. City of Butte, 44 Mont. 124, 125, 119 Pac. 279.

4966. Such cities become cities of the first or second class or towns. Such cities or towns are and become cities of the first or second class or towns according to their population as determined by the federal census of 1890.

History: En. Sec. 5033, Pol. C. 1895; re-en. Sec. 3482, Rev. C. 1907.

4967. Old officers continue in office—Election. All officers of such city or town holding office at the time of the adoption of this code remain in office until the next annual election and the first Monday of May next ensuing thereafter, and until their successors are elected and qualified. The duties and compensation of such officers and the liabilities of sureties on official bonds remain the same. All elections must be held under the provisions of this code relative to the government of cities and towns.

History: En. Sec. 5034, Pol. C. 1895; re-en. Sec. 3483, Rev. C. 1907. See note to Sec. 4965.

4968. Effect of reorganization of cities and towns hereunder. Any such city or town is the identical corporation theretofore existing, and the reorganization hereunder in no way affects or impairs the title to any property owned or held by such city or town, or in trust therefor, or any debts, demands, liabilities, bonds, or other evidences of indebtedness, or other obligations in favor of or against such city or town, or any action or proceeding then pending, nor does it operate to repeal or affect in any manner any ordinance, resolution, or by-law theretofore passed or

adopted and remaining unrepealed, or to discharge any person from any liability, civil or criminal, for any violation thereof; but such ordinances, resolutions, and by-laws, so far as the same are not in conflict with that part of this code relating to the government of cities and towns, are and remain in full force until repealed or amended, and all proceedings commenced theretofore, after the adoption of this code, must be conducted in accordance with the provisions of this code relating to the government of cities and towns.

History: En. Sec. 5035, Pol. C. 1895; re-en. Sec. 3484, Rev. C. 1907. See note to Sec. 4965.

This section is not curative in character, but was intended simply to preserve the statu quo of all municipal corporations in existence at the time of the adoption of the code of 1895. It imparted no validity to a void ordinance providing compensation for the acting mayor of a municipality. McGillic v. Corby, 37 Mont. 249, 254, 95 Pac. 1063, 17 L. R. A. (N. S.) 1263.

CHAPTER 39.

CHANGE OF CLASSIFICATION OF CITIES AND TOWNS.

Section 4969. Proceedings for Advancement and Census.
4970. Resolution Declaring the Advancement.
4971. New Officers—Election.
4972. Old Ordinances, etc., Remain in Force Until When.
4973. Cities May Be Reduced in Class—Proceedings.
4974. Disincorporation of City or Town—Proceedings.
4975. Duty of County Clerk and City or Town Treasurer—Property and Money to Be Turned Over.

4969. Proceedings for advancement and census. Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census, that such city or town has the requisite population to entitle it to be classified as provided in section 4959 of this code, such city or town must be advanced as provided in the next section.

History: En. Sec. 4950, Pol. C. 1895; amd. Sec. 1, p. 225, L. 1897; re-en. Sec. 3447, Rev. C. 1907.

Constitutional provision for transition of municipal corporation from one class to another as self-executing, see note in Ann. Cas. 1916D, 868.

4970. Resolution declaring the advancement. If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon, by resolution, declare that the town is advanced to a city of the first, second, or third class, or a city of the third class is advanced to a city of the second or first class, or a city of the second class is advanced to a city of the first class, as the case may be, and file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class, and a city of the third class becomes a city of the second or first class, and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; amd. Sec. 2, p. 225, L. 1897; re-en. Sec. 3448, Rev. C. 1907.

Note.—The word "title" originally appearing in the above section has been changed in this code.

4971. New officers—Election. The first election of officers of the new municipal corporation organized under the provisions of this chapter must

be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895; re-en. Sec. 3449, Rev. C. 1907.

4972. Old ordinances, etc., remain in force until when. All ordinances, by-laws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895; re-en. Sec. 3450, Rev. C. 1907. See note to Sec. 4970.

4973. Cities may be reduced in class—Proceedings. Whenever it appears by the census taken by the United States, state, or otherwise, that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by a resolution, declare that such city be reduced to a city of the second class or town, as the case may be. A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns. The provisions of sections 4971 and 4972 of this code apply to this section.

History: En. Sec. 4954, Pol. C. 1895; re-en. Sec. 3451, Rev. C. 1907. See note to Sec. 4970.

4974. Disincorporation of city or town—Proceedings. Whenever it appears by such census that a city or town has a population of less than three hundred inhabitants, the corporate existence of such city or town under this code relative to cities and towns must be discontinued. The board of county commissioners of the county in which the city or town is situated must declare, by resolution, that the incorporation thereof be discontinued, and must provide for the payment of the indebtedness of the same, and thereafter annually levy a tax on all the property situate within the limits of such city or town until all of such indebtedness is paid. The books, documents, records, papers, and seal of such city or town must be deposited with the county clerk for safe-keeping and reference, and the records of the police judge or police court must be deposited with one of the justices of the peace of the township in which such city or town is situated, who has power to execute and complete all unfinished business of such police judge or court.

History: En. Sec. 4955, Pol. C. 1895; re-en. Sec. 3452, Rev. C. 1907. See note to Sec. 4970.

4975. Duty of county clerk and city or town treasurer—Property and money to be turned over. The county clerk must send a certified copy of the resolution of discontinuance to the secretary of state, and all moneys in the hands of the city or town treasurer must be paid to the county treasurer, which must be applied in payment of the indebtedness of such city or town, and all other property must be delivered to the board of county commissioners, which must be sold and disposed of for the purpose of paying such indebtedness.

History: En. Sec. 4956, Pol. C. 1895; re-en. Sec. 3453, Rev. C. 1907.

CHAPTER 40.

ADDITIONS TO CITIES AND TOWNS.

Section 4976. Additions to Cities or Towns.
4977. Additions, How Made.
4978. Extension of Corporate Limits Over Contiguous Platted Tracts.
4979. Election on the Question of Annexation.

4976. Additions to cities or towns. Whenever territory adjoining any incorporated city or town is surveyed, and laid off into streets or blocks as an addition thereto, upon filing the map or plat thereof in the office of the county clerk, said territory may become a part of such city or town, upon the approval of the mayor and a majority of the council indorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907.

Where a certain tract of land was not a part of a city, and the owner was not entitled to the privileges of an owner of city lots, he was under no obligation to pay special assessments for a sewer constructed by the city in the street in front of such land. Farlin v. Hill, 27 Mont. 27, 36, 69 Pac. 237. See Sharkey v. City of Butte, 52 Mont. 16, 21, 155 Pac. 266.

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities or towns, is clearly shown in this and other sections of the code. State ex rel. Powers v. Dale, 47 Mont. 227, 229, 230, 131 Pac. 670, Ann. Cas. 1914D, 227.

The approval of the mayor and a majority of the council indorsed on the map or plat of an addition to a city or town is essential to bring the territory included therein within the jurisdiction of the council. Pool v. Town of Townsend, 58 Mont. 297, 304, 191 Pac. 385.

Cited or applied as section 3212, Revised Codes, in Barnard Realty Co. v. City of Butte, 48 Mont. 102, 113, 136 Pac. 1064; De Sandro v. Missoula Light & Water Co., 48 Mont. 226, 234, 136 Pac. 711.

4977. Additions, how made. The council has control of all such additions, and power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town, or in the addition thereto, contiguous to or near the proposed addition. The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with, and the plat thereof has been submitted to and approved by the mayor and council, and such approval indorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907.

Cited or applied as section 3213, Revised Codes, in Barnard Realty Co. v. City of Butte, 48 Mont. 102, 113, 136 Pac. 1064; De Sandro v. Missoula Light & Water Co., 48 Mont. 226, 234, 136 Pac. 711.

4978. Extension of corporate limits over contiguous platted tracts. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, and which shall be contiguous to any incorporated city or town, may be embraced within the corporate limits thereof, and the boundaries of such city or town extended so as to include the same in the following manner: When, in the judgment of any city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city or town and the inhabitants thereof, and of the inhabitants of any contiguous platted tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the

city or town clerk of such city or town shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be extended so as to embrace and include such platted tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council if disapproved by a majority of the resident freeholders of the territory proposed to be embraced.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907.

The use of the term "incorporated," as applied to cities and towns, clearly connoting the opposite idea of unincorporated cities or towns, is clearly shown in this and other sections of the code. State ex rel. Powers v. Dale, 47 Mont. 227, 229, 230, 131 Pac. 670; Ann. Cas. 1914D, 227.

The language of this section is unequivocal, declaring that before any territory is eligible for incorporation in a city by an extension of the city's boundaries, such territory must be (a) platted into lots or blocks, streets, and alleys; (b) a map or plat thereof must be on file with the county clerk and recorder; and (c) the territory must be contiguous to the city's limits. Sharkey v. City of Butte, 52 Mont. 16, 20, 155 Pac. 266.

A city may not extend its boundaries so as to include unplatted ground, and proceedings had to annex territory, a portion of which was unplatted, contrary to the provisions hereof, were void in toto. Sharkey v. City of Butte, 52 Mont. 16, 21, 155 Pac. 266.

Where the purpose of a taxpayer's action was to have proceedings looking to the annexation of territory to a city declared void ab initio, and the city enjoined from assuming jurisdiction over the persons or property situated within unplatted territory illegally sought to be included, the attack was direct, and not collateral. Sharkey v. City of Butte, 52 Mont. 16, 22, 155 Pac. 266.

The remedy of injunction is available to one whose taxes would be increased by an illegal inclusion of his property within the limits of a city. Sharkey v. City of Butte, 52 Mont. 16, 23, 155 Pac. 266.

The recital in a city council's resolution that territory proposed to be annexed to the city was contiguous and platted, when such was not the fact, could not inure to the city's benefit, or preclude a resident of the territory attempted to be annexed, from any available remedy he would otherwise have. Sharkey v. City of Butte, 52 Mont. 16, 23, 155 Pac. 266.

Necessity that property annexed to a municipal corporation be adjacent or contiguous, see note in Ann. Cas. 1913D, 401.

Collateral attack upon proceedings for annexation of territory to municipality, see note in 3 Ann. Cas. 243.

Validity of the extension of territorial limits of municipality so as to include state property, see note in Ann. Cas. 1915A, 1014.

Annexation of territory to municipality as taking property without due process of law, see note in 27 L. R. A. 741.

Discrimination between residents or property owners within territory annexed as to right to defend against annexation to municipality, see note in 17 L. R. A. (N. S.) 421.

4979. Election on the question of annexation. When a city or town desires to be annexed to another and contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities respectively, the terms and conditions on which the annexation can be made, and if the city or town council of

the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare, and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare, and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated, and when so filed the annexation is complete, and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation. Such annexations do not affect or impair any rights, obligations, or liabilities then existing, for or against either of such cities or towns.

History: En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907.

CHAPTER 41.

PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO.

Section 4980. Plat or Addition to Be Made and Recorded.
4981. What Plat Must Contain.
4982. Survey—By Whom to Be Made and What to Contain.
4983. Further Requirements as to Survey.
4984. Certificate of Surveyor.
4985. Certificate of Dedication and Form.
4986. Abstract of Title—Release of Mortgage or Other Lien—Inclusion of Release and Judgment in Abstract.
4987. Plat to Be Prepared in Duplicate—Approval of Same by Municipal Council or County Commissioners—Filing and Recording.
4988. Plats Must Be Made on Mounted Drawing Paper, Filed, and Recorded.
4989. No Lots to Be Sold Until Plat Recorded—Penalty.
4990. Donations or Grant on a Plat Has the Effect of a Deed.
4991. New Survey and Plat May Be Ordered.
4992. Form of Plat May Be Prescribed by Ordinance.
4993. Small Tracts Must Be Platted, Surveyed, and Certified Before Sale.
4994. Penalty for Violation of Law.

4980. Plat or addition to be made and recorded. Any person, company, or corporation who may lay out any city or town, or any addition to any city or town, or any tract of land within the limits of any city or town, or townsite, or tract of land outside of the boundaries of any city or town, or transfer any lots, blocks, or tracts therein, must cause to be made an accurate survey and plat thereof, and cause the same to be recorded in the office of the county clerk and recorder of the county in which such land lies.

History: En. Sec. 5000, Pol. C. 1895; re-en. Sec. 3465, Rev. C. 1907; amd. Sec. 1, Ch. 119, L. 1917.

Cited or applied as section 5000, Political Code, before amendment, in Farlin v. Hill, 27 Mont. 27, 33, 69 Pac. 237; as section 3465, Revised Codes, in De Sandro v. Missoula Light & Water Co., 48 Mont. 226, 234, 136 Pac. 711.

4981. What plat must contain. The plat must show as follows:

1. All streets, alleys, avenues, and highways, and the width thereof.

2. All parks, squares, and all other grounds dedicated or reserved for public uses, with the boundaries and dimensions thereof.

3. All lots and blocks with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot and block.

4. The angles of intersection of all boundary lines of the lots and blocks wherever the angle of intersection is not a right angle.

5. The location of all stone or iron monuments set to establish street lines.

6. The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

7. The location of all section corners or legal subdivision corners of sections within the limits of said plat.

8. The adjoining block corners of all surveyed and adjoining additions, and the streets, alleys, avenues, and highways of such adjoining additions, for the purpose of showing how the new plat and survey conform to such adjoining addition of surveyed and platted ground.

9. For the purpose of promoting the public comfort, welfare, and safety, such plat and survey must show that at least one-ninth of the platted area, exclusive of streets, alleys, avenues, and highways, is forever dedicated to the public for parks and playgrounds; the one-half of such area so dedicated to the public for parks and playgrounds may be distributed in small plots of not less than one block in area through the different parts of the area platted; and the one-half shall be consecrated into larger parks on the outer edge of the area so platted. The board of county commissioners of the county, or the council of the city or town, is hereby authorized to suggest suitable places for such parks and playgrounds, and for good cause shown may make an order in the proceedings of such body (to be indorsed and certified on said plat), diminishing the amount of such area herein required to be dedicated as public parks and playgrounds to not less than one-twelfth thereof, exclusive of streets, alleys, avenues, and highways; provided, that where such platted area consists of a tract of land containing less than twenty acres, such board of county commissioners of the county, or the council of the city or town, may make an order in the proceedings of such body, to be indorsed and certified on said plat, that no park or playground be set aside or dedicated.

History: Ap. p. Sec. 1, p. 39, L. 1883; re-en. Sec. 2031, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 226, L. 1889; amd. Sec. 5001, Pol. C. 1895; re-en. Sec. 3466, Rev. C. 1907; amd. Sec. 2, Ch. 119, L. 1917.

Cited or applied as section 5001, Political Code, before amendment, in Farlin v. Hill, 27 Mont. 27, 33, 69 Pac. 237; as section 3466, Revised Codes, before amendment, in Barnard Realty Co. v. City of Butte, 48 Mont. 102, 113, 136 Pac. 1064; State ex rel. Cotter v. District Court, 49 Mont. 146, 152, 140 Pac. 732.

4982. Survey—By whom to be made and what to contain. A survey of the city or town site or addition must be made by the county surveyor, or some other competent surveyor, who must mark all the corners of the blocks and lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be six inches by six inches, and be placed in the ground to the depth of one foot.

History: En. Sec. 5002, Pol. C. 1895; re-en. Sec. 3467, Rev. C. 1907.

4983. Further requirements as to survey. If a stone is used as a monument it must have a cross-cut in the top at the point of intersection of the street lines, or a hole may be drilled in the stone to mark such point. If an iron monument is used, it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and establish permanently the lines of all the streets.

History: En. Sec. 5003, Pol. C. 1895; re-en. Sec. 3468, Rev. C. 1907.

4984. Certificate of surveyor. The surveyor must make and subscribe in the plat a certificate that such survey was made according to the provisions of this chapter, stating the date of survey, and verify the same by his oath.

History: En. Sec. 5004, Pol. C. 1895; re-en. Sec. 3469, Rev. C. 1907.

Cited or applied as section 5004, Political Code, in Farlin v. Hill, 27 Mont. 27, 33, 69 Pac. 237.

4985. Certificate of dedication and form. The owner of the land so platted, or his duly authorized attorney, must make on such plat a certificate, to be known as "The certificate of dedication," which may be in the following form: ....., do hereby certify that...have caused to be surveyed, subdivided, and platted into lots, blocks, streets, and alleys, as shown by the plat and certificate of survey hereunto annexed, the following described tract of land, to-wit: (Here describe land included in plat), to be known and designated (here give full name of city, town, or addition), and the lands included in all streets, avenues, alleys, and parks or public squares shown on said plat, are hereby granted and donated to the use of the public forever. Dated this....., day of....., A. D. 19...; which must be signed by all the owners and acknowledged in the same manner as a deed.

History: En. Sec. 5005, Pol. C. 1895; Re-en. Sec. 3470, Rev. C. 1907.

The fee to the land covered by a street once established is vested in the public; for the form of dedication required of the owner, when the plat of the city or town or an addition thereto is recorded, is equivalent to a deed. Hershfield v. Rocky Mt. Bell Tel. Co., 12 Mont. 102, 115, 29 Pac. 883; Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 516, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

Cited or applied as section 5005, Political Code, in Farlin v. Hill, 27 Mont. 27, 34, 69 Pac. 237.

4986. Abstract of title—Release of mortgage or other lien—Inclusion of release and judgment in abstract. The owner of the land so surveyed and platted must have prepared and file with said plat an abstract of the title of the land; such abstract of title must be prepared and certified to by an abstracter who has been duly qualified to engage in the business of compiling abstracts of titles to real estate in the state of Montana; such abstract of title must be submitted to the county attorney of the county when said platted land is outside of any city or town, or to the city or town attorney if said platted land is within the boundaries of any city or town, to examine and indorse on said abstract of title his examination of the same, and that the person making the certificate of dedication is the owner in fee simple of said land so platted.

Persons holding any mortgage or other claim or lien against said land must sign, acknowledge, and record a release in full of any and all claims against the same, which must be shown in the abstract of title as filed;

and if the county attorney or city attorney refuses to certify to said title as herein provided, it shall be the duty of the person claiming to own said land in fee simple to begin suit to quiet title and prosecute the same to final judgment. After final judgment is had, he shall include a certified copy of such judgment in said abstract of title, preceding the certificate of said abstracter, and it shall be followed by the certificate of said county or city attorney, as the case may be, and such abstract of title shall, together with the plat, be filed with the proper officer.

History: En. Sec. 5006, Pol. C. 1895; re-en. Sec. 3471, Rev. C. 1907; amd. Sec. 3, Ch. 119, L. 1917.

4987. Plat to be prepared in duplicate—Approval of same by municipal council or county commissioners—Filing and recording. All such plats must be prepared in duplicate, and when the land platted is within the boundaries of an incorporated city or town, such plats must be submitted to the city or town council for examination and approval or rejection, and when found to conform to law to be approved in duplicate by the council and the city or town engineer, and a certificate of approval shall be indorsed thereon signed by the mayor and the clerk; and a certificate of the city or town engineer shall be indorsed thereon showing that the plat conforms to the adjoining additions or plats of the city or town already platted, as near as the circumstances will admit; and one of such plats so approved and certified shall be filed with the city or town clerk, and one shall be filed with the county clerk and recorder of the county, which shall be the official plat and survey.

When the land platted is outside of the boundaries of a city or town, such plat must be prepared in duplicate and submitted to the board of county commissioners of the county for its examination and approval or rejection, and when found to conform to law to be approved in duplicate by such board of county commissioners and by the county surveyor, and a certificate of approval shall be signed by the chairman of such board and by the county clerk and by the county surveyor, and both plats shall be filed and recorded with the county clerk and recorder. When such town site is duly included within the boundaries of an incorporated city or town, upon application of such city or town council to such board of county commissioners showing such incorporation, such board shall by an order direct that one of such plats so approved, certified, and filed shall be delivered to the mayor and city clerk, which shall be filed and become the official plat and survey of such city or town.

History: En. Sec. 5007, Pol. C. 1895; re-en. Sec. 3472, Rev. C. 1907; amd. Sec. 4, Ch. 119, L. 1917.

4988. Plats must be made on mounted drawing-paper, filed, and recorded. All such plats must be made on mounted drawing-paper, and filed and recorded in the office of the county clerk, and he must keep the original plat for inspection.

History: En. Sec. 5008, Pol. C. 1895; re-en. Sec. 3473, Rev. C. 1907.

4989. No lots to be sold until plat recorded—Penalty. Such plat must be recorded before any lots or blocks are sold or transferred in any manner, and the owner thereof, or any part of the same, must forfeit or pay for each lot sold or transferred, before the recording of such plat, a

penalty not less than ten nor more than one hundred dollars, which must be recovered by the county attorney for the use of the county.

History: En. Sec. 5009, Pol. C. 1895; re-en. Sec. 3474, Rev. C. 1907.

4990. Donations or grants on a plat has the effect of a deed. Every donation or grant to the public, or to any person, society, or corporation, marked or noted as such on the plat of the city or town, or addition, must be considered, to all intents and purposes, as a deed to the said donee.

History: En. Sec. 5010, Pol. C. 1895; re-en. Sec. 3475, Rev. C. 1907.

Reservation of land on map or plat for specified purpose as dedication thereof, see note in Ann. Cas. 1916D, 1079.

Sale of lots according to plat as effecting dedication of park or square thereon, see notes in 17 Ann. Cas. 312; Ann. Cas. 1917B, 197.

4991. New survey and plat may be ordered. Whenever the recorded plat of any city or town or addition thereto, does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or town or addition, the council is authorized to cause a new and correct survey and plat of such city or town or addition to be made and recorded in the office of the county clerk, which corrected plat must follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the surveyor making the same must be indorsed thereon, referring to the original plat corrected thereby, and the defect existing therein, and corrected by such new survey and plat. The ordinance authorizing the making of such new plat must be recorded in the office of the county clerk. The surveyor's certificate must show where said ordinance is recorded.

History: En. Sec. 5011, Pol. C. 1895; re-en. Sec. 3476, Rev. C. 1907.

4992. Form of plat may be prescribed by ordinance. The council of any city or town has power by ordinance to prescribe the manner and form of making any survey of any plat of lands within the city or town.

History: En. Sec. 5012, Pol. C. 1895; re-en. Sec. 3477, Rev. C. 1907.

4993. Small tracts must be platted, surveyed, and certified before sale. Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as vineyard tracts, acreage tracts, suburban tracts, or community tracts, or small areas less than the United States legal subdivision of ten acres, must cause the same to be surveyed, platted, certified, and recorded according to the provisions of this chapter before any part or portion of the same is sold or transferred; and such sales or transfers must be made by reference to the plat on file and the numbers of the lots and blocks. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat.

History: En. Sec. 5013, Pol. C. 1895; re-en. Sec. 3478, Rev. C. 1907; amd. Sec. 5, Ch. 119, L. 1917.

4994. Penalty for violation of law. Any person who shall violate any of the provisions of this chapter is guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than three hundred dollars.

History: En. Sec. 6, Ch. 119, L. 1917; amd. Sec. 1, Ch. 48, L. 1921.

CHAPTER 42.

OFFICERS AND ELECTIONS.

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4995. Officers of city of the first class. The officers of a city of the first class consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex-officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city attorney, one city clerk, one chief of police, one assessor, one street commissioner, one city jailer, one city surveyor, and whenever a paid fire department is established in such city, a chief engineer and one or more assistant engineers, and any other officers necessary to carry out the provisions of this title. The city council may, by ordinance, prescribe the duties of all city officers and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4740, Pol. C. 1895; re-en. Sec. 3216, Rev. C. 1907.

The grant of power contained in this section, in the matter of prescribing the duties and fixing the compensation of city officers, is subject not only to the express and implied limitations found elsewhere in the title under which the section falls, but contains in itself a limitation as to the mode in which the power granted may be executed. McGillic v. Corby, 37 Mont. 249, 254, 95 Pac. 1063, 17 L. R. A. (N. S.) 1263.

The fact that the chief of police is named in the general law, and the rest of the police officers were left to be brought into existence by the city council, cannot be construed as a declaration by the legislature that his relation to the city and the public must be regarded as different from that of any other member of the police force. State ex rel. Wynne v. Quinn, 40 Mont. 472, 476, 107 Pac. 506.

In so far as the method of appointment of members of the police force is concerned, this section is repealed by the provisions of section 5108; the method of appointment and removal by the later law is wholly inconsistent with the notion that the mayor and council are authorized to exercise the power of appointment as provided in the older law. State ex rel. Wynne v. Quinn, 40 Mont. 472, 480, 107 Pac. 506.

Cited or applied as section 4740, Political Code, in City of Philipsburg v. Degenhart, 30 Mont. 299, 304, 76 Pac. 694; as section 3216, Revised Codes, in State ex rel. Quintin v. Edwards, 38 Mont. 250, 267, 99 Pac. 940; State ex rel. Klick v. Wittmer, 50 Mont. 22, 25, 144 Pac. 648.

Who is municipal officer, see notes in Ann. Cas. 1914D, 1229; 14 L. R. A. 646.

4996. Officers of city of second and third classes. The officers of a city of the second and third classes consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex-officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. They may also be appointed by the mayor, with the advice and consent of the council, one city clerk, who is ex-officio city assessor, one chief of police, one city attorney, and any other officer necessary to carry out the provisions of this title. The city council may prescribe the duties of all city officers, and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907.

Note.—The "title" above referred to embraced the entire municipal law contained in the Revised Codes 1907.

Cited or applied as section 3217, Revised Codes, in Grush v. Bishop, 46 Mont. 97, 99, 102, 126 Pac. 619; State ex rel. Klick v. Wittmer, 50 Mont. 22, 25, 144 Pac. 648.

4997. Officers of towns. The officers of a town consist of one mayor and two aldermen from each ward, who must be elected by the qualified electors of the town as hereinafter provided. There may be appointed by the mayor, with the advice and consent of the council, one clerk, who may be ex-officio assessor and a member of the council, and one treasurer, who may be ex-officio tax collector, and one marshal, who may be ex-officio street commissioner, and any other officers necessary to carry out the provisions of this title. The town council may prescribe the duties of all town officers, and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4742, Pol. C. 1895; re-en. Sec. 3218, Rev. C. 1907. See note to Sec. 4996.

Cited or applied as section 3218, Revised Codes, in State ex rel. Ryan v. Board of Aldermen, 45 Mont. 188, 192, 122 Pac. 569; Grush v. Bishop, 46 Mont. 97, 99, 126 Pac. 619; State ex rel. Klick v. Wittmer, 50 Mont. 22, 25, 144 Pac. 648.

4998. Trustees of public libraries—Funds. The trustees of any public library created or existing in a city or town must be appointed by the mayor, with the advice and consent of the council. The number of such trustees and their duties must be prescribed by ordinance; provided, however that the "library fund" provided for in section 5049 of this code shall be invested by the city treasurer under the direction of the trustees of the library; and no money shall be paid out of said fund by him except on an order or warrant from said trustees, who shall have exclusive power to make contracts and expenditures for the support and maintenance of the library, and the purchase of books and other things for a library.

History: En. Sec. 4743, Pol. C. 1895; re-en. sec. 3219, Rev. C. 1907; amd. Sec. 1, Ch. 114, L. 1915.

4999. Council has power to abolish office. The city or town council has the power to abolish any office, the appointment to which is made by the mayor, with the advice and consent of the council, and discharge any officer so appointed, by a majority vote of the council; but no office created under this title must be abolished by the council.

History: En. Sec. 4744, Pol. C. 1895; re-en. Sec. 3220, Rev. C. 1907. See note to Sec. 4996.

The only officers of a city of the first class actually created by the legislature are the mayor, two aldermen from each ward, a police judge, and a city treasurer, none of whom can be in any way affected by any action of the council, though other offices may be abolished. State ex rel. Quintin v. Edwards, 38 Mont. 250, 269, 99 Pac. 940.

This section has no application to a fireman, since section 5110 declares that he is to be deemed a municipal officer. State ex. rel. Driffill v. City of Anaconda, 41 Mont. 577, 581, 111 Pac. 345.

The city council may, by a bare majority vote, abolish the office of city purchasing agent at any time and discharge the person appointed to fill it; hence, if the incumbent of it be an alderman, the two offices are incompatible, and one individual cannot fill both at the same time. State ex rel. Klick v. Wittmer, 50 Mont. 22, 25, 144 Pac. 648.

Cited or applied as section 3220, Revised Codes, in State ex rel. Quintin v. Edwards, 40 Mont. 287, 310, 106 Pac. 695, 20 Ann. Cas. 239.

Statutes conferring powers on municipalities in respect to their officers as a delegation of legislative power, see note in L. R. A. 1916D, 921.

5000. Power to consolidate offices. The city or town council may, by ordinance, consolidate any of the offices, the appointment to which is made by the mayor, with the advice and consent of the council, and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished.

History: En. Sec. 4745, Pol. C. 1895; re-en. Sec. 3221, Rev. C. 1907.

5001. City or town to be divided into wards. The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

History: En. Sec. 4746, Pol. C. 1895; re-en. Sec. 3222, Rev. C. 1907. See note to Sec. 4996.

5002. Division of cities and towns into wards. Cities of the first class must be divided into not less than four nor more than ten wards; cities of the second class into not less than three nor more than six; and cities of the third class into not less than two nor more than four wards; and towns into not less than two nor more than three wards. All changes in the number and boundaries of wards must be made by ordinance, and no new ward must be created unless there shall be within its boundaries one hundred and fifty electors, or more.

History: En. Sec. 4747, Pol. C. 1895; re-en. Sec. 3223, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1909.

5003. Annual election of cities and towns and terms of office. On the first Monday of April of each year a municipal election must be held, at which the qualified electors of each town or city must elect a mayor, and one alderman from each ward, to be voted for by the wards they respectively represent; the mayor to hold office for two years, and until the qualification of his successor; and each alderman so elected to hold office for a term of two years, and until the qualification of his successor; and also in

cities of the first, second, and third class, a police judge and a city treasurer, who hold office for a term of two years, and until the qualification of their successors.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907.

5004. Qualification of mayor. No person shall be eligible to the office of mayor unless he shall be at least twenty-five years old and a taxpaying freeholder within the limits of the city, and a resident of the state for at least three years, and a resident of the city for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907.

Under this section, requiring the mayor of a city to be a "taxpaying freeholder," a person who, at the time of his election, owned and paid taxes on personalty, and owned realty on which he was not liable for taxes for that year because acquired since the date of assessment, is eligible to the office. Mayer v. Sweeney, 22 Mont. 103, 105, 55 Pac. 913.

Cited or applied as section 4749, Political Code, in Brown v. Foster, 48 Mont. 114, 117, 135 Pac. 993.

5005. Terms of aldermen—How decided. At the first annual election held after the organization of a city or town under this title, the electors of such city or town must elect two aldermen from each ward, who must, at the first meeting of the council, decide by lot their terms of office, one from each ward to hold for a term of two years, and one for the term of one year, and until the qualification of their successors.

History: En. Sec. 4750, Pol. C. 1895; re-en. Sec. 3226, Rev. C. 1907.

5006. Same—When to begin. The terms of all officers elected at a municipal election are to commence on the first Monday in May after such election.

History: En. Sec. 4751, Pol. C. 1895; re-en. Sec. 3227, Rev. C. 1907.

5007. Who eligible. No person is eligible to any municipal office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or city for at least two years immediately preceding his election or appointment, and is not a qualified elector thereof.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907.

The phrase "preceding the election," as used in this section, is equivalent in meaning to the expression "next preceding the election." Dowty v. Pittwood, 23 Mont. 113, 118, 57 Pac. 727.

This section is of general application, and controls aldermanic candidates who aspire to office at a first election after incorporation, as well as to those who seek like honors at subsequent elections. Brown v. Foster, 48 Mont. 114, 119, 135 Pac. 993.

Requirement as to eligibility to public office as relating to time of election or time of taking office, see notes in 11 Ann. Cas. 950; 20 Ann. Cas. 992.

5008. Qualification of aldermen. No person shall be eligible to the office of alderman unless he shall be a taxpaying freeholder within the limits of a city, and a resident of the ward so electing him for at least one year preceding such election.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907.

The provision of this section requiring that any person, to be eligible to the office of alderman, must have been a resident of

the ward where elected "for at least one year preceding the election," means one year next preceding the election. Dowty v. Pittwood, 23 Mont. 113, 117; 57 Pac. 727.

Cited or applied as section 4753, Political Code, in Brown v. Foster, 48 Mont. 114, 117, 135 Pac. 993.

Municipal council as judge of qualifications of councilmen, see note in 16 Ann. Cas. 162.

5009. Registration of electors. The council must provide by ordinance for the registration of electors in any city or town, and may prohibit any person from voting at any election unless he has been registered; but such ordinance must not be in conflict with the general law providing for the registration of electors, and must not change the qualifications of electors except as in this title provided.

History: En. Sec. 4754, Pol. C. 1895; re-en. Sec. 3230, Rev. C. 1907.

5010. Qualifications of electors. All qualified electors of the state who have resided in the city or town for six months and in the ward for thirty days next preceding the election are entitled to vote at any municipal election.

History: En. Sec. 4755, Pol. C. 1895; re-en. Sec. 3231, Rev. C. 1907.

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declaration of the voter touching the subject, if a part of the res gestae, or any declarations in disparagement of his right to vote, if made at or before the election, may be received in evidence. Sommers v. Gould, 53 Mont. 538, 165 Pac. 599.

The presumption of a right to vote arises from the fact of registration, but slight proof of the lack of any necessary qualifications to vote is sufficient to overcome that presumption, and calls for evidence in affirmation of the voter's qualifications from the party who would benefit from the vote. Sommers v. Gould, 53 Mont. 538, 545, 165 Pac. 599.

Cited or applied as section 4755, Political Code, in Dowty v. Pittwood, 23 Mont. 113, 118, 57 Pac. 727.

5011. Election judges and clerks—Voting places. The council must appoint judges and clerks of election, and places of voting. There must be at least one place of voting in each ward, and there may be as many more as the council by ordinance shall fix, and the elector must vote in the ward in which he resides. The election precincts in a city or town must correspond with wards, but a ward may be subdivided into several voting precints, and when so divided the elector shall vote in the precinct in which he resides, and all elections must be conducted according to the general laws of the state. In all cities where voting-machines are used, the city council must subdivide the wards into such number of voting precincts that there will be no more than six hundred votes in each precinct.

History: En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909.

5012. Canvass—When and how made. On the Monday following any election, the council must convene and publicly canvass the result, and issue certificates of election to each person elected by a plurality of votes. When two or more persons have received an equal and highest number of votes for any one of the offices voted for, the council must thereafter, at its first regular meeting, decide by vote between the parties which is elected. If the council from any cause fails to meet on the day named, the mayor must call a special meeting of the council within five days thereafter, and, in addition to the notice provided for calling special meetings, must publish the same on two successive days in some newspaper published

in such city or town. If the mayor fails to call said meeting within said five days, any three councilmen may call it. At such special meeting all elections, appointments, or other business may be transacted that could have been on the day first herein named.

History: En. Sec. 4757, Pol. C. 1895; re-en. Sec. 3233, Rev. C. 1907.

5013. Oath and bonds—Vacancy. Each officer of a city or town must take the oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed; but if any one, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907.

The failure of the person elected or appointed to a city office to qualify within ten days, by taking the official oath, creates a vacancy under this section, which may be filled by the appointing power. State ex rel. Bennetts v. Duncan, 47 Mont. 447, 453, 133 Pac. 109.

Cited or applied as section 4758, Political Code, in City of Philipsburg v. Degenhart, 30 Mont. 299, 303, 76 Pac. 694.

Official oath as criterion whether position held is office or employment, see note in 17 Ann. Cas. 456.

5014. When duties of office begin. The officers elected enter upon their duties the first Monday of May succeeding their election, and officers appointed by the mayor, with the advice and consent of the council, within ten days after receiving notice of their appointment.

History: En. Sec. 4759, Pol. C. 1895; re-en. Sec. 3235, Rev. C. 1907.

5015. Vacancies—How filled. When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualification of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office. The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds of all the members elect, may remove any officer.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907.

To justify removal of an officer for misconduct, it is not necessary that the actions made the basis of the charge against him must have been wilful; the official doing of an act may constitute misconduct, although there was no corrupt or malicious motive. Leggatt v. Prideaux, 16 Mont. 205, 207, 40 Pac. 377, 50 Am. St. Rep. 498; State ex rel. Wynne v. Examining and Trial Board, 43 Mont. 389, 399, 117 Pac. 77, Ann. Cas. 1912C, 143; State ex rel. Rowe v. District Court, 44 Mont. 318, 324, 119 Pac. 1103, Ann. Cas. 1913B, 396; State ex rel. Ryan v. Board of Aldermen, 45 Mont. 188, 195, 122 Pac. 569; Bailey v. Examining and Trial Board, 45 Mont. 197, 201, 122 Pac. 572.

The office of police judge is a creature, not of the constitution, but of the statute,

and the incumbent thereof is not liable to impeachment. He is, however, a city officer, and may therefore, in a proper case, be removed by the city council. State ex rel. Working v. Mayor, 43 Mont. 61, 63, 114 Pac. 777.

This section is in consonance with section 18, article v, of the state constitution, subjecting officers not liable to impeachment to removal in the manner provided by law, and is a proper exercise of the legislative authority therein granted. State ex rel. Working v. Mayor, 43 Mont. 61, 63, 114 Pac. 777.

Until written charges have been filed with a city council, in conformity with the provision of this section, no proceeding looking to the removal of a city officer has been instituted. State ex rel. Working v. Mayor, 43 Mont. 61, 64, 114 Pac. 777.

Prohibition does not lie at the suit of a police judge of a city to prohibit the city council from proceeding to remove him from office, where written charges have not been filed against him as required by this section. State ex rel. Working v. Mayor, 43 Mont. 61, 64, 114 Pac. 777.

An alderman was properly found guilty of misconduct in office and removed, on the grounds that in his capacity as an attorney at law he defended one charged with conducting business without paying a license tax, and accepted a retainer to prosecute a suit against the town for damages and an injunction in regard to a sewer. State ex rel. Ryan v. Board of Aldermen, 45 Mont. 188, 193, 122 Pac. 569.

The provision of this section, requiring "a majority vote of the members" of the city council, that is, a majority of those constituting the actual membership of the body at the time, to fill a vacancy in an elective city office, and not section 5054, making "a majority of the whole number of the members elected" requisite for such purpose, is applicable in case a vacancy in its own body caused by resignation or death is to be filled. State ex rel. Wilson v. Willis, 47 Mont. 548, 552, 133 Pac. 962. See State ex rel. Klick v. Wittmer, 50 Mont. 22, 26, 144 Pac. 648.

Having been rightfully chosen by the city council to fill a vacancy in its own body, and after taking and subscribing the constitutional oath, an alderman had the right to have his vote on the question of filling another vacancy, caused by death, recorded, even though a certificate of election had not been issued to him, and irrespective of the mayor's refusal to recognize him, or of the fact that an action to determine his official status was then pending. State ex rel. Wilson v. Willis, 47 Mont. 548, 553, 133 Pac. 962.

Inherent power of municipal corporation to remove officers, see note in 10 Ann. Cas. 886.

5016. Accountability of officers provided for. It is the duty of the council to provide for the accountability of all officers provided for in this title, by requiring of them sufficient security for the faithful performance of their duties or trust, which security must be given by them before entering upon their respective duties. If such security becomes insufficient, additional security may be required, and if not given within ten days, the council, by a vote of two-thirds of the members, may declare the office vacant, and may thereafter fill the same.

History: En. Sec. 4761, Pol. C. 1895; re-en. Sec. 3237, Rev. C. 1907.

This section provides for the accountability of all municipal officers, but does not prescribe what the conditions of the bond shall be. City of Philipsburg v. Degenhart, 30 Mont. 299, 303; 76 Pac. 694.

5017. Official bonds—How given. The city treasurer, city clerk, and city marshal, and such other city officers as the council by ordinance may require, must give official bonds, in such sums and securities as the ordinance may prescribe, which bonds must be approved by the council and filed with the city clerk, except the bond of the city clerk, which must be filed with the city treasurer, and no officer must become surety upon the official bond of another.

History: En. Sec. 4762, Pol. C. 1895; re-en. Sec. 3238, Rev. C. 1907.

Money collected from gambling houses and brothels by city officers, and receipted for by the treasurer, was held to have been received for the city, though such money was illegally collected, and the failure of the treasurer to pay it over to his successor in office was a breach of his official bond, for which his sureties were liable. City of Philipsburg v. Degenhart, 30 Mont. 299, 303, 76 Pac. 694.

5018. Salaries must be fixed. The council must, by ordinance, fix the salaries and compensation of the city officers, policemen, and other employees, which must not exceed the amount specified in this title.

History: En. Sec. 4763, Pol. C. 1895; re-en. Sec. 3239, Rev. C. 1907.

5019. Salaries and qualifications of mayor and aldermen. The annual salary of a mayor of a city of the first class must not exceed four thousand dollars; and the annual salary of the mayor of a city of the second class must not exceed two thousand dollars; and the annual salary of the mayor of a city of the third class must not exceed six hundred dollars; and each alderman in a city of the first class may be allowed and paid not exceeding six dollars per diem, to be fixed by ordinance, for each day of session held by city council; provided, that no alderman shall be paid for more than five days' service during any one month; and aldermen of cities of the second and third class may be allowed and paid not exceeding three dollars per diem for each day of session, to be fixed by ordinance, but no alderman shall be paid for more than two days' service during any one month. No salary or compensation shall be allowed to the mayor or alderman of a town. No person shall be elected to the office of mayor or alderman in any city who is not a resident and freeholder within the limits of the city.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913.

5020. Salaries of police judges. The annual salary and compensation of police judges must be fixed by ordinance, and in a city of the first class, with a population in excess of fifty thousand inhabitants, must not exceed, for all services rendered, three thousand dollars; and in a city of the second class must not exceed fifteen hundred dollars; and in a city of the third class must not exceed six hundred dollars, and, in addition, a police judge is entitled to receive in all civil cases the fees which are now or may hereafter be allowed justices of the peace. In all criminal actions or proceedings arising under the criminal laws of the state, when acting as a justice of the peace or committing magistrate, he must receive no compensation whatever; provided, however, that none of the provisions of this act shall affect cities operating under the commission form of government.

History: En. Sec. 4765 Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919.

It was held under this section, prior to its amendment, that a police judge is not entitled to collect fees in cases arising out of violations of city ordinances, either from the city or from the defendant. State ex rel. Rowe v. District Court, 45 Mont. 205, 209, 122 Pac. 270.

Cited or applied as section 3241, Revised Codes, before amendment, in State ex rel. Rowe v. District Court, 44 Mont. 318, 322, 119 Pac. 1103, Ann. Cas. 1913B, 396.

5021. Compensation of justices of the peace acting as police judge. In towns, the council may designate a justice of the peace of the township in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, not exceeding one hundred dollars per annum, and the justices of the peace so designated must act as a police judge in all cases arising out of a violation of ordinances where the town is a party.

History: En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907.

A justice of the peace, acting as police judge, has exclusive jurisdiction in all

cases arising under the ordinances, in addition to his jurisdiction as a justice. The two jurisdictions are separate and distinct, however, because he can act as police judge only by virtue of his designation under the statute and by the mode of procedure provided for that purpose. State ex rel. Streit v. District Court, 45 Mont. 375, 380, 123 Pac. 405, 48 L. R. A. (N. S.) 156.

A justice of the peace has no jurisdiction over cases arising under town ordinances, except where he may have been designated under this section to act as police judge, in which event failure to style himself "police judge," instead of "justice of the peace," is a mere irregularity insufficient to divest him of jurisdiction. Grant v. Williams, 54 Mont. 246, 252, 169 Pac. 286.

In an action for malicious prosecution against a justice of the peace, by a person aggrieved by an act of such justice acting in the designated capacity of police judge, it must be alleged that such officer had not been designated to act as police judge; otherwise the presumption will prevail that official duty was regularly performed. Grant v. Williams, 54 Mont. 246, 252, 169 Pac. 286.

5022. Salary of treasurer. The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed three thousand dollars in cities of the second class must not exceed two thousand dollars, and in cities of the third class it must not exceed seven hundred dollars, and in towns it must not exceed five hundred dollars.

History: En. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907.

5023. Salary of city attorney. The annual salary and compensation of the city attorney must be fixed by ordinance, and must not exceed, in cities of the first class, three thousand dollars, and in cities of the second class must not exceed fifteen hundred dollars, and in cities of the third class must not exceed five hundred dollars, which compensation shall be in full for all services rendered in any capacity, and no fee, percentage, or additional compensation must be given to or allowed him.

History: En. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907.

5024. Salary of chief of police. The annual salary and compensation of the chief of police must be fixed by ordinance, and must not exceed, in cities of the second class, one hundred and fifty dollars per month, and in cities of the third class not to exceed one hundred and twenty-five dollars per month.

History: En. Sec. 4769, Pol. C. 1895; re-en. Sec. 3245, Rev. C. 1907; amd. Sec. 1, Ch. 55, L. 1911.

5025. Salary of city clerk. The annual salary and compensation of the city clerk must be fixed by ordinance, and in cities of the first class must not exceed twenty-four hundred dollars, which is for all services rendered by him in any capacity; in cities of the second class must not exceed fifteen hundred dollars; in cities of the third class must not exceed twelve hundred dollars, which compensation, for cities of the second and third class, includes services rendered by him as city attorney; and in towns must not exceed three hundred dollars, which includes all services rendered by him in any capacity; provided, however, that nothing in this section shall be held or construed as applying to cities and towns operating under the commission form of government.

History: En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917.

5026. Salary must not be increased or diminished during term. The salary and compensation of an officer must not be increased or diminished during his term of office.

History: En. Sec. 4771, Pol. C. 1895; re-en. Sec. 3247, Rev. C. 1907.

5027. Constitutional oath of office must be taken. Before entering upon office all officers, elected or appointed, must take and subscribe the constitutional oath of office.

History: En. Sec. 4772, Pol. C. 1895; re-en. Sec. 3248, Rev. C. 1907.

The official oath in writing of an alderman, when taken and subscribed, is intended to become a record of the city. State ex rel. Wilson v. Willis, 47 Mont. 548, 554, 133 Pac. 962.

Cited or applied as section 3248, Revised Codes, in State ex rel. Bennetts v. Duncan, 47 Mont. 447, 453, 133 Pac. 109.

Failure to comply with exact form of oath prescribed by law as affecting its binding character, see note in 5 Ann. Cas. 723.

5028. Duties and compensation of other officers. The duties and compensation of the street commissioners, chief of the fire department, city surveyor, and other city officers not provided in this title may be prescribed by ordinance.

History: En. Sec. 4789, Pol. C. 1895; re-en. Sec. 3258, Rev. C. 1907.

Cited or applied as section 3258, Revised Codes, in State ex rel. Quintin v. Edwards, 38 Mont. 250, 269, 99 Pac. 940.

CHAPTER 43.

EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE AND ATTORNEY.

Section 5029. Executive Officers.
5030. Powers of Mayor.
5031. Mayor to Preside, Sign Warrants, etc.
5032. Council to Elect President.
5033. Duties of Clerk.
5034. Duties of City Treasurer.
5035. Transfer of Municipal Funds—How Made.
5036. Security for Deposits, How Given—Statements of Banks.
5037. Duties of Chief of Police.
5038. Qualifications, Term of Office, and Duties of City Attorney.

5029. Executive officers. The executive officers of a city or town are the mayor, marshal, and such officers for the assessment, collection, auditing, safe-keeping, and disbursing the revenue, and keeping the records and journals of the city or town, as the council may provide.

History: En. Sec. 4780, Pol. C. 1895; re-en. Sec. 3249, Rev. C. 1907. Cal. Pol. C. Sec. 4385.

5030. Powers of mayor. The mayor is the chief executive officer of the city or town, and has power:

1. To nominate, and, with the consent of the council, to appoint all non-elective officers of the city or town, provided for by the council, except as provided in this title.

2. To suspend, and, with the consent of the council, to remove any non-elective officer, stating in the suspension or removal the cause thereof.

3. To cause the ordinances of the city or town to be executed, and to supervise the discharge of official duty by all subordinate officers.

4. To communicate to the council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city or town, with such recommendations as he may deem proper.

5. To recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town, and the improvement of the government and finances, as he deems expedient.

6. To approve all ordinances and resolutions of the council adopted by it, and, in case the same do not meet his approbation, to return the same to the next regular meeting of the council, with his objections in writing, and no ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

7. To veto any objectionable part of a resolution or ordinance, and approve the other parts. If the mayor fail to return any resolution or ordinance as aforesaid, the same takes effect without further action.

8. To call special meetings of the council, and when so called he must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

9. To cause to be presented, once in three months, a full and complete statement of the financial condition of the city or town.

10. To bid in for the city or town any property sold at a tax or judicial sale, where the city or town is a party or interested.

11. To procure and have in his custody the seal of the city or town.

12. To take and administer oaths.

13. To call on every male citizen of the city or town, over the age of eighteen years, to aid in the enforcement of the laws and ordinances in case of riots; to call out the militia to aid him in suppressing the same or other disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the city, or for carrying into effect any law or ordinance; and any person who does not obey such call forfeits to the city or town a fine not exceeding twenty-five dollars.

14. To require of any of the officers of a city or town an exhibit of his books and papers.

15. To grant pardons and remit fines and forfeitures for offenses against city or town ordinances, when in his judgment public justice would be thereby subserved; but he must report all pardons granted, with the reasons therefor, to the next council.

16. To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

17. He has such power as may be vested in him by ordinance of the city or town, in and over all places within five miles of the boundaries of the city or town, for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

History: Ap. p. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907. Cal. Pol. C. Sec. 4386.

The power of suspension and removal, granted the mayor by the second subdivision of this section, is taken from him by section 5108. State ex rel. Quintin v. Edwards, 38 Mont. 250, 270, 99 Pac. 940.

In so far as the method of appointment of members of the police force is concerned, this section is repealed by section 5108. State ex rel. Wynne v. Quinn, 40 Mont. 472, 480, 107 Pac. 506.

In an injunction suit to restrain the payment of municipal funds for work done in repairing sidewalks, one ground of the complaint in which was that though the meeting of the council at which the walk was ordered replaced was a special one, it was held without any notice, proclamation, or message of the mayor, as required by the eighth subdivision of this section, the plaintiff had the burden of proving that

the meeting was a special one. O'Brien v. Drinkenberg, 41 Mont. 538, 543, 111 Pac. 137.

It is not necessary, in order to convene the council in special session, that a formal proclamation be issued by the mayor, or that notice shall be given. The law does require that the mayor shall deliver to the council a message stating the object of the meeting. O'Brien v. Drinkenberg, 41 Mont. 538, 546, 111 Pac. 137.

5031. Mayor to preside, sign warrants, etc. The mayor is the presiding officer of the council, must sign the journals thereof and all warrants on the city treasurer, and decide by his vote all ties, and has no other vote.

History: En. Sec. 4782, Pol. C. 1895; re-en. Sec. 3251, Rev. C. 1907.

Under the law as it existed in 1895, the mayor was deemed to be a constituent part of the council, and, where there was a tie vote of the aldermen on the confirmation of an officer, he had the right to vote for confirmation. State ex rel. Young v. Yates, 19 Mont. 239, 241, 47 Pac. 1004, 37 L. R. A. 205.

Cited or applied as section 3251, Revised Codes, in O'Brien v. Drinkenberg, 41 Mont. 538, 543, 111 Pac. 137.

5032. Council to elect president. The council may elect a president, who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor, and in the absence of the president the council may appoint one of its number to act in his place.

History: En. Sec. 4783, Pol. C. 1895; re-en. Sec. 3252, Rev. C. 1907.

The council may or may not elect a president. When elected, he must be held to know whether provision has been made for his compensation; if none has been made in the mode prescribed by law, then he is entitled to none, and has no legal claim against the city therefor. McGillic v. Corby, 37 Mont. 249, 255, 95 Pac. 1063, 17 L. R. A. (N. S.) 1263.

Where accountants are employed to audit the books of a city and their contract calls for a report to the city, but before it is made two copies thereof are handed to the mayor, at his request, one of which he presents to the city council, and the other he receives as his own, the mayor's duty is fully discharged, after seeing that the copy presented to the council finds its way into the hands of the city clerk, and is by him filed among the records of his office; the mayor has a right to retain the other copy among his private papers. City of Butte v. Nevin, 46 Mont. 380, 383, 128 Pac. 600.

5033. Duties of clerk. It is the duty of the clerk:

1. To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, by-laws, resolutions, and contracts passed, adopted, or entered into, and to sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

2. To enter in a book all ordinances, resolutions, and by-laws passed and adopted by the council. Such book is called "The Ordinance Book."

3. To enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the city treasury; such book is called "The Finance Book."

4. To countersign and cause to be published or posted, as provided by law, all ordinances, by-laws, or resolutions passed and adopted by the council.

5. To file and keep all records, books, papers, or property belonging to the city or town, and to deliver the same to his successor when qualified.

6. To make and certify copies of all records, books, and papers in his possession, on the payment of like fees as are allowed county clerks, which fees must be paid into the city treasury.

7. To give notice of all elections as required by law, and to notify all persons of their election or appointment to office.

8. To make and keep a complete index of the journal ordinance book, finance book, and all other books and papers on file in his office.

9. To perform such duties in and about the assessment, levy, and collection of taxes and assessments as may be prescribed by law or ordinance.

10. To take and administer oaths, but must not charge or receive any fees therefor.

11. To certify to the county clerk, within ten days after their election and qualification, the names and terms for which they are elected, of the mayor, city clerk, and city treasurer.

12. To perform such other and further duties as the council may prescribe.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907. Cal. Pol. C. 4393.

The presentation of protests or objections against the creation of special improvement districts is no part of the duties of the city clerk, and the leaving of such protests at the clerk's office is of no avail. Hensley v. City of Butte, 36 Mont. 32, 38, 92 Pac. 34. Compare Tiggerman v. City of Butte, 44 Mont. 138, 142, 119 Pac. 477.

The mayor of a city in this state is not required to keep a record of his official acts. The duty to keep the files and records of the city appertains to the clerk, who is bound to deliver them to his successor. City of Butte v. Nevin, 46 Mont. 380, 383, 128 Pac. 600.

If the mayor chooses to keep a record including copies of documents which must be preserved in the files of the clerk's office, they are his private property, and title to them does not vest in the city by virtue of the fact that he is acting as its chief executive at the time. City of Butte v. Nevin, 46 Mont. 380, 383, 128 Pac. 600.

If a person has been lawfully elected a member of the city council, and has taken the required oath, the intention of the law is that the oath, when taken and subscribed, shall become a record of the city, and it is the clerk's duty to file and keep it as such. It is also the clerk's duty to record the newly elected officer's vote on a question; and the performance of the clerk's duty, in either respect, may be enforced by mandamus. State ex rel. Wilson v. Willis, 47 Mont. 548, 554, 133 Pac. 962.

Cited or applied as section 3253, Revised Codes, in Harvey v. Town of Townsend, 57 Mont. 407, 188 Pac. 897.

5034. Duties of city treasurer. It shall be the duty of the city treasurer:

1. To receive all moneys that come to the city or town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

2. To perform such duties in the collection of taxes, licenses, or assessments as are or may be prescribed by law or ordinances.

3. To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city or town, received by him and by him disbursed during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

4. To keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

5. To keep a separate account of each fund or appropriation, and the debits and credits thereof.

6. To give every person paying to him money as treasurer, a receipt therefor, specifying the date of payment, the amount, and for what paid.

7. To render at any time an account to the council, showing the money on hand and the condition of the treasury.

8. To keep a register of all warrants paid, called "The Registry Book," which must show the date, amount, and number, and the person to whom, and the fund from which the same was paid, and to deliver and file with the city clerk all vouchers, warrants, or orders paid by him.

9. To annually make out and submit to the city council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, file the same with the clerk, and an abstract thereof must be published in some newspaper in the city or town, or, if none is published, such abstract must be posted in the room or building occupied by the council.

10. To pay out, in the order which they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

11. To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in such city or town, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half per centum per annum, payable quarter-annually.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913. Cal. Pol. C. 4392.

Under former statutes it was held that a city treasurer, who was obliged by law of the state and an ordinance of the city to keep the funds of the city on deposit, if he used reasonable prudence and caution in selecting the bank, and was without fault or negligence in keeping his deposit, was not liable for a loss occasioned by the failure of the bank in which he deposited the money. City of Livingston v. Woods, 20 Mont. 91, 102, 49 Pac. 437. Compare Commissioners of Jefferson County v. Linebeger, 3 Mont. 231, 239, 35 Am. Rep. 462.

In an action by a city against the sureties on the official bond of the treasurer, reports of the treasurer to the city council of moneys received and disbursed during the month, made under this section, may be given in evidence against such sureties, and are prima facie true, and, when not contradicted by the sureties, are binding on them. City of Philipsburg v. Degenhart, 30 Mont. 299, 304, 305, 76 Pac. 694.

5035. Transfer of municipal funds—How made. No money must be transferred from one fund to another, except by ordinance or resolution of the council.

History: En. Sec. 2, Ch. 88, L. 1913.

5036. Security for deposits, how given—Statements of banks. The treasurer shall take from such banks such security in public bonds or other securities or indemnity bonds as the council may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand.

When more than one such bank is available in any city or town, such deposits shall be distributed ratably among all such banks qualifying therefor, substantially in proportion to the paid in capital of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of the treasurer to prorate all such deposits among all the banks in such city or town qualified to receive same as in this act provided, to the end that an equitable distribution of such deposits be maintained, but the amount so deposited in any bank shall at no time exceed the amount of the paid-in capital of such bank.

If no such bank exists in the city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to

receive such deposits, then and in such case, or in either of such cases, such moneys or any portion thereof shall be deposited under the terms of this act in the bank or banks most convenient to such city or town willing to accept such deposits under the terms of this act, and qualified as above provided.

Any bank or banks receiving such deposits shall, through its president and cashier, make a statement quarter-annually of account under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balances in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank, nor any officer thereof nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer, or to any other person, other than the interest provided for herein, for or on account of the making of such deposits with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made or permitted to remain in any bank until the security for such deposits shall have been first approved by the council and delivered to the treasurer. All interest paid and collected on such deposits shall be credited to the general fund of the city or town.

When moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913.

Right to preference in respect to public funds deposited in bank which subsequently becomes insolvent, see notes in 5 L. R. A. (N. S.) 886; 16 L. R. A. (N. S.) 918; L. R. A. 1917A, 683; 8 Ann. Cas. 116; Ann. Cas. 1916B, 1264.

5037. Duties of chief of police. It is the duty of the chief of police:

1. To execute and return all process issued by the police judge, or directed to him by any legal authority, and to attend upon the police court regularly.

2. To arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance, and bring them before the police judge for trial.

3. To have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council.

4. The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

5. To perform such other duties as the council may prescribe.

History: En. Sec. 4785, Pol. C. 1895; re-en. Sec. 3254, Rev. C. 1907.

The chief of police is a policeman or police officer in the same sense as is an ordinary policeman. When the circumstances demand it, he is required to perform all the duties of the ordinary policeman, for, though he has the additional duty of supervision and control of the entire force, this does not lessen or abridge the duties which are enjoined upon all police officers under the general laws of the state. State ex rel. Wynne v. Quinn, 40 Mont. 472, 475, 107 Pac. 506.

5038. Qualifications, term of office, and duties of city attorney. The city attorney to be appointed shall be a person who has been licensed to practice as an attorney in this state. He shall hold his office for two years, unless suspended or removed as provided by this act. It shall be the duty of the city attorney to attend before the police court and other courts of the city and the district court, and prosecute on behalf of the city, and he shall generally do and perform such other acts as pertain to the office of the city or corporation council. He shall, when required, draw for the use of the council contracts and ordinances for the government of the city, and, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the corporation. For such services he shall receive such salary and fees as may be fixed by the city council by ordinance. Nothing herein shall be taken or construed as preventing the city council from employing other and additional council in special cases, and providing for the payment of such services. The city attorney may be suspended or removed from office by the city council for the neglect, violation, or disregard of the duties required by this act, or the ordinances of the city.

History: Ap. p. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907. Cal. Pol. C. Sec. 4391.

CHAPTER 44.

LEGISLATIVE POWERS—POWERS OF CITY COUNCILS—ORDINANCES—INITIATIVE AND REFERENDUM.

Section 5039. Powers of City Councils.
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5041. Regulation of Motor Vehicles and Their Speed.
5042. "Motor Vehicles" Defined.
5043. Organized Cities and Towns Authorized to Take by Gift, Donation, Devise, etc.
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5048. Tax Levy for Band Concerts.
5049. Establishment of Free Public Library—Tax Levy for Maintenance.
5050. Submission of Questions to Electors.
5051. Library to be Established When Majority Vote Favors—Election at Which Question May Be Submitted.
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5056. Ordinances—How Prepared.
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5058. Initiative in Cities—Petition.
5059. Submission of Question at Regular Election.
5060. No Ordinance to Be Effective Until Thirty Days After Passage.
5061. Referendum Petition.
5062. Referendum to Be Had at Regular Election.
5063. Special Election May Be Ordered.
5064. Proclamation of Election.
5065. Ballots and Method of Voting.
5066. Qualifications of Voters.
5067. Forms of Petitions.
5068. To What Ordinances Applicable.

5039. Powers of city councils. The city or town council has power:

1. To make and pass all by-laws, ordinances, orders, and resolutions not repugnant to the constitution of the United States or of the state of Montana, or of the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

2. To levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the state.

3. To license all industries, pursuits, professions, and occupations, and to impose penalities for failure to comply with such license requirements; but the amount to be paid for such license must not exceed the sum required by the state law when the state law requires a license therefor.

4. To fix the amount, terms, and manner of issuing and revoking licenses; but the council may refuse to issue licenses when it may deem it best for the public interests.

5. To build or hire all necessary buildings for the use of the city or town, and to heat and light the same.

6. To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks, and public grounds, and vacate the same.

7. To provide for lighting and cleaning the streets, alleys, and avenues; to regulate the use of sidewalks, and to require the owners of the premises adjoining to keep the same free from snow or other obstruction; to regulate the deposition and removal of ashes, garbage, or other offensive matter in any street, alley, or on public grounds or on any premises, and to provide for levying the cost of such removal as a special tax against the property from which such matter was deposited.

8. To provide for and regulate street crossings, curbs, and gutters; to regulate and prevent the use of obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction.

9. To regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds.

10. To regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town.

11. To regulate and control the laying of railroad tracks, and prohibit the use of engines and locomotives propelled by steam or otherwise, or to regulate the speed thereof when used.

12. To require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style, and size of the lamp-posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location of the lamp-posts, and to require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise, where the said track intersects or crosses any street, alley, or public highway, or runs along the same, and to fix and determine the size and kind of such crossing and the grades thereof; and, in case the owner of

such railroad fails to comply with such requirements, the council may cause the same to be done, and it may assess the expense thereof against such owner, and the same constitutes a lien on any property belonging to such owner within such city or town, and may be collected as other taxes.

13. To license and authorize the construction and operation of street-railroads, and require them to conform to the grade of the street as the same are or may be established.

14. To regulate the numbering of houses and lots, and to change the same.

15. To provide for the cleaning of waters, watercourses, and streams within the city, or to alter, straighten, or widen the same, and the draining and filling in of ponds, wells, or shafts on private property, when necessary to the public health or public welfare.

16. To license, tax, and regulate auctioneers, peddlers, pawnbrokers, second-hand and junk-shops, drivers, porters, saloons, billiard-tables, tenpin alleys, shooting-galleries, shows, circuses, street parades, theatrical performances, and places of amusements within the city or town; provided, that the power to license, tax, and regulate circuses and shows of like character shall extend three miles beyond the limits of the city or town.

17. To require the owners and keepers of pawn, second-hand, and junk-shops to keep a record of all articles purchased or pawned to them, which record, and the articles purchased or pawned, are subject to the inspection of all police officers of the city or town.

18. To prevent the keepers of pawn, second-hand, and junk-shops from purchasing any article from a minor, without the written consent of the parent or guardian of such minor.

19. To regulate or prohibit dance houses within the city or town limits, and within three miles thereof.

20. To suppress and punish all fraudulent devices and practices for the purposes of obtaining money or property, and to prohibit the same or exhibition of immoral publications, prints, pictures, or illustrations.

21. To establish markets and market-houses, and provide for the supervision and use thereof.

22. To provide for and regulate the inspection of beef, pork, flour, meal, and all provisions, oils, whiskey, and other spirits in barrels, hogsheads, and other vessels; to regulate the inspection of milk, water, butter, lard, and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

23. To regulate the inspection, weighing, and measuring of wood, coal, stone, corn, or other grain, and hay, within the city or town.

24. To regulate the construction, use, and repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

25. To prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof.

26. For the purpose of guarding against fire, to prescribe the limits

within which wooden or combustible buildings must not be erected, placed, or repaired, and to establish fire limits within the city or town.

27. To establish a fire department, and prescribe and regulate its duties; to maintain a fire-alarm and police telegraph.

28. To erect engine, hose, and hook-and-ladder houses, and provide engines and other implements for the extinguishment of fire.

29. To inspect chimneys, flues, fireplaces, stovepipes, ruins, structures, and boilers, and, when dangerous, to require the same to be removed or put in order, and prohibit the use thereof until safe.

30. To regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, or other inflammable explosives or materials, tar, pitch, kerosene, oil, and turpentine, and to prohibit the storage of the same within three miles of the city limits.

31. To regulate or prohibit the building of bonfires, the explosion, use or selling of fireworks, firecrackers, torpedoes, or other pyrotechnics or toy pistols or guns within the city or town.

32. To prohibit and punish cruelty to animals.

33. To define and abate nuisances, and to impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises which they occupy or control.

34. To define vagrancy, and to restrain and punish vagrants, mendicants, and persons guilty of disorderly conduct.

35. To establish and maintain a jail for the confinement of persons convicted of violating the ordinances of the city or town; to make rules for the government of the same, and to cause the prisoners to work on streets or elsewhere within three miles of the city.

36. To regulate, restrain, or prohibit the running at large of horses, cattle, swine, sheep, goats, and dogs, or other animals, and to authorize the impounding and sale thereof, if found at large contrary to ordinance.

37. To license the keeping of dogs, and provide for the killing or destruction thereof, if found running at large without license.

38. To prevent the incumbering of streets, sidewalks, alleys, or public grounds with carriages, wagons, lumber, fire-wood, or other obstacles or materials.

39. To prevent the riding or driving of animals, or the drawing or riding of vehicles of any kind on the sidewalks of the city, or the doing damage in any way to the sidewalks.

40. To prevent horse-racing, or immoderate driving or riding in the streets of the city or town, and to regulate and provide for the hitching of all animals on the streets.

41. To regulate or prohibit coasting, skating, sliding, or tobogganing on the streets or alleys, or the indulgence in other amusements dangerous or annoying to the inhabitants, or having a tendency to frighten animals.

42. To regulate the location of slaughter-houses, breweries, distilleries, livery-stables, foundries, blacksmith shops, planing-mills, soap factories, and tanneries within the city or town, and to prohibit any offensive and unwholesome establishments within the city or town limits, or within three miles thereof.

43. To regulate or suppress the erection of poles and the stringing

of wires, rods, or cables in the streets, alleys, or within the limits of any city or town.

44. To provide for a board of health, and to prescribe its powers and duties, and when such board of health is provided, for the same to have jurisdiction within the city or town limits, and within three miles thereof.

45. To establish at a suitable place, without the limits of the city or town, in case of necessity, a hospital to prevent the spread of smallpox, or other contagious or infectious diseases, and to regulate the control thereof, and do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

46. To establish and regulate cemeteries, within or without the city or town, and acquire lands for this purpose, and prohibit the establishment of cemeteries within three miles of the city or town.

47. To fix the compensation, and to prescribe the duties of all officers and other employees of the city or town, subject to the limitations mentioned in this title.

48. To impose fines and penalties for the violation of any city ordinance, but no fine or penalty must exceed three hundred dollars, and no imprisonment must exceed ninety days for any one offense.

49. To levy and collect annually from each able-bodied male resident of the city or town, between the ages of twenty-one and forty-five years, a poll-tax not exceeding three dollars per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing must work one day on the public streets of the city.

50. To regulate partition fences and party walls not already constructed.

51. To prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings, and to order the construction of fire-escapes thereon.

52. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners.

53. To erect and organize a workhouse in or near a city or town; and any person who fails or neglects to pay any fine or costs imposed on him by any ordinance may be committed to the workhouse until such fine is paid.

54. To license and regulate hackney carriages, carts, omnibuses, wagons, and drays, and to fix the rate to be charged for the carriage of persons and property within the city or town, and to the public works and property without the limits of the city or town.

55. To regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires, and to prevent and suppress the sale of firearms, and carrying of concealed weapons.

56. To establish standard weights and measures to be used in the city or town, and to provide for a sealer of standard weights and measures, who has exclusive jurisdiction within the city or town.

57. To provide for the inspection and measuring of lumber and other building materials.

58. To make regulations authorizing the police of the city or town to make arrests of persons charged with crime, within the limits of the city or town and within five miles thereof, and along the line of water supply of the city or town.

59. To provide for the planting of trees and the protection of the same.

60. To require from an officer at any time a report in detail of the transactions in his office, or any matter connected therewith.

61. To regulate the sales of poisons, and to punish any person for selling or using opium, or any preparation thereof, or having the same or any implement to be used in smoking it in his possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where the same is smoked or used. Druggist may sell opium or any preparation thereof, subject to the general laws of the state in relation thereto.

62. To sell, dispose of, or lease any property belonging to a city or town not held in trust for a specific purpose, and such transfer must be made by ordinance or resolution passed by a two-thirds vote of all the members of the council.

63. To make any and all contracts necessary to carry into effect the powers granted by this title, and to provide for the manner of executing the same.

64. To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, bridges, water-works, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed three per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt. The additional indebtedness authorized, including all indebtedness heretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, shall not exceed ten per centum over and above the three per centum heretofore referred to, of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided, further, that the above limit of three per centum shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby, and

carried in the affirmative by a vote of the majority of said taxpayers who vote at such election. It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply, or have valuable water rights or a supply of water desired by the city or town for supplying the said city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply, upon such terms as the parties agree; in case they cannot agree, then the said city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use; and any city or town acquiring property under the laws relating to the taking of private property for public use shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure and appropriate water rights and title to the same, and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise. Cities and towns shall have jurisdiction and control over the territory occupied by their public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works, and also over the source or stream from which water is taken, for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

65. To regulate and provide for the construction or repair of sidewalks and foot pavements, and if the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks or pavements, and the city or town may pay for the same, and the amount so paid is a lien upon the lot, and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

66. To grant the right of way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, and to regulate the running and management of the same, and compel the owner of such street or other railroads to keep the street in repair when occupied by such street or other railroad; to regulate the speed of

railroad engines, and to require railroad companies to station flagmen at street crossings.

67. To compel the owner of a building to erect fire-escapes and proper exits and entrances when necessary for safety.

68. To establish the grade of any street, alley, or avenue, and when the grade has been established, it must not be changed except by a vote of the majority of the council, and not then until the damage to property owners, caused by the change of grade, has been assessed and determined by three disinterested appraisers, who must be appointed by the mayor and confirmed by the council, who must make an appraisement, taking into consideration the benefits, if any, to the property, and file their report with the clerk within ten days after receiving notice of their appointment, and the amount of damages so assessed must be tendered to the owner or his agent before any change of grade is made.

69. To provide for the sprinkling of the streets, alleys, and public places of the city or town, and to fix the rates to defray the cost of said work.

70. To regulate the location of steam-boilers, the putting up of signs and awnings, and the construction of entrances to basements, cellars, and other floors to buildings from the sidewalks.

71. To prevent and prohibit prize-fights, boxing-matches of any kind, with or without gloves, or exhibition of prize-fighters, boxers, or sluggers in the city or town, or within five miles thereof.

72. To require the owner of a sidewalk, house, or other structure which is dangerous to passers-by, to repair or remove the same after notice.

73. To permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water, and other mains, but no excavations must be made for such purpose without the permission of the council or its authorized officer; and the streets and alleys must be placed in as good condition by the person or corporation making the excavation, as they were before the excavation was made, and the mains laid down, and in default thereof the council may order the same to be done at the expense of such person or corporation.

74. To provide for inclosing, improving, and regulating all public grounds belonging to the city or town.

75. To condemn private property for opening, establishing, widening, or altering any streets, alley, park, sewer, waterway, in the city or town, or for any other public use, and the ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking, and must conform to and the proceedings thereunder had as provided in the Code of Civil Procedure concerning eminent domain.

76. To appropriate money, and provide for the payment of the debt and expenses of the city or town, and also the debt of the municipal corporation of which it is the successor.

77. To take a census of the inhabitants of a city or town at any time.

78. To provide for the city or town printing, the contract for which must be let annually to the lowest bidder.

79. To adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

80. To create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding twenty years; to make such assessments payable in instalments, and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants, which warrants shall bear interest at a rate not to exceed six per centum per annum.

81. To regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement.

82. To regulate the use and construction of irrigating ditches, drains, and flumes within or running through any city or town.

History: Ap. p. Sec. 325, 5th Div. Comp. Stat. 1887; amd. Secs. 3, 4 and 5, p. 179, L. 1889; amd. Sec. 1, p. 113, L. 1893; amd. Sec. 4800, Pol. C. 1895; amd. Sec. 1, p. 203, L. 1897; re-en. Sec. 3259, Rev. C. 1907. Cal. Pol. C. Sec. 4408.

Note.—Subdivisions 19 and 80 have been changed in this code to conform to subsequent changes in the law governing improvement districts and to legislation prohibiting gambling, prostitution and sale of intoxicating liquors.

The last clause of subdivision 64 of this section, which, in the codes of 1895, declared that no municipality having a water supply furnished by private persons shall erect a water plant to be operated by itself, but that it should purchase or condemn that owned by such private persons, was declared unconstitutional. Helena C. W. Co. v. Steele, 20 Mont. 1, 4, 49 Pac. 382, 37 L. R. A. 412; State ex rel. Gerry v. Edwards, 42 Mont. 135, 148, 111 Pac. 734, Ann. Cas. 1912A, 1010, 32 L. R. A. (N. S.) 1078.

In the ownership and control of its water system, a city acts in its proprietary character, as distinguished from its governmental capacity. H. C. W. Co. v. Steele, 20 Mont. 1, 6, 49 Pac. 382, 37 L. R. A. 412; Public Service Commission v. City of Helena, 52 Mont. 527, 534, 159 Pac. 24.

A water company authorized by the seventy-third subdivision of this section to make an excavation is liable to an individual for injuries received through its negligence in failing in its duty to restore the street to its former safe condition. Robinson v. Mills, 25 Mont. 391, 398, 65 Pac. 114.

The council is the governing body of the municipality, and, as such, is given the exclusive control of streets and highways. Snook v. City of Anaconda, 26 Mont. 128, 134, 66 Pac. 756; Ford v. City of Great Falls, 46 Mont. 292, 305, 127 Pac. 1004.

A city is authorized by the sixty-fourth subdivision of this section to acquire by condemnation proceedings water rights for the purpose of establishing a water supply system. City of Helena v. Rogan, 26 Mont. 452, 469, 68 Pac. 798.

In condemnation proceedings to acquire title to property for a water supply, it is not necessary to allege or prove that the city had endeavored to obtain the consent of the owners of the property to the taking thereof. City of Helena v. Rogan, 27 Mont. 135, 137, 69 Pac. 709.

An ordinance making it unlawful to keep open a pawn-shop after six o'clock p. m. is not a prohibition of the business, but a regulation of it, authorized by the sixteenth subdivision of this section. City of Butte v. Paltrovich, 30 Mont. 18, 21, 75 Pac. 521, 104, Am. St. Rep. 698.

The power conferred upon a city by the sixteenth subdivision of this section is primarily to enact such police regulations, with reference to the occupations therein enumerated, as shall be necessary to the good order and general welfare of its citizens. City of Butte v. Paltrovich, 30 Mont. 18, 23, 75 Pac. 521.

This section specifies the items of expense which a city that has not reached the constitutional limit of indebtedness may incur. Helena W. W. Co. v. City of Helena, 31 Mont. 243, 247, 78 Pac. 220; Palmer v. City of Helena, 40 Mont. 498, 505, 107 Pac. 512.

Under an ordinance making it the duty of the occupant of premises to keep the adjoining sidewalks free from snow, ice, etc., the city has a right to proceed against the occupant, as well as the owner, whose duty in this respect is laid down in subdivision 7 of this section. The remedy against the occupant is merely cumulative, and its assertion is not inconsistent with the exercise of the power granted in subdivision 7. City of Helena v. Kent, 32 Mont. 279, 288, 80 Pac. 258, 4 Ann. Cas. 235.

The forty-third subdivision of this section, at most, does not enable a corporation or individual wishing to engage in the telegraph or telephone business to do so. The provision only leaves it to the option of the cities and towns to legislate upon this subject, and, if they do not do so, they cannot be coerced into acting any more than the legislature itself. State ex rel. Crumb v. City of Helena, 34 Mont. 67, 73, 85 Pac. 744.

Where defendants at considerable cost had practically completed a building to be used as a livery-stable within the residence portion of a city, whereupon an ordinance was passed by the council requiring persons desiring to engage in such business to first obtain a permit, the same not being in terms applicable to livery-stables then in existence within the city limits, such ordinance was an unlawful discrimination between defendants and others engaged in the same business at the time of its enactment. City of Billings v. Cook, 35 Mont. 95, 104, 88 Pac. 656, 119 Am. St. Rep. 845.

In enacting the sixty-fourth subdivision of this section, it is apparent that the legislature intended to pursue strictly the provisions of section 6, article XIII, of the constitution, with a view of effectuating its object. Butler v. Andrus, 35 Mont. 575, 580, 90 Pac. 785; Carlson v. City of Helena, 39 Mont. 82, 98, 102 Pac. 39, 17 Ann. Cas. 1233; Lepley v. City of Fort Benton, 51 Mont. 551, 555, 154 Pac. 710.

Under subdivision 64 of this section, there may be no extension, if there is no debt already contracted, for the word "additional" qualifies the character of the debt to be contracted, and refers also to a pre-existing amount of indebtedness to which it may be added. The word "necessary" defines the condition of affairs which requires the additional indebtedness. The condition must be such as to create the necessity. Butler v. Andrus, 35 Mont. 575, 581, 90 Pac. 785; Lepley v. City of Fort Benton, 51 Mont. 551, 555, 154 Pac. 710.

The proviso under which the legislature may authorize an extension of the constitutional limit of three per cent., found in subdivision 64 of this section, is clear in purpose, to wit, to allow such extension when it is necessary to construct a sewerage system or to procure a water supply. It cannot be granted or made available for any other purpose nor under any other circumstances than those which create the necessity for it. Butler v. Andrus, 35 Mont. 575, 581, 90 Pac. 785; Lepley v. City of Fort Benton, 51 Mont. 551, 555, 154 Pac. 710.

The purpose of the limitation in matters of indebtedness, contained in the sixty-fourth subdivision of this section, is to prevent extravagance, and such provisions should be so construed as to accomplish the desired end so far as possible. Butler v. Andrus, 35 Mont. 575, 580, 90 Pac. 785.

A city's arbitrary action in placing a bond issue within the extended ten per cent. limit of indebtedness authorized, under certain conditions, by the sixty-fourth subdivision of this section, when there was sufficient margin within the constitutional three per cent. limit to cover it, does not affect the validity of such bonds as a liability of the city. Butler v. Andrus, 35 Mont. 575, 582, 90 Pac. 785.

City and town councils have express authority from the state to define and punish vagrancy under the thirty-fourth subdivision of this section. State ex rel. City of Butte v. District Court, 37 Mont. 202, 204, 95 Pac. 841.

Where the legislature had, by a general law applicable to all municipalities alike, such as that contained in subdivision 64 of this section, extended the constitutional limit of indebtedness which a city could incur in the procurement of a water supply or the construction of a sewer system, it was not necessary that the question whether the necessity calling for an extension of the limit of indebtedness existed be first submitted to the law-making power, and authority obtained from it through a special act. The determination of such necessity rested with the taxpayers affected by the contemplated improvement. Carlson v. City of Helena, 39 Mont. 82, 98, 102 Pac. 39, 17 Ann. Cas. 1233.

Subdivision 64 of this section does not make it incumbent upon a city, when it desires to acquire a water supply of its own, to purchase the system then maintained therein by any person or corporation under a franchise granted or contract made by the municipality, the course pointed out in the proviso in said section relative to the purchase of the then existing system being obligatory only when the city "desires" to so purchase; if not, it may procure any other available supply. Carlson v. City of Helena, 39 Mont. 82, 99, 102 Pac. 39, 17 Ann. Cas. 1233.

Subdivision 66 of this section carries out the plain intent of section 12 of article XV of the constitution. Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 516, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

The municipal authorities which have control of streets and highways may use or permit the use of them in any manner or for any purpose reasonably incident to the appropriation of them to public travel. For such changing public uses the owner of abutting property is presumed to have received compensation when the way was created. Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 516, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666; Smith v. Northern Pacific Ry. Co., 50 Mont. 539, 550, 148 Pac. 393.

Under section 4985, the fee to the land covered by a street once established is vested in the public; for the form of dedication required of the owner, when the plat of a city or town or an addition thereto is recorded, is equivalent to a deed; but, as the respective rights of the abutting owners and of the public are dependent upon the fact of dedication, it is not important to inquire where the fee is vested. Kipp v. Davis-Daly Copper Co., 41

Mont. 509, 516, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

A railroad proposed to be constructed by a mining company over the streets, and entirely within the limits of a city, for the carriage of supplies, ores, etc., which would otherwise have to be conveyed by teams, is not a "commercial" railroad as distinguished from street railroads; such contemplated use of the city's streets falls within their ordinary uses; and hence no additional servitude is cast upon the owner of abutting real property for which compensation must first be made. Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 520, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

The use to which a railroad proposed to be constructed in the streets of a city by a mining company was to be put in hauling supplies, ores, etc., to and from the company's mine, as well as supplies, ores, merchandise, etc., which might be offered for carriage by any person or corporation, was a public use. Kipp v. Davis-Daly Copper Co., 41 Mont. 509, 520, 110 Pac. 237, 21 Ann. Cas. 1372, 36 L. R. A. (N. S.) 666.

Under the sixty-fifth subdivision of this section, a town council has power to condemn a sidewalk and order a new cement one in its stead, thereby exercising a legislative function, and, except for fraud or abuse of discretion, its action is not subject to judicial review. O'Brien v. Drinkenberg, 41 Mont. 538, 544, 111 Pac. 137.

As a city council has, under this section and section 5079, the sole power to determine the amount that shall be expended in carrying on the city government, it, and not the mayor, has the power to reduce the police force for economical reasons, or when it becomes unnecessarily large. State ex rel. Rowling v. Mayor of Butte, 43 Mont. 331, 336, 117 Pac. 604.

Under its general legislative power the council of a city or town may provide for the appointment of as many policemen, including a chief of police in case of a city, and a marshal in case of a town, as may be necessary to preserve the peace and enforce the ordinances. Grush v. Bishop, 46 Mont. 97, 99; 126 Pac. 619.

A city, after having necessarily and legally incurred an outstanding indebtedness for a water supply and a sewer system, under the ten per cent. limit, may afterward incur an additional indebtedness of five thousand dollars, under the three per cent. limit, for building a bridge, where the existing indebtedness of the city, incurred under the three per cent. limit, has fallen below that limit by reason of payments thereon, or on account of the fact that the assessed valuation of taxable property has increased so as to leave a sufficient margin within the three per cent. limit. Arnold v. City of Miles City, 46 Mont. 478, 479, 128 Pac. 915.

It is only for special purposes, to wit, sewerage systems and water supplies, that cities may incur indebtedness in excess of the constitutional limit of three per cent., when authorized by the taxpayers, but tho constitutional provision does not limit the amount to which the legislature may authorize the taxpayers to extend the indebtedness. Arnold v. City of Miles City, 46 Mont. 478, 481, 128 Pac. 915.

By subdivision 64 it is clear that it was the intention of the law-making body to compel a city to refrain from becoming indebted for general purposes in excess of three per cent. of the value of its taxable property, and that, so long as it keeps within this limit, regard being had to the assessed valuation at the time the indebtedness is proposed to be contracted, it is proceeding according to law. Arnold v. City of Miles City, 46 Mont. 478, 481, 128 Pac. 915.

The frequent use, in the laws of this state, of the prefix "street," before "railroads" or "railways," indicates the legislative intention to maintain a distinction between railroads and street railroads, and suggests that, in construing enactments touching railroads, they should not be held to apply to street railroads unless the intention that they should so apply is apparent. Helena etc. Ry. Co. v. City of Helena, 47 Mont. 18, 34, 130 Pac. 446.

The mode of exercising the power granted by the sixty-third subdivision of this section is subject to the limitation prescribed in that section of the code in reference to the awarding by municipalities of contracts exceeding a certain amount to the lowest responsible bidder; this limitation is, furthermore, exclusive, and applies to all municipal bodies. Missoula St. Ry. Co. v. City of Missoula, 47 Mont. 85, 95, 130 Pac. 771.

The twelfth subdivision of this section does not apply to street railroads; hence, an ordinance requiring a street railway company to light its track within the corporate limits, without expense to the city, is void. Helena etc. Ry. Co. v. City of Helena, 47 Mont. 18, 37, 130 Pac. 446.

The thirteenth subdivision of this section, taken in connection with the general provision contained in the first subdivision, confers all the powers necessary for the policing of street railroads. Helent etc. Ry. Co. v. City of Helena, 47 Mont. 18, 37, 130 Pac. 446.

The provisions of subdivision 80 of this section were not repealed by implication by sections 5225 et seq. relating to special improvements in cities and towns. Shapard v. City of Missoula, 49 Mont. 269, 275, 141 Pac. 544.

The police powers granted to cities and towns by subdivisions 8 and 43 of this section, relative to the regulation of the use of the streets by the erection of telegraph

or telephone poles, the stringing of wires thereon, etc., are preserved to them by the concluding portion of section 6645. City of Butte v. Montana Independent Tel. Co., 50 Mont. 574, 581, 148 Pac. 384.

A city has the power to install at public expense a lighting plant to supply light not only for its public buildings and streets, but also for use by its inhabitants. Milligan v. City of Miles City, 51 Mont. 374, 384, 153 Pac. 276, L. R. A. 1916C, 395.

When a city is engaged in operating a municipal plant, under an authority granted by general law, it acts in a proprietary or business capacity, and stands upon the same footing as a private individual or business corporation similarly situated. Milligan v. City of Miles City, 51 Mont. 374, 384, 153 Pac. 276, L. R. A. 1916C, 395.

Where a city was authorized to conduct an electric light and power plant, it could lay a main to heat a building by the waste steam from the plant, and incidentally furnish steam for heat to private buildings abutting on the main. Milligan v. City of Miles City, 51 Mont. 374, 385, 153 Pac. 276, L. R. A. 1916C, 395.

Where a city had authorized an issue of bonds for sewer purposes which fully exhausted the three per cent. constitutional limit, it was without power to subsequently issue further bonds for the construction of a lighting plant by having recourse to the device of classing the first issue within the extended ten per cent. limit—which may be resorted to only for the procurement of a sewerage system or a water supply—a large enough margin being thus created within the three per cent. limit to accommodate the later issue. Lepley v. City of Fort Benton, 51 Mont. 551, 555, 154 Pac. 710.

Where a city acquires a water supply without resort to indebtedness beyond the constitutional three per cent. of the city's taxable property, it stands on an equal footing with an individual or private corporation engaged in furnishing water to it and its inhabitants, and is subject to all reasonable regulation and control by the state under the police power. Public Service Commission v. City of Helena, 52 Mont. 527, 534, 159 Pac. 24.

A city which has acquired a water supply by resorting to the extended limit of indebtedness is not thereby exempted from control and regulation by the state through the agency of the public service commission. Public Service Commission v. City of Helena, 52 Mont. 527, 538, 159 Pac. 24.

The authority of a city to incur indebtedness beyond the three per cent. limit for the purpose of rendering or maintaining its water supply wholesome and fit for the purpose intended is clearly implied, if not expressly conferred. McClintock v. City of Great Falls, 53 Mont. 221, 226, 163 Pac. 99.

Under the sixty-third and seventy-third subdivisions of this section, a city may contract for rates with a public utility, subject, however, to the paramount authority of the state to exercise its power in the premises whenever it chooses to do so. State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 110, 173 Pac. 799.

The purpose of the legislature, in employing the very general language used in paragraphs 63 and 73 of this section, was not to surrender fully the distinctively governmental function to regulate rates, but rather to permit municipalities to protect themselves and their inhabitants against extortionate rates until the state itself should act in the premises. State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 111, 173 Pac. 799.

Subdivision 64 of this section refers only to the contracting of an indebtedness in addition to the "then outstanding indebtedness of the city". Parker v. City of Butte, 58 Mont. 531, 533, 193 Pac. 748.

Cited and construed as section 4800, Political Code, before amendment, in Palmer v. City of Helena, 19 Mont. 61, 66, 47 Pac. 209; Jordan v. Andrus, 27 Mont. 22, 26, 69 Pac. 118; as amended in In Re O'Brien, 29 Mont. 530, 540, 75 Pac. 196, 1 Ann. Cas. 373; State ex rel. Tel. Co. v. Mayor of Red Lodge, 30 Mont. 338, 343, 76 Pac. 758; as section 3259, Revised Codes, in State ex rel. Quintin v. Edwards, 38 Mont. 250, 266, 99 Pac. 940; as Laws of 1897, p. 203, in Johnson v. City of Great Falls, 38 Mont. 369, 370, 99 Pac. 1059, 16 Ann. Cas. 974; as section 3259, Revised Codes, in Barnard Realty Co. v. City of Butte, 48 Mont. 102, 111, 136 Pac. 1064; Kohn v. City of Missoula, 50 Mont. 75, 77, 144 Pac. 1087.

5040. Inspection and measurement of gas and electricity. The council of any incorporated city or town shall have power, by ordinance, to provide for and regulate the inspection and the measurement of gas, electric, or other light, and electric or other power, sold within its limits or brought into or carried through any such city or town.

History: En. Sec. 1, Ch. 57, L. 1907; Sec. 3260, Rev. C. 1907.

5041. Regulation of motor vehicles and their speed. The council of any incorporated city or town shall have power, by ordinance, to regulate

motor vehicles and their speed within the limits of such city or town, and to prescribe and enforce fines and penalties for violation of such regulations.

History: En. Sec. 1, Ch. 49, L. 1917.

5042. "Motor vehicles" defined. The term "motor vehicles," as used in this act, except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except traction-engines, road-rollers, fire wagons and engines, fire department vehicles, and police patrol-wagons.

History: En. Sec. 2, Ch. 49, L. 1917.

5043. Organized cities and towns authorized to take by gift, donation, devise, etc. Any city or town organized under the laws of the state of Montana is hereby empowered and given the right to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest, or any property, real, personal, or mixed, or any improved or unimproved park or playground, or any water or water right, water reservoir or watershed, or any timber land or any reserve, or any fish or game reserve in any part of the state, and the right to own, hold, work, and improve the same; and said gifts, donations, grants, bequests, or devises made to any officer or board of any such city or town shall be considered a gift, donation, grant, bequest, or devise made for the use and benefit of any such city or town, and shall be administered and used, by such city or town for the particular purpose for which the same was given, donated, granted, bequeathed, or devised.

History: En. Sec. 1, Ch. 10, L. 1917.

5044. Who may make gift, donation, or grant—Property included therein—How used and administered. Any donation, gift, or grant may be made by any person, company, copartnership, or corporation to any city or town organized under the laws of the state of Montana, of any property, real, personal, or mixed, or any improved or unimproved park or playground, or any water or water right, water reservoir or watershed, or any timber land or reserve, or any fish or game reserve in any part of the state of Montana, to be held for the use and benefit of said city or town; and any person over the age of eighteen years and of sound mind and discretion may make any gift, grant, donation, or testamentary disposition of property, real, personal, or mixed, or any improved or unimproved park or playground, or water or water right, water reservoir or watershed, or timber land or reserve, or any fish or game reserve in any part of the state, to any city or town organized under the laws of the state of Montana; but in the event of any gift, donation, grant, devise, or bequest shall be made to any such city or town, or to any officer or board of such city or town, the same shall be construed as a gift, donation, grant, devise, or bequest to such city or town, and shall be administered and used for such city or town, and for the particular purpose for which the same was given, donated, granted, bequeathed, or devised. And in the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

History: En. Sec. 2, Ch. 10, L. 1917.

5045. Public baths. All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town, and to defray the cost and expense of maintaining said public bathing place, said city or town is hereby authorized and empowered to contract an indebtedness, upon behalf of said city or town, upon the credit thereof, by borrowing money or issuing bonds; provided, that no money may be borrowed, and no bonds may be issued for said purpose, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and a majority vote be cast therefor.

History: En. Sec. 1, Ch. 12, L. 1905; re-en. Sec. 3294, Rev. C. 1907.

5046. Power to maintain and regulate. Power is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all by-laws, ordinances, resolution, and orders necessary for the establishment, maintenance, and regulation of a public bathing place within said city or town, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using said bathing place.

History: En. Sec. 2, Ch. 12, L. 1905; re-en. Sec. 3295, Rev. C. 1907.

5047. Certain cities may provide public band concerts. Cities of the first, second and third class, as defined by the laws of the state of Montana, and incorporated towns may, at their discretion, provide public band concerts for the entertainment of their people, and to pay therefor out of any moneys in a fund to be provided in accordance with the provisions of the next section; said band concerts and entertainments to be given at a place or places and at a time or times to be designated by the city council; provided, however, that said band concerts shall be given not more than twice each week; provided, further, that no band shall be employed in connection with the giving of said band concerts, except one having its headquarters in the said city or town in which said band concert is given.

History: En. Sec. 1, Ch. 23, L. 1917; amd. Sec. 1, Ch. 167, L. 1921.

5048. Tax levy for band concerts. For the purpose of providing band concerts as in this act provided, the council or other governing body in any town or city of the first, second or third class, or any incorporated town, may assess and levy, in addition to the levy for general municipal or administrative purposes, not exceeding one mill on the dollar on the assessed value of the taxable property of the said city or town.

History: En. Sec. 2, Ch. 167, L. 1921.

5049. Establishment of free public library—Tax levy for maintenance. The council has power to establish and maintain a free public library, and for that purpose may provide by ordinance for a tax as follows: In a city or town having assessed valuation of one million dollars or more, a tax not exceeding two mills on the dollar on the property may be levied. In a city or town having an assessed valuation of less than one million dollars and more than seven hundred and fifty thousand dollars, a tax not exceeding two and one-half mills on the dollar on the property may be levied. In a city or town having an assessed valuation of less than seven hundred

and fifty thousand dollars, a tax not exceeding three mills on the dollar on the property may be levied. The tax so levied and collected constitutes a fund known as the "library fund," and must be expended only for the purchase of books and other things necessary for a library, and the support and maintenance thereof; provided, that no increase over the present authorized levy shall be made until the question of such increase has first been submitted to a vote of the taxpayers affected thereby.

History: En. Sec. 1, p. 110, L. 1883; re-en. Sec. 1141, 5th Div. Comp. Stat. 1887; amd. Sec. 5039, Pol. C. 1895; amd. Sec. 1, p. 229, L. 1897; amd. Sec. 1, Ch. 62, L. 1905; re-en. Sec. 3488, Rev. C. 1907.

5050. Submission of questions to electors. Before any such ordinance is passed the council must submit to the qualified electors of the city or town at an election the question. At such election the ballot must have printed or written thereon the words, "Public Library—Yes," "Public Library—No," and in voting the elector must make a cross thus, "X," opposite the answer for which he intends to vote.

History: En. Sec. 5040, Pol. C. 1895; re-en. Sec. 3489, Rev. C. 1907.

5051. Library to be established when majority vote favors—Election at which question may be submitted. If the majority of the votes cast at such election is in favor of the establishment of a public library, then such library must be established as above provided. Such question may be submitted at the annual or at any special election held in such city or town, and must be submitted at any such election on the petition of one hundred or more inhabitants of such city or town.

History: En. Sec. 5041, Pol. C. 1895; re-en. Sec. 3490, Rev. C. 1907.

5052. What constitutes a quorum. A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated, and may compel the attendance of absent members, under such rules and penalties as the council may prescribe.

History: En. Sec. 4801, Pol. C. 1895; re-en. Sec. 3261, Rev. C. 1907. Cal. Pol. C. Sec. 4406.

5053. May prescribe rules. The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the members elected, and must cause to be kept a journal of the proceedings, which must be open to inspection.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907. Cal. Pol. C. Sec. 4407.

5054. Ayes and noes must be called, and a majority elects. The ayes and noes must be called and recorded on the final passage of any ordinance, by-law, or resolution, or making any contract, and the voting on the election or appointment of any officer must be viva voce, and a majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

History: Ap. p. Secs. 333-337-347, 5th Div. Comp. Stat. 1887; amd. Secs. 2 and 6, pp. 122 and 126, L. 1893; amd. Sec. 4803, Pol. C. 1895; re-en. Sec. 3263, Rev. C. 1907.

This section does not apply to an election by a city council to fill a vacancy in its own body, caused by resignation or death; the provisions governing such elec-

tion are found in section 5015. State ex rel. Wilson v. Willis, 47 Mont. 548, 551, 133 Pac. 962.

Cited or applied as section 3263, Revised Codes, in O'Brien v. Drinkenberg, 41 Mont. 538, 544, 111 Pac. 137.

Validity of ordinance passed in violation of rule of municipal council, see note in Ann. Cas. 1914D, 1199.

Injunction to prevent passage of municipal ordinance, see notes in 19 Ann. Cas. 208; Ann. Cas. 1913, 96; 13 L. R. A. 844; 2 L. R. A. (N. S.) 152.

5055. Style of ordinance. The style of ordinances may be as follows: "Be it ordained by the council of the city of....., or town of.....," and all ordinances may be published or posted, as prescribed by the council.

History: En. Sec. 4804, Pol. C. 1895; re-en. Sec. 3264, Rev. C. 1907.

5056. Ordinances—How prepared. All ordinances, by-laws, and resolutions must be passed by the council and approved by the mayor, or the person acting in his stead, and must be recorded in a book kept by the clerk called "The Ordinance Book," and numbered in the order in which they are passed, and take effect from and after their passage, except as otherwise ordered, and no ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907.

An ordinance calling for a special election for the authorization or rejection of an increase of the city's indebtedness by the issuance of water and sewer bonds, was not obnoxious to the prohibition contained in this section, that no ordinance shall be passed containing more than one subject. The general subject of the ordinance was the incurring of the indebtedness, and the different purposes named in it as making the indebtedness necessary were matters of detail for the information of the voters. Carlson v. City of Helena, 39 Mont. 82, 108, 102 Pac. 39, 17 Ann. Cas. 1233.

The observance of the limitation imposed by this section, relative to ordinances containing more than one subject, which must be clearly expressed in its title, is mandatory, and renders void any ordinance which violates it. But whatever is germane, incidental, or necesary to the main or general subject of an ordinance may be included in it, and is not a separate subject. Carlson v. City of Helena, 39 Mont. 82, 108, 102 Pac. 39, 17 Ann. Cas. 1233. Compare State v. McKinney, 29 Mont. 375, 382, 74 Pac. 1095.

A resolution of intention is not valid unless approved by the mayor, and all proceedings taken thereunder are void. Hinzeman v. City of Deer Lodge, 58 Mont. 369, 374, 193 Pac. 395.

Cited or applied as section 3265, Revised Codes, in State ex rel. Browne v. Booher, 43 Mont. 569, 570, 118 Pac. 271; Harvey v. Town of Townsend et al., 57 Mont. 407, 188 Pac. 897.

Propriety of exercise of power by municipality by means of resolutions, see notes in 3 Ann. Cas. 654; 6 Ann. Cas. 471; Ann. Cas. 1913C, 1321.

Necessity that title of ordinance fully express the subject-matter thereof, see note in Ann. Cas. 1912C, 192.

5057. Certain ordinances validated. Any and all ordinances of any city or town within Montana, which have been heretofore duly recorded and signed by the mayor or presiding officer of the council and by the city clerk, as provided by section 334 of an act entitled "An act to amend section 334 of the Compiled Statutes of Montana, fifth division, relating to printing and posting city ordinances," duly approved March 9, 1889, which may have been published in some newspaper published within the limits of the city or town, or written copies of which said ordinances may have been posted in not less than five conspicuous places within the limits of such city or town, are hereby declared to have the same legality and validity as if such publishing or posting had been duly directed by the council of such city or town, and as if the city clerk had attached, at the

expiration of each term of posting and at the end of any such ordinance or ordinances as recorded in the book of ordinances, his certificate as to the fact of posting such ordinance or ordinances, as provided for by said act herein referred to.

History: En. Sec. 5043, Pol. C. 1895; re-en. Sec. 3492, Rev. C. 1907.

5058. Initiative in cities—Petition. Ordinances may be proposed by the legal voters of any city or town in this state, in the manner provided in this act. Eight per cent. of the legal voters of any city or town may propose to the city or town council an ordinance on the subject within the legislative jurisdiction and powers of such city or town council, or an ordinance amending or repealing any prior ordinance or ordinances. Such petition shall be filed with the city or town clerk. It shall be the duty of the city or town clerk to present the same to the council at its first meeting next following the filing of the petition. The council may, within sixty days after the presentation of the petition to the council, pass an ordinance similar to that proposed in the petition, either in exact terms or with such changes, amendments, or modifications as the council may decide upon. If the ordinance proposed by the petition be passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act. If the council shall have made any change in the proposed ordinance, a suit may be brought in the district court in and for the county in which the city or town is situated, to determine whether or not the change is material. Such suit may be brought in the name of any one or more of the petitioners. The city shall be made the party defendant. Any elector of the city or town may appear in such suit in person or by counsel on the hearing thereof, but the court shall have the power to limit the number of counsel who shall be heard on either side, and the time to be allowed for argument. It shall only be necessary to state in the complaint that a petition for an ordinance was filed in pursuance of this act; that the city council passed an ordinance on the subject different from that proposed in the petition; and that the plaintiff desires a construction of the ordinance so passed to determine whether or not it differ materially from that proposed. The petition and the ordinance proposed thereby, and the ordinance actually passed, may be set out in the complaint, or copies thereof annexed to the complaint. The names to the petition need not be set out. Such cases shall be advanced and brought to hearing as speedily as possible, and have precedence over other cases, except criminal and taxation cases. The court shall have jurisdiction in such cases to determine whether or not the change made by the city council is material, and also whether the petition was regular in form or substance, and shall also have power to decide, if the fact be put in issue by the defendant, whether or not the petition was signed by a sufficient number of voters and was regular in form. If the court shall decide that the change was material and that the petition was regular in form and signed by a sufficient number of legal voters, then the ordinance proposed by the petition shall be submitted to the people as provided in this act. If the court shall decide that the ordinance passed by the council was not materially different from that proposed in the peti-

tion, or the petition was not regular in form, or not signed by a sufficient number of legal voters, the ordinance shall not be submitted to the people. If the court shall decide that the changes made by the council were material, but that the petition was irregular for some reason, or not properly or sufficiently signed, a new petition, regular in form, may be presented by the required number of legal voters, asking the council to submit such ordinance to the people, and thereupon the same shall be so submitted as provided in this act. If the council shall not, within sixty days, pass an ordinance on the subject of the ordinance proposed in the petition, then the ordinance proposed by the petition shall be submitted to the people. Before submitting such ordinance to the people, the mayor or city or town council may direct that a suit be brought in the district court in and for the county, in the name of the city or town, to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The complaint shall name as defendants not less than ten nor more than twenty of the petitioners. In addition to the names of such defendants, in the caption of the complaint, there shall be added the words, "and all petitioners whose names appear on the petition for an ordinance filed on the..... day of....., in the year.....," stating the date of the filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition thereto shall be published at least once, at the expense of the city, in at least one newspaper published in the city or town. In all suits brought under this section the decision of the district court shall be final except in cases where it shall decide that the proposed ordinance would be unconstitutional or invalid as being beyond the powers of the city or town council, and in such excepted cases the petitioners, or any of them, may appeal to the supreme court as in other cases, but shall not be required to give any bond for costs. The decision of the district court holding such ordinance valid or constitutional shall not, however, prevent the question being raised subsequently, if the ordinance shall be passed and go into effect, by any one affected by the ordinance. No costs shall be allowed to either side in suits or appeals under this section.

History: Sec. 3266, Rev. C. 1907.

Note.—Sections 5058 to 5068 were enacted as chapter 167, Laws of 1907, appearing as sections 3266 to 3276, Revised Codes 1907.

The initiative and referendum provisions applicable to cities apply, and were evidently intended to apply only, to matters of general legislation in which all electors without distinction may take an active interest. Carlson v. City of Helena, 39 Mont. 82, 113, 102 Pac. 39, 17 Ann. Cas. 1233.

The adoption of the initiative and referendum as applied to municipal legislation, among other things, indicates that it is the policy of this state to confide to the citizens of municipalities the right of local self-control to the utmost extent compatible with an orderly system of state government. State ex rel. Gerry v. Edwards, 42 Mont. 135, 150, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

Initiative and referendum provisions with respect to municipal corporations, see notes in 11 Ann. Cas. 920; Ann. Cas. 1916B, 819; Ann. Cas. 1918D, 604; 11 L. R. A. (N. S.) 1092; 33 L. R. A. (N. S.) 969; 50 L. R. A. (N. S.) 196; L. R. A. 1917B, 15.

5059. Submission of question at regular election. Any ordinance proposed by petition as aforesaid, which shall be entitled to be submitted to the people, shall be voted on at the next regular election to be held in the city or town, unless the petition therefor shall ask that the same be

submitted at a special election, and such petition be signed by not less than fifteen per cent. of the electors qualified to vote at the last preceding municipal election.

History: Sec. 3267, Rev. C. 1907.

5060. No ordinance to be effective until thirty days after passage. No ordinance or resolution passed by the council of any city or town shall become effective until thirty days after its passage, except general appropriation ordinances providing for the ordinary and current expenses of the city or town, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety, and shall not include a franchise or license to a corporation or individual, nor any provisions for the sale of real estate, nor any lease or letting of any property for a period exceeding one year, nor the purchase or sale of personal property exceeding five thousand dollars in value.

History: Sec. 3268, Rev. C. 1907.

This section has no application to an ordinance providing for the issuance of water and sewer bonds after sanction of the taxpayers affected thereby has been obtained. The law has to do with matters of general legislation on which all electors, whether taxpayers or not, may vote, while the question whether bonds shall be issued can be submitted to taxpayers only. Carlson v. City of Helena, 39 Mont. 82, 113, 102 Pac. 39, 17 Ann. Cas. 1233.

Cited or applied as section 3276, Revised Codes, in State ex rel. Quintin v. Edwards, 40 Mont. 287, 298, 106 Pac. 695, 20 Ann. Cas. 239.

5061. Referendum petition. During the thirty days following the passage of any ordinance or resolution, five per cent. of the qualified electors of the city or town may, by petition addressed to the council and filed with the clerk of the city or town, demand that such ordinance or resolution, or any part or parts thereof, shall be submitted to the electors of the city or town.

History: Sec. 3269, Rev. C. 1907.

5062. Referendum to be had at regular election. Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the city or town at the next municipal election; provided, the petition or petitions shall have been filed with the city clerk at least thirty days before such election. If such petition or petitions be signed by not less than fifteen per cent. of the qualified electors of the city or town, the measure shall be submitted at a special election to be held for the purpose.

History: Sec. 3270, Rev. C. 1907.

5063. Special election may be ordered. The city or town council may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any ordinance passed by the city or town council, and may likewise submit to the electors, at a general election, any ordinance passed by the city or town council.

History: Sec. 3271, Rev. C. 1907.

5064. Proclamation of election. Whenever a measure is ready for submission to the electors, the clerk of the city or town shall, in writing, notify the mayor thereof, who, forthwith, shall issue a proclamation setting forth the measure and the date of the election or vote to be had thereon. Said proclamation shall be published four days in four consecutive weeks in each daily newspaper in the municipality, if there be such, otherwise in the weekly newspapers published in the city or town. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the city or town.

History: Sec. 3272, Rev. C. 1907.

5065. Ballots and method of voting. The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the municipality shall be on separate sheets, and returned to the clerk of the municipality. The return shall be canvassed in the same manner as the returns of regular elections for municipal officers. The mayor of the municipality shall issue his proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the municipality for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five days after the vote is officially announced.

History: Sec. 3273, Rev. C. 1907.

5066. Qualifications of voters. The qualifications for voting on questions submitted to the electors, under the provisions hereof, shall be the same as those required for voting at municipal elections in the city or town at elections for mayor or aldermen thereof. And where, by the laws of the state, or by ordinance of the city or town made in pursuance thereof, electors are required to register in order to be qualified to vote at municipal elections, the registration book or books shall be prima facie evidence of the right to sign any petition herein provided for.

History: Sec. 3274, Rev. C. 1907.

5067. Forms of petitions. The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act. The city clerk shall perform the duties which, under the state laws, devolve upon the county clerk and secretary of state, in so far as the provisions relating thereto may be made to apply to the case of the city or town clerk; but it shall not be necessary to mail or distribute copies of the petitions or measures to the electors of the city or town.

History: Sec. 3275, Rev. C. 1907.

5068. To what ordinances applicable. The provisions of this act regarding the referendum shall not apply to ordinances which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any city or town.

History: Sec. 3276, Rev. C. 1907.

Cited or applied as sec. 3276, Revised Codes, in Carlson v. City of Helena, 39 Mont. 82, 113, 102 Pac. 39, 17 Ann. Cas. 1233; State ex rel. Gerry v. Edwards, 42 Mont. 135, 150, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

CHAPTER 45.

MUNICIPAL CONTRACTS AND FRANCHISES.

Section 5069. Officers Must Not Be Interested in Contracts.
5070. Awarding Contracts.
5071. Contractor—Oath of.
5072. Alteration and Modification of Contract—How Made.
5073. No Allowance for Extra Work.
5074. Franchise, How Granted.
5075. Grant of Franchise Must Be Submitted to Taxpaying Free-holders.
5076. Same—Notice of Election.
5077. When Voted, Council Must Pass Ordinance.

5069. Officers must not be interested in contracts. The mayor, or any member of the council, or any city or town officer, or any relative or employee thereof, must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

History: En Sec. 345, 5th Div. Comp. Stat. 1887, amd. Sec. 4806, Pol. C. 1895; re-en. Sec. 3277, Rev. C. 1907.

This section is not applicable to a mayor who was not interested in a contract made with the city, but who agreed, after the contract was accepted and filed with the proper official, to take stock in a corporation succeeding to the rights of the original contractor. State v. Great Falls City Council, 19 Mont. 518, 530, 49 Pac. 15.

Stockholder of corporation as interested party in contract between corporation and municipal council of which he is a member, see notes in 21 Ann. Cas. 912; Ann. Cas. 1916A, 77.

Liability of municipality under executed contract in which officer is interested, see notes in 3 Ann. Cas. 672; Ann. Cas. 1912D, 1132.

5070. Awarding contracts. All contracts for work, or for supplies or material, for which must be paid a sum exceeding two hundred and fifty dollars, must be let to the lowest responsible bidder, under such regulations as the council may prescribe; provided, that no contract shall be let extending over a period of three years, or more, without first submitting the question to a vote of the resident taxpayers of said city or town.

History: En. Sec. 1, Ch. 48, L. 1907; re-en. Sec. 3278, Rev. C. 1907.

To successfully attack the letting of a contract for a municipal improvement, it must be shown that the contract was not let to the lowest responsible bidder, that there was not any opportunity afforded for competitive bidding, or that there was collusion or bad faith on the part of the council or such gross mistake as to preclude the exercise of sound judgment. O'Brien v. Drinkenberg, 41 Mont. 538, 550, 111 Pac. 137.

This section is designed to prevent favoritism and to secure to the public the best possible return for the expenditure of the funds which the property owners are required to furnish, through the payment of taxes and assessments. Ford v. City of Great Falls, 46 Mont. 292, 309, 127 Pac. 1004.

Where a city council incorporated in a resolution ordering the paving of a street, as well as in the call for bids, the requirement that in the construction of the pavement certain patented processes and compounds should be used, and the company controlling the patent agreed that the cost of such material, which constituted only a part of the gross cost of the improvement, should be the same to all bidders, while in

other respects, such as the cost of labor, other material, etc., the principle of competition was retained, the proceedings were not void as being violative of this section. Ford v. City of Great Falls, 46 Mont. 292, 311, 127 Pac. 1004.

The requirement of this section extends to and includes expenditures made from the general revenues of the municipality, as well as from funds derived from special assessments. Ford v. City of Great Falls, 46 Mont. 292, 313, 127 Pac. 1004.

Under the exclusive rather than directory nature of the limitation upon the power of cities to let contracts prescribed by this section, a contract entered into by a city with a street railway company, according to the terms of which the latter was to be paid the cost of removing and replacing its tracks on certain streets to enable the former to lay sewers, was void, it not having been let to the lowest responsible bidder as required by the statute. Missoula St. Ry. Co. v. City of Missoula, 47 Mont. 85, 95, 130 Pac. 771.

A contract with a city for the construction of a system of waterworks is governed by the provisions of this section and sections 5071 to 5073. City of Forsyth v. Crellin, 210 Fed. 835, 838.

Cited or applied as section 3278, Revised Codes, in City of Butte v. Bennetts, 51 Mont. 27, 29, 149 Pac. 92, Ann. Cas. 1918C, 1019.

Construction of phrase "lowest responsible bidder" in statute providing for letting public contracts, see note in Ann. Cas. 1913A, 500.

Implied liability of municipality where contract is let contrary to statute requiring competitive bidding, see note in Ann. Cas. 1917A, 1263.

Elements to be considered in determining responsibility of bidder for public contract, see note in 38 L. R. A. (N. S.) 672.

Rights under statute or ordinance requiring award of contract to lowest bidder, see note in 26 L. R. A. 707.

5071. Contractor—Oath of. No money must be paid to any person claiming under a contract with the council, until such person has first filed with the clerk a statement, under oath, disclosing the names of all persons directly or indirectly interested in the contract, of the proceeds or profits thereof, declaring that no persons other than those named are interested, and that no person forbidden by this title has any interest in the same.

History: En. Sec. 4808, Pol. C. 1895; re-en. Sec. 3279, Rev. C. 1907.

Cited or applied as section 4808, Political Code, in State v. Great Falls City Council, 19 Mont. 518, 527, 540, 49 Pac. 15.

Cited or applied as section 3279, Revised Codes, in City of Forsyth v. Crellin, 210 Fed. 835, 837.

5072. Alteration and modification of contract—How made. When it becomes necessary, in the prosecution of any work, to make alterations or modifications of the specifications or plans of a contract, such alteration or modification must only be made by resolution of the council, and such resolution is of no effect until the price to be paid for the same is agreed to in writing, and signed by the contractor and approved by the council.

History: En. Sec. 4809, Pol. C. 1895; re-en. 3280, Rev. C. 1907.

Cited or applied as section 3280, Revised Codes, in City of Forsyth v. Crellin, 210 Fed. 835, 837.

5073. No allowance for extra work. No contractor must be allowed anything for extra work caused by an alteration or modification, unless a resolution is made and an agreement signed as provided in the preceding section, nor must he in any case be allowed more for such alteration than the price fixed by such agreement.

History: En. Sec. 4810, Pol. C. 1895; re-en. Sec. 3281, Rev. C. 1907.

Cited or applied as section 3281, Revised Codes, in City of Forsyth v. Crellin, 210 Fed. 835, 837.

5074. Franchise, how granted. The council must not grant a franchise or special privilege to any person save and except in the manner specified

in the next section. The powers of the council are those only expressly prescribed by law and those necessarily incident thereto.

History: En. Sec. 4813, Pol. C. 1895; re-en. Sec. 3290, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1921.

5075. Grant of franchise must be submitted to tax-paying freeholders. No franchise for any purpose whatsoever shall be granted by any city or town, or by the mayor or city council thereof, to any person or persons, association, or corporation, without first submitting the application therefor to the resident freeholders whose names shall appear on the city or county tax-roll preceding such election.

History: En. Sec. 1, Ch. 85, L. 1903; re-en. Sec. 3291, Rev. C. 1907.

A city is prohibited from granting a franchise to a gas company to lay its mains in its streets, until the application for it has first been submitted to and approved by the qualified electors. State ex rel. Billings v. Billings Gas Co., 55 Mont. 102, 108, 173 Pac. 799.

Grant by municipal corporation of perpetual franchise to public service corporation, see note in 2 A. L. R. 1110.

5076. Same—Notice of election. A notice of such election must be published at least in one daily newspaper, if there be one published in the city or town, and if not, in some weekly newspaper of general circulation, at least once a week for three successive weeks, and such notice must be posted in three public places in the city or town. The notice must state the time and place of holding the election, and the character of any such franchise applied for, and the valuable consideration, if any there be, to be derived by the city. At such election the ballots must contain the words, "For granting franchise," "Against granting franchise," and in voting, the elector must make a cross thus, "X," opposite the answer he intends to vote for. Such election must be conducted and canvassed and the return made in the same manner as other city or town elections.

History: En. Sec. 2, Ch. 85, L. 1903; re-en. Sec. 3292, Rev. C. 1907.

5077. When voted, council must pass ordinance. If the majority of votes cast at the election be "For granting franchise," the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance.

History: En. Sec. 3, Ch. 85, L. 1903; re-en. Sec. 3293, Rev. C. 1907.

CHAPTER 46.

PRESENTATION AND PAYMENT OF CLAIMS—CITY WARRANTS.

Section 5078. Presentation of Claims—Limitation of Actions.
5079. Allowance and Payment of Claims—Cash Basis.
5080. Defective Highways—Notice of Claim for Injuries.
5081. City Warrants—Rate of Interest.
5082. Call for Payment.
5083. Registry of Warrants.

5078. Presentation of claims—Limitation of actions. All accounts and demands against a city or town must be presented to the council duly itemized and accompanied by an affidavit by the party or his agent, stating the same to be a true and correct account against the city or town for the full amount for which the same is presented, and that the same accrued as set forth, and with all necessary and proper vouchers, within

one year from the date the same accrued; and any claim or demand not so presented within the time aforesaid is forever barred, and the council has no authority to allow any account or demand not so presented, nor must any action be maintained against the city or town for or on account of any demand or claim against the same, until such demand or claim has first been presented to the council for action thereon; provided, however, that in case the total indebtedness of a city or town has reached three per centum of the total assessed valuation of the taxable property of such city or town, as ascertained by the last assessment for state and county taxes, it shall be lawful for, and such city or town is hereby authorized and empowered, to conduct its affairs and business on a cash basis as provided and contemplated by the next section of this code.

History: En. Sec. 4812 Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907.

The provision of this section, requiring claims against a city to be verified and filed with the municipality, has no application to a claim for salary fixed by ordinance; hence a police officer was under no obligation to so present his claim to entitle him to recover his salary for the time he was unlawfully deprived of his office. Wynne v. City of Butte, 45 Mont. 417, 423, 123 Pac. 531.

Under this section, if moneys paid under protest, for a special assessment in an improvement district, are not for a "tax, license, or other demand for public revenue," such payment, if it can form the basis of an action at all, stands as a mere demand against the city, not suable until after presentation to and disallowance by the city council, which presentation and disallowance must appear upon the face of the complaint. Leggat v. City of Butte, 54 Mont. 137, 140, 168 Pac. 38.

This section was evidently intended to cover claims against the city arising in the ordinary course in carrying on the city government, in providing for the city's welfare in sundry directions, and in transacting the business and economic affairs of the city, but not on such contracts as are specifically provided for, which it must be presumed are designed to contain their own specific provisions, and, among other material and essential conditions, stipulations respecting the time and manner of the payment of the consideration on the part of the city. City of Forsyth v. Crellin, 210 Fed. 835, 838.

Cited or applied as section 4812, Political Code, before amendment, in Helena W. W. Co. v. City of Helena, 27 Mont. 205, 208, 70 Pac. 513; Dawes v. City of Great Falls, 31 Mont. 9, 13, 77 Pac. 309; as amended, in Helena W. W. Co. v. City of Helena, 31 Mont. 243, 246, 78 Pac. 220; as section 3288, Revised Codes, in Palmer v. City of Helena, 40 Mont. 498, 505, 107 Pac. 512; State ex rel. Driffill v. City of Anaconda, 41 Mont. 577, 578, 111 Pac. 345; Harvey v. Town of Townsend, 57 Mont. 407, 409, 188 Pac. 897.

To whom presentation of claims against municipality may be made, see notes in Ann. Cas. 1913A, 348; Ann. Cas. 1917D, 962; 46 L. R. A. (N. S.) 167.

Character of claims within statute requiring presentation as a condition of municipal liability, see note in 50 L. R. A. (N. S.) 174.

5079. Allowance and payment of claims—Cash basis. All accounts and demands against a city or town must be submitted to the council, and if found correct, must be allowed and an order made that the demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner, specifying for what purpose and by what authority it is issued, and out of what funds it is to be paid, and the treasurer must pay the same out of the proper fund; provided, however, that in case the total indebtedness of a city or town has reached the limit of three per cent. provided in section 6 of article XIII of the constitution of the state of Montana, it shall be lawful for, and said city or town is hereby authorized and empowered, to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the city or town out of the cash in the city or town treasury and derived from its current revenues, under such restrictions

and regulations as the city or town council may by ordinance prescribe; and in the event that payment be made in advance, the city or town shall have power to require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer, in package form, as a pledge for the fulfilment and performance of the contract or obligation for which said advance shall have been made; and provided, further, that before the payment of the current expenses above mentioned, the city or town council shall first set apart sufficient moneys to pay the interest upon its legal, valid, outstanding bonded indebtedness and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907.

Where a city had exceeded its debt limit, it could not incur an indebtedness not payable from a specially authorized tax, but payable from funds previously appropriated, under an agreement that the claimants should accept warrants in payment of their claims, and if the warrant should not be paid, the city should not be liable therefor. The payment of such claims on the theory that the appropriation by ordinance was an assignment of the funds so appropriated for the payment of the claims was unauthorized. Helena W. W. Co. v. City of Helena, 27 Mont. 205, 208, 70 Pac. 513.

The provisions of this and the following section do not apply to a claim for damages arising from personal injuries. Dawes v. City of Great Falls, 31 Mont. 9, 13, 77 Pac. 309.

The determination of what is a current expense is for the courts; but the determination of the city council as to whether a particular current expense is reasonable and necessary is not subject to review by the courts in the absence of fraud or abuse of discretion. Helena W. W. Co. v. City of Helena, 31 Mont. 243, 247, 78 Pac. 220. See State ex rel. Rowling v. Mayor of Butte, 43 Mont. 321, 335, 117 Pac. 604.

The term "current" was doubtless employed by the legislature to distinguish the common, recurring, running expenses of a city from such expenses as partake of the nature of an investment, or such as are to be incurred in a substantial or permanent improvement. Helena W. W. Co. v. City of Helena, 31 Mont. 243, 248, 78 Pac. 220.

An expenditure to install and operate a water system to belong to the city is not for current expenses, and not authorized by this statute. Helena W. W. Co. v. City of Helena, 31 Mont. 243, 248, 78 Pac. 220.

A city which is indebted beyond the constitutional limitation may not use its surplus revenues, no matter from what source derived, to acquire an electric light plant to supply itself and its inhabitants with light, where a company, operating both gas and electric light systems, under a franchise from the city, has ample facilities to meet all requirements. An expenditure of this character does not fall within the definition of "reasonable and necessary current expenses" which a city, laboring under such disability, has power to incur under this and the following section. Palmer v. City of Helena, 40 Mont. 498, 504, 107 Pac. 512.

This section and the one following were enacted to permit cities, which have reached their constitutional limit of indebtedness, to conduct their affairs upon a cash basis and pay reasonable and necessary current expenses out of current revenues, or in cash in advance, upon requiring indemnity in the form of a cash deposit, to be held by the treasurer. Palmer v. City of Helena, 40 Mont. 498, 505, 107 Pac. 512.

Under this and the next succeeding section, a city, which is indebted in excess of the limit prescribed by the constitution, is permitted to conduct its affairs upon a cash basis and pay "reasonable and necessary current expenses from its current revenues," but the authority of such a city extends no further than to make expenditures both reasonable and necessary for the corporate existence of the city; in other words, the right to expend public money is limited to those items of expense which may properly be designated as "living expenses." Palmer v. City of Helena, 40 Mont. 498, 507, 107 Pac. 512.

A city which, having reached the constitutional limit of indebtedness, finds itself in financial straits, will not be heard to say, in defense of its violation of a civil service statute in removing a fireman contrary to its provisions, that it did so to reduce expenses, where it has failed to take advantage of this and the following section, authorizing cities in such condition to pay their running expenses from current revenues upon a cash basis. State ex rel. Driffill v. City of Anaconda, 41 Mont. 577, 584, 111 Pac. 345.

Cited or applied as section 3287, Revised Codes, in Larkin v. City of Butte, 52 Mont. 410, 413, 158 Pac. 316.

Right of municipal corporation to reconsider action as to allowance of claim, see note in 21 L. R. A. (N. S.) 289.

5080. Defective highways—Notice of claim for injuries. Before any city or town in this state shall be liable for damages for, or on account of, any injury or loss alleged to have been received or suffered by reason of any defect in any bridge, street, road, sidewalk, culvert, park, public ground, ferry-boat, or public works of any kind in said city or town, the person so alleged to be injured, or some one in his behalf, shall give to the city or town council, or trustee, or other governing body of such city or town, within sixty days after the alleged injury, notice thereof; said notice to contain the time when and the place where said injury is alleged to have occurred.

History: En. Sec. 1, Ch. 93, L. 1903; re-en. Sec. 3289, Rev. C. 1907.

Where, in an action against a city for personal injuries, a notice of claim for damages, marked "filed" by the city clerk, and bearing an indorsement that the claim had been referred to the judiciary committee of the council and disallowed, was received in evidence without objction, the requirements of this section were sufficiently complied with. O'Flynn v. City of Butte, 36 Mont. 493, 498, 93 Pac. 643.

The words "any defect in any sidewalk," found in this section, refer to any and every defect, deficiency, or obstruction likely to interfere with the proper use of the walk, such as an accumulation of snow and ice, etc., and not merely to some structural deficiency in the walk itself. Tonn v. City of Helena, 42 Mont. 127, 133, 111 Pac. 715, 36 L. R. A. (N. S.) 1136.

This section, requiring the giving of notice of a personal injury, occasioned by a defective sidewalk, as a prerequisite to the recovery of damages from the city or town, is not unconstitutional as making an unjust discrimination in favor of municipalities and against all others who may be defendants in personal injury actions; the classification made by the section is not unreasonable, and, where all cities and towns are treated alike, it cannot be said that the particular city or town in which the injury occurred is granted a special immunity, where the notice provided for has not been given. Tonn v. City of Helena, 42 Mont. 127, 133, 111 Pac. 715, 36 L. R. A. (N. S.) 1136.

The purpose of this section is to require that notice of any injury arising from a defective sidewalk, street, etc., shall be given to the city, not alone that the city may have an opportunity to examine the place where the injury occurred, and consult those who may be witnesses, but as well to enable the city to settle the claim and avoid the expense of litigation if investigation discloses a legal liability on its part. For this reason it is not sufficient that the city officers had notice of the defect. It is knowledge of the injury which the statute requires shall be brought to the attention of the city authorities. Tonn v. City of Helena, 42 Mont. 127, 133, 111 Pac. 715, 36 L. R. A. (N. S.) 1136; Eby v. City of Lewistown, 55 Mont. 113, 122, 173 Pac. 1163.

The provisions of this section are applicable alike to injuries to person and injuries to property, and the same reason exists for notice in both cases. A complaint in an action against a city for damages to plaintiff's premises occasioned by a defective sewer pipe, which failed to allege that the notice required by the section had been given, did not state a cause of action. Butte Machinery Co. v. City of Butte, 43 Mont. 351, 352, 116 Pac. 357; overruled in Kelly v. City of Butte, 44 Mont. 115, 118, 119 Pac. 171.

The giving of notice of injury is prima facie sufficient where, upon its face, it purports to have been given, in the plaintiff's behalf, by the attorneys who brought the action for him. McEnaney v. City of Butte, 43 Mont. 526, 533, 117 Pac. 893.

Where plaintiff sued defendant city for flooding his mine by reason of a defective plan adopted for the construction of a sewer, the cause of injury was not a "defect," within the meaning of this section. Kelly v. City of Butte, 44 Mont. 115, 117, 119 Pac. 171.

This section, having been enacted under the title, "an act relating to actions against cities and towns for damages to persons injured on streets and other public grounds by reason of the negligence of any public officer, agent, or employee in any city or town in Montana" (Laws 1903, c. 93), such section applies only to injuries to persons, as distinguished from injuries to property. Kelly v. City of Butte, 44 Mont. 115, 118, 119 Pac. 171; overruling Butte Machinery Co. v. City of Butte, 43 Mont. 351, 116 Pac. 357.

This section is sufficiently complied with by filing the notice with the city clerk, and the failure of the city council to meet for

sixty days does not defeat the injured party's right to sue. Tiggerman v. City of Butte, 44 Mont. 138, 142, 119 Pac. 477; Hensley v. City of Butte, 36 Mont. 32, 37, 92 Pac. 34, Distinguished.

A notice, signed in behalf of the injured person by his attorney, is sufficient under the provisions of this section, the acts of the attorney being presumed to be regular and by authority, especially where the objection to the signature was not made in the trial court. Pullen v. City of Butte, 45 Mont. 46, 55, 121 Pac. 878.

Matter additional to that required by this section to be stated in the notice must be treated as surplusage. Irving v. Town of Stevensville, 51 Mont. 44, 46, 149 Pac. 483.

Where, from the description of the place at which an accident due to a defective sidewalk happened, given in the notice to the city council required by statute, it inferentially, though not in terms, appeared that the injury occurred within the city limits, it was sufficient; the members of the council being presumed to know the limits of their jurisdiction. Murray v. City of Butte, 51 Mont. 258, 264, 151 Pac. 1051.

In an action against a city to recover for personal injuries alleged to have been sustained by reason of the defective condition of a sidewalk, the plaintiff cannot prevail without affirmatively establishing the fact that the notice required by this section has been given, no matter how meritorious his claim may be. Where no testimony whatever was presented as to who filed, presented, or received the notice, it was fatal to a judgment in favor of the plaintiff. Murray v. City of Butte, 51 Mont. 258, 265, 151 Pac. 1051.

Neither indorsement nor signature by the city clerk is essential to prove the giving of the notice to a city required by this section. The fact may be established by any competent evidence, such as that the filing mark was in the handwriting of the city clerk or one of his deputies, that it was made at his office, or that the notice had been called to the attention of the council. Murray v. City of Butte, 51 Mont. 258, 265, 151 Pac. 1051.

A city of this state is one of its governmental agencies, and enjoys such privileges and is subject to such liabilities only as are imposed by law, and when conditions are attached to the enforcement of such liabilities as are imposed upon a city, the latter may rightfully insist upon a strict compliance with the conditions as in case of a notice of injury required by this section. Berry v. City of Helena, 56 Mont. 122, 126, 182 Pac. 117.

This section is not in any sense a statute of limitations, which the municipality may waive or not, as it may choose, but its provisions are intended for the benefit of the public, and the notice prescribed must have been given before any liability whatever attaches. Berry v. City of Helena, 56 Mont. 122, 126, 182 Pac. 117.

The notice which must be given a city by one who claims to have sustained personal injuries by reason of a fall upon an ice-covered sidewalk must contain, among other things, an accurate statement of the time when they were received, on giving the time as "on or about" a certain day, when in fact the accident had occurred two days later, not meeting the requirement. Berry v. City of Helena, 56 Mont. 122, 127, 182 Pac. 117.

Compliance with this section is a necessary prerequisite to plaintiff's right of action, and an appropriate allegation of such compliance is an indispensable part of the statement of a cause of action. Berry v. City of Helena, 56 Mont. 122, 128, 182 Pac. 117.

The notice required by this section is not subject to amendment, and at the expiration of the time limited by that section the claimant is bound by the one he has served, and his right to institute an action is to be tested by it and none other. Berry v. City of Helena, 56 Mont. 122, 128, 182 Pac. 117.

Validity of requirement of notice of injury as a condition of municipal liability, see note in 36 L. R. A. (N. S.) 1136.

Sufficiency of notice of injury from defective highway with respect to description of place of accident, see note in 18 Ann. Cas. 994.

Sufficiency of statutory notice with respect to description of time of accident on defective street, see note in Ann. Cas. 1918E, 1026.

Physical or mental incapacity as an excuse for failure to give notice of injury required as a condition of municipal liability, see note in 32 L. R. A. (N. S.) 350.

Infancy or other disability of claimant as suspending limitation of time to file claim against municipality, see notes in 13 Ann. Cas. 488; Ann. Cas. 1916C. 1042.

Validity of statute requiring written notice of defective highway as condition precedent to municipal liability, see note in 16 Ann. Cas. 172.

Necessity of written notice as to defect as condition of liability of municipal corporation for injuries due to positive act of its officers or servants, see note in 23 L. R. A. (N. S.) 282.

5081. City warrants—Rate of interest. When any warrant, drawn upon the treasurer of a city or town, pursuant to any ordinance or resolution or direction of the council of such city or town, is presented to the

city or town treasurer for payment, and the same is not paid for want of funds, such treasurer must indorse thereon "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until such warrant is called for payment the warrant shall bear interest at a rate fixed by ordinance, and not to exceed six per cent. per annum.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907.

Interest on city warrants, see notes in 10 Ann. Cas. 209; Ann. Cas. 1916C, 576.

Running of statute of limitations against warrants of municipal or quasi-municipal corporations, see note in 2 Ann. Cas. 394.

Necessary parties in action to determine validity of municipal warrants, see notes in 5 Ann. Cas. 858; 3 L. R. A. (N. S.) 256.

Mandamus to compel issuance of municipal warrant to pay indebtedness, see note in L. R. A. 1916D, 325.

5082. Call for payment. When there are moneys in the city or town treasury applicable to the payment of any warrants drawing interest, sufficient to pay the same, the city or town treasurer must give notice in some newspaper published in such city or town, or if none is published therein, then by written notice posted in a conspicuous place on the outer door of the office of the city treasurer, stating that he is ready to pay the said warrants, and giving the number of the warrants to be paid. From the time of the first publication or posting of such notice the warrants so called shall cease to draw interest.

History: En. Sec. 2, p. 75, L. 1897; re-en. Sec. 3285, Rev. C. 1907.

5083. Registry of warrants. Upon the presentation of any warrant or warrants indorsed, as specified in section 5081 of this code, it shall be the duty of the city treasurer to record the same in a book to be provided for that purpose, the date of such presentation, the number and date of the warrant, to whom payable, the fund on which drawn, and the amount thereof, and all warrants to be redeemed, as provided for in the preceding section, shall be redeemed in the order of their registration, beginning with the date of the warrant so first registered.

History: En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907.

CHAPTER 47.

JUDGMENTS—RESPONSIBILITY FOR DAMAGE BY RIOTS.

Section 5084. Judgments Against Cities and Towns—Mode of Payment.
5085. Judgment May Be Funded.
5086. Cities and Towns Responsible for Damages by Mobs and Riots.

5084. Judgments against cities and towns—Mode of payment. On the certificate of a justice of the peace or the clerk of the court in which any judgment is rendered, showing the amount of the judgment and the date of its entry, the council must, by ordinance, direct that the amount of such judgment be paid out of the general fund, and that a warrant issue therefor on the general fund if there is sufficient money therein, exclusive of the appropriations for the current fiscal year, to pay the same, and the council must at the proper times levy and cause to be collected a tax on all the property of the city or town for the payment of such judgment within a period of three years from its presentation, if there is not sufficient money as aforesaid in the general fund to pay the same.

History: En. Sec. 5037, Pol. C. 1895; re-en. Sec. 3486, Rev. C. 1907. Cal. Pol. C. Sec. 4455.

5085. Judgment may be funded. If any judgment rendered against any town or city exceeds the sum of ten thousand dollars, the council may fund the same as other indebtedness against the city or town is funded.

History: En. Sec. 5038, Pol. C. 1895; re-en. Sec. 3487, Rev. C. 1907.

5086. Cities and towns responsible for damages by mobs and riots. Every city or town is responsible for injuries to real or personal property within its corporate limits, done or caused by mobs or riots.

History: En. Sec. 5036, Pol. C. 1895; re-en. Sec. 3485, Rev. C. 1907. Cal. Pol. C. Sec. 4452.

The sole purpose of this section was to create a liability which did not exist at common law, and to impose a new burden upon municipal corporations. It does not indicate a legislative intent to exempt cities from liability for all other torts than those mentioned therein. May v. City of Anaconda, 26 Mont. 140, 142, 66 Pac. 759.

The liability of a city for damages to property through riots or mobs is absolute, except where the plaintiff owner by his own unlawful conduct induced the injury for which he seeks damages, in which event he cannot recover. Butte Miners' Union v. City of Butte, 58 Mont. 391, 401, 194 Pac. 149.

The bare fact that the plaintiff labor union had stored arms and ammunition in its building to protect its property and the lives of its members was not alone sufficient to defeat its right to recover damages, since the right to protect property and to bear arms in defense of person and property is guaranteed by the constitution. Butte Miners' Union v. City of Butte, 58 Mont. 391, 401, 194 Pac. 149.

The purpose of this statute is not only to create municipal liability, but to instill in the minds of every person liable to contribute to the public expense, a will to discourage violence and to stimulate effort to preserve public safety. Butte Miners' Union v. City of Butte, 58 Mont. 391, 399, 194 Pac. 149.

What constitutes mob or riot for which municipality is liable, see notes in 11 Ann. Cas. 185; 18 Ann. Cas. 151; 10 L. R. A. (N. S.) 925; L. R. A. 1918C, 239.

Liability of municipality for damages caused by mob as dependent on notice to authorities, see notes in 8 Ann. Cas. 465; Ann. Cas. 1916A, 326.

Liability of municipality for property destroyed by mob, see notes in 24 L. R. A. 592; 44 L. R. A. (N. S.) 358.

Liability of municipality for failure to prevent riot in street, see note in 23 L. R. A. (N. S.) 1190.

Liability of municipality for acts of prisoners in jail forming mob, see note in Ann. Cas. 1916D, 190.

CHAPTER 48.

JUDICIAL POWERS—POLICE COURTS.

Section 5087. Police Court Established.
5088. Jurisdiction of Police Courts.
5089. Jurisdiction for Violation of Ordinances, and Civil and Criminal Jurisdiction.
5090. When Judge Cannot Act.
5091. Preliminary Examinations—Proceedings in.
5092. Proceedings in Criminal Actions.
5093. Proceedings in Civil Actions.
5094. Whom to Prosecute.

5087. Police court established. A police court is established in each city or town, which court must always be open, except upon non-judicial days, and upon such days it may transact criminal business only.

History: En. Sec. 4910, Pol. C. 1895; re-en. Sec. 3296, Rev. C. 1907.

Cited or applied as section 4910, Political Code, in State ex rel. City of Butte v. District Court, 37 Mont. 202, 204, 95 Pac. 841; as section 3296, Revised Codes, in Grant v. Williams, 54 Mont. 246, 251, 169 Pac. 286.

5088. Jurisdiction of police courts. The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

1. Petit larceny.

2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill.

3. Breaches of the peace, riots, affrays, committing wilful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both fine and imprisonment.

4. Proceedings respecting vagrants, lewd, or disorderly persons. Such offenses must be prosecuted in the name of the state of Montana.

Said police court shall have no jurisdiction of any civil cause, except as provided in the next section.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907. Cal. Pol. C. Sec. 4426.

A justice of the peace had jurisdiction under the above section, as it existed prior to its amendment, over misdemeanors committed in a town or city within his township. In re Ryan, 20 Mont. 64, 67, 50 Pac. 129.

This section and section 5091 merely confer jurisdiction upon the police court or judge in the cases and proceedings enumerated; the compensation to which he is entitled is provided for elsewhere in the code. State ex rel. Rowe v. District Court, 44 Mont. 318, 322, 119 Pac. 1103, Ann. Cas. 1913B, 396.

Cited or applied as section 4911, Political Code, as amended, in In re Graye, 36 Mont. 394, 397, 93 Pac. 266; before amendment, in State ex rel. City of Butte v. District Court, 37 Mont. 202, 204, 95 Pac. 841; as section 3297, Revised Codes, in State ex rel. Rowe v. District Court, 45 Mont. 205, 208, 122 Pac. 270; Grant v. Williams, 54 Mont. 246, 251, 169 Pac. 286.

Jurisdiction of municipal courts to try offenses against state laws, see note in 18 Ann. Cas. 53.

May judges of police courts be vested or burdened with powers or duties of a judicial character, see note in 19 L. R. A. (N. S.) 615.

Power of police court to punish for contempt, see note in 8 A. L. R. 1564.

Prosecution under statute as bar to prosecution under ordinance and vice versa, see notes in 21 Ann. Cas. 67; Ann. Cas. 1912C, 37.

5089. Jurisdiction for violation of ordinances, and civil and criminal jurisdiction. The police court also has exclusive jurisdiction:

1. Of all proceedings for the violation of any ordinance of the city or town, both civil and criminal, which must be prosecuted in the name of the city or town;

2. Of any action for the collection of taxes and assessments levied for city or town purposes; or for the erection or improvement of public buildings; for the laying out, or opening, or improving any public street or sidewalk, alley, or bridge; or for the purchase of or the improvement of any public grounds; or for any and all public improvements made or ordered by the city or town within its limits, when the amount of the tax or assessments sought to be collected against the person assessed does not exceed three hundred dollars; but no lien upon the property taxed or assessed for the non-payment of the taxes or assessment can be foreclosed in any such action;

3. Of an action for the collection of money due to the city or town or from the city or town to any person, when the amount sought to be collected, exclusive of interest and costs, does not exceed three hundred dollars;

4. For the breach of any official bond given by any city or town officer, and for the breach of any contract, and any action for damages in which the city or town is a party, or is in any way interested; and all forfeited recognizances given to or for the benefit or in behalf of the city

or town; and upon all bonds given upon any appeal taken from the judgment of the court in any action above named, where the amount claimed, exclusive of costs, does not exceed three hundred dollars;

5. For the recovery of personal property belonging to the city or town, when the value of the property (exclusive of the damages for the taking or detention) does not exceed three hundred dollars; and,

6. Of an action for the collection of any license required by any ordinance of the city or town.

History: En. Sec. 4912, Pol. C. 1895; re-en. Sec. 3298, Rev. C. 1907. Cal. Pol. C. Sec. 4427.

Note.—For history of earlier acts see State ex rel. Rowe v. District Court, 45 Mont. 205-209, 122 Pac. 270.

Non-compliance with an ordinance, making it the duty of an occupant of premises within the limits of a city to keep a sidewalk free from snow and ice, is not in its essence a crime or misdemeanor, and actions arising therefrom are properly prosecuted in the name of the city. City of Helena v. Kent, 32 Mont. 279, 290, 80 Pac. 258, 4 Ann. Cas. 235; State ex rel. Streit v. Justice Court, 45 Mont. 375, 381, 123 Pac. 405, 48 L. R. A. (N. S.) 156. See also State ex rel. City of Butte v. District Court, 37 Mont. 202, 206, 95 Pac. 841.

The police court of a city or town has exclusive jurisdiction of all proceedings for the violation of an ordinance defining vagrancy and prescribing punishment for such offense, and prosecutions thereunder must be conducted in the name of the city. State ex rel. City of Butte v. District Court, 37 Mont. 202, 208, 95 Pac. 841.

Police courts have concurrent jurisdiction with justices' courts to punish vagrancy as a crime against the state, and such prosecutions must be instituted and conducted in the name of the state. State ex rel. City of Butte v. District Court, 37 Mont. 202, 208, 95 Pac. 841.

Prosecutions for violations of local ordinances must be conducted in the name of the municipality. State ex rel. Streit v. Justice Court, 45 Mont. 375, 380, 123 Pac. 405, 48 L. R. A. (N. S.) 156.

A justice of the peace, designated by the town council to act as police judge, has exclusive jurisdiction of all cases arising under the ordinances, in addition to his jurisdiction as a justice. State ex rel. Streit v. Justice Court, 45 Mont. 375, 380, 123 Pac. 405, 48 L. R. A. (N. S.) 156.

Cited or applied as section 3298, Revised Codes, in State ex rel. Rowe v. District Court, 45 Mont. 205, 208, 209, 122 Pac. 270; Grant v. Williams, 54 Mont. 246, 251, 169 Pac. 286.

5090. When judge cannot act. In all cases in which the judge is a party, or in which he is interested, or when he is related to either party by consanguinty or affinity within the sixth degree, and in case of his sickness, absence, or inability to act, the police judge or mayor may call in a justice of the peace residing in the city or town to act in his place and stead.

History: En. Sec. 4913, Pol. C. 1895; re-en. Sec. 3299, Rev. C. 1907. Cal. Pol. C. Sec. 4428.

5091. Preliminary examinations—Proceedings in. Proceedings in preliminary examinations in criminal actions in the police court must be had in conformity with the provisions of sections 11773 to 11797 of the Penal Code.

History: En. Sec. 4914, Pol. C. 1895; re-en. Sec. 3300, Rev. C. 1907.

Cited or applied as section 3300, Revised Codes, in State ex rel. Rowe v. District Court, 44 Mont. 318, 322, 119 Pac. 1103, Ann. Cas. 1913B, 396.

5092. Proceedings in criminal actions. Proceedings in police courts in criminal actions triable in such courts are regulated by sections 12302 to 12347 of the Penal Code.

History: En. Sec. 4915, Pol. C. 1895; re-en. Sec. 3301, Rev. C. 1907. Cal. Pol. C. Sec. 4431.

5093. Proceedings in civil actions. The proceedings of the police court in civil actions are regulated by sections 9725 to 9728 of the Code of Civil Procedure.

History: En. Sec. 4916, Pol. C. 1895; re-en. Sec. 3302, Rev. C. 1907. Cal. Pol. C. Sec. 4432.

5094. Who to prosecute. The city attorney must prosecute all cases for the violation of any ordinance, and prosecute, conduct, and control all proceedings in cases mentioned in section 5089 of this code, both in the police court and on appeal therefrom to the district court.

History: En. Sec. 4917, Pol. C. 1895; re-en. Sec. 3303, Rev. C. 1907.

Prosecutions for violations of local ordinances must be conducted in the name of the municipality, and by its prosecuting officer. State ex rel. Streit v. Justice Court, 45 Mont. 375, 380, 123 Pac. 405, 48 L. R. A. (N. S.) 156.

CHAPTER 49.

POLICE DEPARTMENT.

Section 5095. Police Department.
5096. Mayor to Have Charge of Police Department.
5097. Terms of Members of the Police Force.
5098. Examining Board for Police Department.
5099. Examination of Applicants for Position on Police Force.
5100. Presentation and Trials of Charges Against Policemen.
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5095. Police department. There shall be in every city and town of this state a police department, which shall be organized, managed, and controlled as in this act provided.

History: Sec. 3304, Rev. C. 1907.

Note.—Sections 5095 to 5108 were enacted as sections 1 to 14, chapter 136, Laws of 1907, appearing as sections 3304 to 3317, Revised Codes 1907.

The police force cannot be abolished as a whole, for under this section the city is required to maintain it; nor can it be abolished in part; the power of the city extends only to a reduction in its numbers for economical reasons, and it must be exercised in good faith. State ex rel. Quintin v. Edwards, 40 Mont. 287, 306, 106 Pac. 695, 20 Ann. Cas. 239.

The purpose of the legislature in enacting the metropolitan police law was to remove the police force as far as possible from the control of partisan political influences by putting it under civil service rules, and thus raise the standard of efficiency. State ex rel. Quintin v. Edwards, 40 Mont. 287, 303, 106 Pac. 695, 20 Ann. Cas. 239; State ex rel. Bennetts v. Duncan, 47 Mont. 447, 454, 133 Pac. 109.

A chief of police, whose duties are the same as those of the ordinary policeman, except that the additional one of supervision and control of the entire force is imposed upon him, is a "policeman," and, as such, after appointment under the act placing the police departments of cities under civil service rules, he is secure from removal from office in any other manner than that provided in the act. State ex rel. Wynne v. Quinn, 40 Mont. 472, 476, 107 Pac. 506.

The legislature, in enacting the "Police Commission Bill," employing, as it did, many expressions which are exclusive in their meaning, intended to supplant all existing legislation as to the mode of constituting the police departments of cities, and to put all members thereof under civil service rules. State ex rel. Wynne v. Quinn, 40 Mont. 472, 478, 107 Pac. 506.

The metropolitan police law, placing the police department under civil service rules, is mandatory as to cities of the first class, but is left optional with the authorities of

the smaller cities and towns whether they shall bring themselves within its provisions. State ex rel. Buckner v. Mayor of Butte, 41 Mont. 377, 382, 109 Pac. 710; Grush v. Bishop, 46 Mont. 97, 101, 126 Pac. 619.

The power to reduce the police force, as constituted under the metropolitan police law, if unnecessarily large or for economical reasons, resides in the city council, and not in the mayor. State ex rel. Rowling v. Mayor of Butte, 43 Mont. 331, 336, 117 Pac. 604.

The metropolitan police law contemplates that, in addition to the office of chief of police, which the act itself creates, there shall be different grades and other offices established by the city council, as indicated in section 4863, or by the mayor in the event the council fails to act, as shown by section 5096. State ex rel. Dwyer v. Duncan, 49 Mont. 54, 58, 140 Pac. 95.

Cited or applied as chapter 136, p. 344, Laws 1907, in State ex rel. Quintin v. Edwards, 38 Mont. 250, 256, 99 Pac. 940; as section 3304, Revised Codes, in State ex rel. Bailey v. Edwards, 40 Mont. 313, 316, 106 Pac. 703; State ex rel. Rowling v. District Court, 41 Mont. 532, 533, 110 Pac. 86; Wynne v. City of Butte, 45 Mont. 417, 421, 123 Pac. 531; Larkin v. City of Butte, 52 Mont. 410, 412, 158 Pac. 316.

Validity of statutes creating metropolitan police, see notes in 8 Ann. Cas. 1103; Ann. Cas. 1917D, 1112.

Policeman as public officer, see notes in Ann. Cas. 1914D, 1235; Ann. Cas. 1917B, 663; 36 L. R. A. (N. S.) 881.

5096. Mayor to have charge of police department. The mayor of all cities and towns shall have charge of and supervision over the police department thereof. He shall appoint all the members and officers thereof. Subject to the provisions of this act, he shall have the power to suspend or remove any member or officer of the force. He shall make rules and regulations, not inconsistent with the provisions of this act, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

History: Sec. 3305, Rev. C. 1907.

This section is wholly inconsistent with the notion that the mayor, or the council, or both together, may appoint or remove any member of the department in any other manner than that prescribed in the later law of which the section forms a part. State ex rel. Wynne v. Quinn, 40 Mont. 472, 479, 107 Pac. 506.

If the mayor of a city puts members of the police department out of active service, but afterwards complies with an order of court to reinstate them, and, after they have served a short time, again retires them, he is not in contempt. State ex rel. Rowling v. District Court, 41 Mont. 532, 534, 110 Pac. 86.

In proceedings, under writ of supervisory control, to review the action of the district court in holding that the mayor of a city, to whom a writ of mandate had been issued to restore certain policemen to their offices, from which they had been unlawfully ousted by him under the provisions of the metropolitan police law, the only question presented to the appellate court for determination was whether said mayor had actually in good faith obeyed the order by restoring the officers to their places. Under these circumstances, the question whether the mayor could relieve the men from active duty and place them on the eligible list, and other kindred propositions not theretofore presented to the district court for adjudication, were not properly determinable. State ex rel. Rowling v. District Court, 41 Mont. 532, 534, 110 Pac. 86.

A city ordinance, providing for the organization of the police department of the city, in conformity with the statute governing that matter, has, when duly passed, the force and effect of a statute. State ex rel. Dwyer v. Duncan, 49 Mont. 54, 59, 140 Pac. 95.

Cited or applied as section 3305, Revised Codes, in State ex rel. Quintin v. Edwards, 40 Mont. 287, 302, 106 Pac. 695, 20 Ann. Cas. 239; Larkin v. City of Butte, 52 Mont. 410, 412, 158 Pac. 316.

5097. Terms of members of the police force. All applicants for appointments to the police force, if appointed by the mayor and confirmed by the city council, shall first serve for a probationary term, and at any time within six months of said appointment or at the end of said period, the mayor may, by and with the approval of a majority of the city council, discharge such applicants, or he may at the end of said period of six months, with the approval of a majority of the council, confirm the appoint-

ment of any such applicants to membership in the police department, and, if so confirmed, they shall hold during good behavior, or until by age or disease they become incapacitated to discharge their duties, and if not so confirmed, the term of such applicants shall expire at the end of six months from the date of appointment.

History Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921.

A policeman, discharged contrary to the provisions of the metropolitan police law, is not guilty of laches in delaying, for thirteen months, to take any action by mandamus for his reinstatement, where he is awaiting the final decision of law questions in a similar pending proceeding. State ex rel. Bennetts v. Duncan, 47 Mont. 447, 452, 133 Pac. 109.

It is obligatory upon the mayor of a city to appoint to permanent service on the police force a policeman who, after service for the probationary term of six months, has demonstrated his fitness for the position. State ex rel. Bennetts v. Duncan, 47 Mont. 447, 455, 133 Pac. 109.

Cited or applied as section 3306, Revised Codes, in State ex rel. Quintin v. Edwards, 40 Mont. 287, 302, 106 Pac. 695, 20 Ann. Cas. 239; State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 107 Pac. 506; Grush v. Bishop, 46 Mont. 97, 100, 126 Pac. 619; Larkin v. City of Butte, 52 Mont. 410, 412, 158 Pac. 316; State ex rel. Breen v. Mayor of City of Butte, 58 Mont. 116, 118, 190 Pac. 991.

Removal of police officers by state, see note in Ann. Cas. 1918B, 145.

5098. Examining board for police department. In cities of the first class the mayor shall nominate, and with the consent of the council appoint, three residents of such city, who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of "The Examining and Trial Board of the Police Department," and who shall hold office for two years, and until their successors are appointed and qualified. The council of any town or city, other than a city of the first class, may provide by ordinance for such a board in any such town or city. The compensation of the members of such board shall be fixed by the council, but shall not exceed ten dollars per day, nor more than fifty dollars per month for each member, in cities of the first class; nor more than five dollars per day, nor more than twenty-five dollars per month for each member, in any other city, or in any town.

History: Sec. 3307, Rev. C. 1907.

The law, in effect, commands that there shall be an examining and trial board of the police department, the members of which the mayor is required to nominate, and as to cities of the first class the law is mandatory, and, as to other cities and towns, it is permissive only. State ex rel. Buckner v. Mayor of Butte, 41 Mont. 377, 383, 109 Pac. 710.

Where the mayor of a city of the first class had appointed three residents to constitute the examining and trial board of the police department created by this section, such persons, having qualified, were de facto officers whose official acts were legal, notwithstanding the city council repeatedly refused to confirm them. State ex rel. Buckner v. Mayor of Butte, 41 Mont. 377, 385, 109 Pac. 710.

Cited or applied as section 3307, Revised Codes, in State ex rel. Quintin v. Edwards, 40 Mont. 287, 302, 106 Pac. 695, 20 Ann. Cas. 239; State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 107 Pac. 506; Grush v. Bishop, 46 Mont. 97, 100, 126 Pac. 619; State ex rel. Bennetts v. Duncan, 47 Mont. 447, 454, 133 Pac. 109.

5099. Examination of applicants for position on police force. All applicants for positions on the police force shall be required successfully to undergo an examination before this board, and to receive a certificate from said board that the applicant is qualified for appointment for the probationary period upon the police force. It shall be the duty of the board to examine all such applicants as to their legal, mental, moral, and physical qualifications and ability to fill the position of member of the

police department, and shall, subject to the approval of the mayor, make rules and regulations regarding such examinations not inconsistent with this act or the laws of the state. And said board shall also have the jurisdiction, and it shall be its duty to hear, try and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that any such member or officer is incompetent or by age or disease, or otherwise has become incapacitated to discharge his duties. Notice of not less than two days must be given to the accused of any charge made against him and of the time set for the hearing and trial thereof. No member or officer of the police force in cities of the first class shall be discharged without a hearing or trial before said board, and if such a board be instituted in any city of any other class, or in any town, then the same rule shall prevail regarding hearings and trials and the right thereof as in cities of the first class. The mayor and the chief of police, subject to the approval of the mayor, shall have the power to suspend a policeman, or any officer under the chief, for a period of not exceeding ten days in any one month without any hearing or trial. The examining board shall decide whether the charge or complaint is proven or not proven and shall have the power, by a decision of the majority of the board, to discipline or impose a punishment. Such action of the board shall be subject to modification or veto by the mayor, made in writing, giving the reasons therefor, which shall become a permanent record of the said examining and trial board.

The findings and decisions of said board shall be final unless modified or vetoed by the mayor within five days from the date of the filing of such findings and decisions with the city clerk. Where a charge or complaint against a member of the police force is found proven by the board, the board, the mayor, or the chief of police, with the approval in writing of the mayor, may order the suspension from pay for some definite time, of the member or officer found guilty, or impose upon him a fine not exceeding fifty dollars, or reduce his grade, or discharge him from the police force, or subject him to any other discipline prescribed in the rules of the police department, which is not inconsistent with the provisions of this act, or with other laws of the state. The decision of the board shall be final and conclusive, and shall not be subject to review by any court on question of fact. The district court of the proper county shall have jurisdiction, however, in a suit brought by the officer or member, to determine whether the essential requirements of law have been complied with in the matter of his trial, but such suit must be brought by such officer or member within a period of sixty days following the decision of said board; provided, further, that the mayor must approve or disapprove the decision of the board within a period of five days of the rendition of said decision; and provided further, that no action for the restoration to office by any member of the police department unlawfully or illegally removed or excluded from office shall be maintained unless the same is begun within a period of sixty days from the date of accrual of the cause of action, but no suit for the recovery of salary, or other emoluments of office, shall be maintained by any member of the police department unless the same shall be instituted within fifteen days after the right to said office shall be finally determined and, provided also, that any cause of action hav-

ing heretofore accrued for unpaid salaries or removal or suspension from office, shall be commenced within sixty days after the approval of this act, and unless so commenced such action shall be forever barred.

History: Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921.

The provision restricting the power of removal found in this section refers to removals for lapse of duty and the like, and is no restriction upon the power of the council to abolish as many of the places or offices once provided for, as it chooses, by reducing the number of the members on the force. State ex rel. Quintin v. Edwards, 40 Mont. 287, 304, 106 Pac. 695, 20 Ann. Cas. 239.

An ordinance intended, not to abolish the offices of members of the police force for economical reasons, but to get them off the force permanently in order to make way for the mayor to fill their places with persons more acceptable to him, is void, and does not confer upon the mayor the power to make appointments to the vacant places; a discharge of one member of the police force, manifestly for the purpose of making place for another person, is unlawful under a statute having a civil service feature. State ex rel. Quintin v. Edwards, 40 Mont. 287, 306, 309, 106 Pac. 695, 20 Ann. Cas. 239.

A police captain is a "policeman," and upon appointment, after having served the probationary term of six months is secure from removal from office except as provided by law. State ex rel. Bailey v. Edwards, 40 Mont. 313, 318, 106 Pac. 703.

The provision of this section, that the mayor may suspend a policeman or any officer under the chief, for a certain period without hearing or trial, cannot be said to indicate an intention on the part of the legislature to regard the chief officer as in a separate class from other members of the force. State ex rel. Wynne v. Quinn, 40 Mont. 472, 480, 107 Pac. 506.

A police officer who has been discharged from the police department cannot obtain a review of the proceedings in the supreme court on application for a writ of supervisory control on the grounds that the charges filed against him did not state sufficient facts to constitute a cause of action, and that the evidence was not sufficient to support the findings, since these were questions of law which could be considered in the district court. Bailey v. Examining and Trial Board, 42 Mont. 216, 218, 112 Pac. 69.

The effect of this provision is that a decision of the examining and trial board on questions of fact is final and conclusive on all courts if there is any substantial evidence to support it. Bailey v. Examining and Trial Board, 42 Mont. 216, 218, 122 Pac. 69; Id., 45 Mont. 197, 202, 122 Pac. 572.

The power to impose punishment on a police officer found guilty of official misconduct being lodged in the mayor, his judgment of dismissal from the force cannot be disturbed on appeal as being too severe. Bailey v. Examining and Trial Board, 45 Mont. 197, 203, 122 Pac. 572.

A probationer, being a member of the police force, can be removed only upon charges made and trial had in conformity with this and the following section. State ex rel. Bennetts v. Duncan, 47 Mont. 447, 455, 133 Pac. 109.

It is contemplated that reduction in rank or grade may be imposed as a punishment in case the officer, other than the chief, is found guilty. State ex rel. Dwyer v. Duncan, 49 Mont. 54, 58, 140 Pac. 95.

Under the duty to administer its affairs economically, a city may retire a member of its police department, but the council cannot under the guise of financial retrenchment remove a jailer, continue his office in operation, and install another in his place. State ex rel Breen v. Mayor of City of Butte, 58 Mont. 116, 118, 190 Pac. 991.

Since there is no provision in the metropolitan police law requiring the keeping of any record of the testimony produced on the trial of an officer charged with misconduct, the district court is without authority to command the trial board on certiorari to return a transcript thereof to aid in determining whether the evidence was sufficient to warrant an order of removal. State ex rel. Examining and Trial Board v. District Court, 58 Mont. 90, 100, 190 Pac. 295.

Cited or applied as section 3308, Revised Codes, in Grush v. Bishop, 46 Mont. 97, 100, 126 Pac. 619; Larkin v. City of Butte, 52 Mont. 410, 412, 158 Pac. 316; State ex rel. O'Brien v. Mayor of Butte, 54 Mont. 533, 535, 172 Pac. 134.

Right to compel policemen to submit to physical examination to determine fitness, see note in 33 L. R. A. (N. S.) 259.

5100. Presentation and trials of charges against policemen. If a charge be made by any person against any member or officer of the police force that he is incompetent, or has been guilty of neglect of duty, misconduct in his office, or of conduct unbecoming a police officer, the charge must

be put in writing in the form required by the rules of the examining and trial board, and a copy thereof must be served upon the accused officer or member at least two days before the hearing. It is then the duty of the said board to hear, try, and determine the charge according to the rules of said board and of the police department. The accused has the right to be present at this trial and be heard in person and by counsel, and to give and furnish evidence in his defense. All trials shall be open to the public. The chairman, or acting chairman, of the board shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses upon any proceeding authorized by the rules and regulations of said board or of the police department, and any person duly served with a subpoena is bound to attend in obedience thereto, and the board shall have the same authority to enforce obedience to the subpoena, and to punish for disobedience thereof, as is possessed by justices of the peace in like cases.

History: Sec. 3309, Rev. C. 1907.

The requirement of this section, that a complaint charging a police officer with any of the offenses triable by the examining and trial board of the police department shall be reduced to writing, is met if it in substance makes out any of the offenses mentioned therein. Bailey v. Examining and Trial Board, 45 Mont. 197, 199, 122 Pac. 572.

A police officer who, after having been notified of an obstruction on a sidewalk by a pedestrian who was injured by falling over it, paid no attention to the complaint further than to say that nothing could be done unless the complainant should swear out a warrant against the owner of the premises, was guilty of misconduct in office, in view of police regulations governing such matters, as well as of neglect of duty; and a charge substantially embodying these facts was sufficient to state either or both of these offenses made triable by the trial board of the police department. Bailey v. Examining and Trial Board, 45 Mont. 197, 202, 122 Pac. 572.

It is contemplated that charges against any officer in the department shall be heard by the examining and trial board. State ex rel. Dwyer v. Duncan, 49 Mont. 54, 58, 140 Pac. 95.

An accusation against a police officer held sufficient to present the question of his fitness to hold the office. State ex rel. O'Brien v. Mayor of Butte, 54 Mont. 533, 536, 172 Pac. 134.

In every proceeding for the removal of an officer the charges against him are not to be tested by the rigid rules of criminal procedure, but the ultimate inquiry is the fitness of the accused to hold his position, and such inquiry is raised by the specific questions whether he is incompetent or has been guilty of neglect of duty or misconduct in office, or conduct unbecoming an officer. State ex rel. O'Brien v. Mayor of Butte, 54 Mont. 533, 536, 172 Pac. 134.

The sufficiency of charges against a police officer cannot be defeated by the fact that the specifications considered as a basis for criminal prosecution may be barred by the statute of limitations. State ex rel. O'Brien v. Mayor of Butte, 54 Mont. 533, 536, 172 Pac. 134.

The charge that a police officer falsely stated upon his application for a position that he had never been convicted of crime was sustained by evidence that he pleaded guilty of petit larceny and suffered a judgment of fine therefor. State ex rel. O'Brien v. Mayor of Butte, 54 Mont. 533, 536, 172 Pac. 134.

In proceedings before a city council for the removal of the chief of the fire department, the charges need not be stated with the technical accuracy required in a complaint filed in court. State ex rel. Griffiths v. Mayor of City of Butte, 57 Mont. 368, 188 Pac. 367.

Cited or applied as section 3309, Revised Codes, in State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 107 Pac. 506; State ex rel. Bennetts v. Duncan, 47 Mont. 447, 455, 133 Pac. 109; State ex rel. Dwyer v. Duncan, 49 Mont. 54, 58, 140 Pac. 95; Larkin v. City of Butte, 52 Mont. 410, 412, 158 Pac. 316.

5101. Vacancies to be filled from eligible list. In case of any vacancy in the police force, the same shall be filled from a list of persons eligible to appointment under this act.

History: Sec. 3310, Rev. C. 1907.

The act of the mayor and city council in retiring a lieutenant of police to the eligible list, on the ground of economy, and

immediately thereafter appointing another to fill the same office, was a violation of the civil service principle upon which the metropolitan police law is founded and did not deprive the plaintiff of his office. State ex rel. Dwyer v. Duncan, 49 Mont. 54, 59, 140 Pac. 95.

Cited or applied as section 3310, Revised Codes, in State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 478, 107 Pac. 506, as section 7 of metropolitan police law, in State ex rel. Bennetts v. Duncan, 47 Mont. 447, 455, 133 Pac. 109.

5102. Exemptions of members of police force. No member of the police force shall be liable to military or jury duty, or to arrest on civil process, while actually on duty, nor shall he hold any other office, or be employed in any other department of the city or town government.

History: Sec. 3311, Rev. C. 1907.

Cited or applied as section 3311, Revised Codes, in State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 478, 107 Pac. 506.

5103. Members of the police department not to take part in political conventions. No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at such convention, except in the performance of duty relating to his position as such officer or member.

History: Sec. 3312, Rev. C. 1907.

Cited or applied as section 3312, Revised Codes, in State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 107 Pac. 506; State ex rel. Bennetts v. Duncan, 47 Mont. 447, 450, 133 Pac. 109.

5104. Prohibited from soliciting for votes. It shall be unlawful for any officer or member of the police department to solicit any person to vote at any political caucus, primary, or election for any candidate, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary, or at any election, or be a member of any political committee.

History: Sec. 3313, Rev. C. 1907.

Cited or applied as section 3313, Revised Codes, in State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 107 Pac. 506.

5105. City council may make additional regulations. In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this act, or any law of the state, for the government of the police department, and for regulating the powers and duties of its officers and members.

History: Sec. 3314, Rev. C. 1907.

The city council may furnish assistance to the mayor, in the form of a commission, to determine the physical competency of the members of the police force. Larkin v. City of Butte, 52 Mont. 410, 413, 158 Pac. 316.

Cited or applied as section 3314, Revised Codes, in State ex rel. Quintin v. Edwards, 40 Mont. 287, 302, 106 Pac. 695, 20 Ann. Cas. 239; State ex rel. Dwyer v. Duncan, 49 Mont. 54, 58, 140 Pac. 95.

5106. Qualifications of police officer. The members of the police department, at the time of their appointment under this act, shall be not less than twenty-one years of age nor more than fifty years of age, but this restriction shall not apply to any member of the present police department; and they shall have been citizens of the United States and residents of the city or town at least two years prior to such appointment. They must be able to speak and write understandingly the English language.

History: Sec. 3315, Rev. C. 1907.

Cited or applied as section 3315, Revised Codes, in State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 107 Pac. 506.

5107. Salary of chief of police. The salary of the chief of police in cities of the first-class shall be not less than one hundred nor more than three hundred dollars per month, and within these limits the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: Sec. 3316, Rev. C. 1907.

Cited or applied as section 3316, Revised Codes, in State ex rel. Wynne v. Quinn, 40 Mont. 472, 477, 107 Pac. 506.

5108. Repealing clause. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but nothing herein contained shall abridge any of the powers possessed by the mayor of any city or town under any other provisions of law or any ordinance.

History: Sec. 3317, Rev. C. 1907.

The saving clause of this section serves no purpose other than to indicate that the legislature did not intend to repeal any existing law or ordinance of any city which was not inconsistent with the law enacted. State ex rel. Wynn v. Quinn, 40 Mont. 472, 480, 107 Pac. 506.

Cited or applied as section 14, Police Commission Bill, in State ex rel. Quintin v. Edwards, 38 Mont. 250, 270, 99 Pac. 940; as section 3317, Revised Codes, in State ex. rel. Quintin v. Edwards, 40 Mont. 287, 297, 106 Pac. 695, 20 Ann. Cas. 239; State ex rel. Bailey v. Edwards, 40 Mont. 313, 316, 106 Pac. 703; State ex rel. Buckner v. Mayor of Butte, 41 Mont. 377, 380, 109 Pac. 710; State ex rel. Rowling v. District Court, 41 Mont. 532, 533, 110 Pac. 86; State ex rel. Rowling v. Mayor of Butte, 43 Mont. 331, 117 Pac. 604; Grush v. Bishop, 46 Mont. 97, 98, 126 Pac. 619; State ex rel. Dwyer v. Duncan, 49 Mont. 54, 58, 140 Pac. 95; Larkin v. City of Butte, 52 Mont. 410, 412, 158 Pac. 316.

CHAPTER 50.

FIRE DEPARTMENT—FIREMAN'S DISABILITY FUND.

Section 5109. Council May Establish Fire Department.
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5137. Source and Control of Funds.
5138. Hours of Work of Members of Fire Department in Cities of First and Second Class.
5139. Rules and Regulations Governing Fire Departments.
5140. Appointment of Chief Engineer of Fire Department—His Powers and Duties.

5109. Council may establish fire department. The council of cities and towns shall have power to establish a fire department, and prescribe and regulate its duties, to maintain a fire-alarm telegraph, to erect engine, hose, and hook-and-ladder houses, and provide engines and other implements and apparatus for the extinguishing of fire.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907.

Mandamus lies to reinstate a fireman who has been discharged in violation of the act placing paid fire departments under civil service rules. State ex rel. Driffill v. City of Anaconda, 41 Mont. 577, 581, 111 Pac. 345.

State control of municipal fire department, see notes in 14 Ann. Cas. 357; 15 L. R. A. (N. S.) 575.

Effect of partial invalidity of statute relating to municipal fire departments, see note in Ann. Cas. 1916D, 75.

Fire department as pertaining to the governmental or to the proprietary branch of municipality, see note in 9 A. L. R. 143.

Firemen as public officers, see note in 36 L. R. A. (N. S.) 881.

5110. Fire department to consist of what—Compensation. Such fire department, when established, may consist of one chief of the fire department, as many assistant chiefs of the fire department, and such number of firemen as the council may from time to time provide, and may also include a city electrician, and as many assistant eletricians as the council may from time to time provide. The compensation of the chief of the fire department and assistant chiefs of the fire department and firemen, in cities and towns where the council shall establish a paid fire department, and said city electrician and assistant city electricians, shall be fixed by ordinance. The mayor shall nominate, and, with the consent of the council, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firemen, and such appointment shall be first made for a probationary term of six months, and thereafter the mayor may nominate, and, with the consent of the council, appoint such chief and assistant chief or chiefs of the fire department and firemen, who shall thereafter hold their appointment during good behavior, and while they have the physical ability to perform their duties. The chief of the fire department, and the assistant chief or chiefs of the fire department, and the firemen, shall not be deemed officers of the municipal corporation in which such fire department is established.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911.

Section 4999 has no application to a fireman, since this section declares that he is not to be deemed a municipal officer. State ex rel. Driffill v. City of Anaconda, 41 Mont. 577, 581, 111 Pac. 345.

5111. Powers of mayor to suspend firemen. The mayor may suspend the chief and assistant or any fireman of the fire department for neglect of duty or a violation of any of the rules and regulations of the fire department; the chief of the fire department may suspend the assistant chief of the fire department or any fireman, and the assistant chief of the fire department may suspend any fireman for a like cause. In all cases of suspension the person suspended must be furnished with a copy of the charge against him in writing, setting forth reasons for the suspension, and such charges must be presented to the next meeting of the council and a hearing had thereon, when the suspended member of the fire department may appear in person or by counsel and make his defense to said charges; if such charges are found proven by the council, the

council, by a vote of a majority of the whole council, may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a time limited, or in the removal of the suspended person from the fire department; should the charges be not presented to the next meeting of the council after the suspension, or should the charges be found not proven by the council, the suspended person shall be reinstated and be entitled to his usual compensation for the time so suspended.

History: Sec. 3328, Rev. C. 1907.

Note.—Sections 5111 to 5115 were enacted as sections 3 to 7, pages 74 to 75, Laws of 1899, appearing as sections 3328 to 3332, Revised Codes 1907.

If a fireman has been removed without written charges, his action in asking for reinstatement after his discharge did not constitute a waiver of his right to be confronted with written charges, as there can be no waiver of a right that has been lost. State ex rel. Driffill v. City of Anaconda, 41 Mont. 577, 582, 111 Pac. 345.

Cited or applied as section 3328, Revised Codes, in State ex rel. Griffiths v. Mayor of City of Butte, 57 Mont. 368, 188 Pac. 367.

5112. Reduction of force in reverse order of appointment. Should the council at any time reduce the number of firemen in the fire department, those most recently appointed shall be selected for retirement from the fire department, and the city or town clerk shall keep a list of such retired firemen, and should the number of firemen be again increased by the council, the men on said list shall be called into service, the longest service firemen being first selected for service in the fire department.

History: Sec. 3329, Rev. C. 1907. See also history of Sec. 5111.

The city council must, if it deems it necessary to reduce the number of paid firemen, retire the one last appointed, and may not exercise any discretion in the premises and discharge the one thought least efficient, even though oldest in point of service. State ex rel. Driffill v. City of Anaconda, 41 Mont. 577, 584, 111 Pac. 345.

5113. Qualification of firemen. The qualifications of firemen shall be that they shall be qualified voters of the city or town, not over forty-five years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty. Should there be any firemen in the existing fire department of cities and towns, whose age at the time of their appointment is forty-five years or over, the same shall be retired from the service of such department.

History: Sec. 3330, Rev. C. 1907. See also history of Sec. 5111.

Note.—The above section rewritten to correct grammatical errors.

Where a discharged fireman seeks reinstatement by mandamus, a statement in his affidavit that he had been duly appointed and confirmed as a member of the fire department, and that at all times he had the physical ability to perform his duties as such, was a sufficient allegation that he possessed the qualifications of a fireman as defined by this section; otherwise he would not have been appointed in the first instance. State ex rel. Driffill v. City of Anaconda, 41 Mont. 577, 581, 111 Pac. 345.

5114. Duties of chief and assistant chief of fire department. The chief of the fire department shall have sole command and control over all persons connected with the fire department of the city or town, and shall possess full power and authority over its organization, government, and discipline, and to that end may from time to time establish such discip-

linary rules and regulations as he may deem advisable, subject to the approval of the city or town council; he shall have charge of and be responsible for the engines and other apparatus, the property of the town or city furnished the fire department, and see that they are at all times ready for use in the extinguishing of fires. The assistant chief of the fire department shall aid the chief in the work of the department and in his absence shall perform his duties.

History: Sec. 3331, Rev. C. 1907. See also history of Sec. 5111.

Cited or applied as section 3331, Revised Codes, in State ex rel. Griffiths v. Mayor of City of Butte, 57 Mont. 368, 188 Pac. 367.

5115. Act applicable to existing departments. In cities and towns where fire departments are now established, organized, and existing, as provided in this act the same shall be deemed to be established hereunder.

History: Sec. 3332, Rev. C. 1907. See also history of Sec. 5111.

5116. Volunteer companies not affected. All acts and parts of acts in conflict herewith are hereby repealed; provided, that nothing herein contained shall be held or construed to affect any fire organization known as a volunteer fire company.

History: En. Sec. 10, p. 76, L. 1899; re-en. Sec. 3333, Rev. C. 1907.

5117. Fire department—Disability fund. There shall be created and established in each city and town in the state of Montana where there is an established fire department a fund in the city or town treasury, to be known as the "disability fund," of the fire department of said city or town.

History: Sec. 3334, Rev. C. 1907.

Note:—Sections 5116 to 5124 were enacted as sections 1 to 8, chapter 71, Laws of 1907, appearing as sections 3334 to 3341, Revised Codes 1907.

Statute providing compensation for injury or death of fireman as constituting pension, see note in Ann. Cas. 1917C, 1140.

Power of legislature to require municipality to pension employees, see note in 34 L. R. A. (N. S.) 608.

Nature and circumstance of injury as affecting right to share in pension or insurance fund, see note in 20 L. R. A. (N. S.) 1176.

Vested right in pension, see note in 50 L. R. A. (N. S.) 1019; Ann. Cas. 1915C, 751.

5118. Source of fund. The disability fund of the fire department of such city or town shall consist of such sums of money as may be derived from the levy of an annual tax for that purpose, levied by such city or town council as hereinafter provided, and donations to the fire department from any source, in land, money, and other valuable gifts. No member of any such fire department of a city or town shall receive any gift of money or other valuable thing for his services other than the salary fixed by ordinance; and in the event of any member of such fire department shall receive any gift of money, or other valuable thing, the same shall be turned into the said disability fund; provided and excepting, however, that any member of such fire department may receive as a gift any medal, badge, emblem, or other article of adornment, in recognition of individual bravery or heroic action in the discharge of his duties as such fireman.

History: Sec. 3335, Rev. C. 1907. See also history of Sec. 5117.

5119. Tax levy for fund. For the purpose of maintaining said disability fund, the city or town council may, in the manner provided for

by law, and at the time of the levy of the annual tax, levy a special tax of not to exceed one-tenth of one mill on the dollar upon the assessed valuation of all taxable property within the limits of the said city or town, which said tax shall be collected as other taxes, and when so collected shall be paid into the disability fund of said fire department.

History: Sec. 3336, Rev. C. 1907. See also history of Sec. 5117.

5120. Trustees of fund. A board of trustees of said disability fund shall be created, to consist of the mayor, clerk, and attorney of said city or town, the chief of such fire department in said city or town, and one member of the fire department, who shall be selected by a majority of the members of said fire department between the first and tenth day of May of each year in which said city or town shall elect a mayor, and shall hold his position as such trustee during the administration of the then incumbent mayor.

History: Sec. 3337, Rev. C. 1907. See also history of Sec. 5117.

5121. Duties of trustees. The board of trustees of the said disability fund shall audit the same from time to time, at least twice during each fiscal year, and report the condition of the said fund annually to the city or town council, on or before the first day of April of each year. No payments shall be made therefrom except upon the order of the council upon the written recommendation of a majority of the board of trustees. The city or town council may provide for the investment of all or any part of said funds in bonds of the United States or of the state of Montana, or of the particular city or town in which such fund exists, and for the sale of such bonds when desirable. All such bonds shall be deemed part of the city treasury, and the treasurer shall be responsible therefor in the same manner as for the moneys of the fund.

History: Sec. 3338, Rev. C. 1907. See also history of Sec. 5117.

5122. Use of fund. Said fund shall not be used for any purpose whatsoever, other than the relief of firemen of such city or town who may be disabled in the line of duty in such fire department; nor shall this act render the city or town liable for such disability, but such fund shall be and remain in such city or town treasury, to be drawn upon by the warrant of the mayor, countersigned by the clerk, in such sum as may be allowed under the provisions of the next section, for the relief of disabled firemen, until such fund be exhausted, when no further warrant thereon shall be issued.

History: Sec. 3339, Rev. C. 1907. See also history of Sec. 5117.

5123. Benefits—How allowed. Benefits shall only be allowed on the recommendation of the board of trustees, or the majority thereof, approved by the city or town council. Whenever the board of trustees shall recommend to the council the payment of any benefit to any member of such fire department, disabled in the line of duty, the recommendation shall be in writing, stating the name of the beneficiary, the character of the disability, when, where, and how received, and the amount to be paid to such beneficiary. The benefit paid to any member of such fire department who may be disabled in the line of duty shall be at least a sum equal in amount to the loss of salary and reasonable cost of medicine or

medical services incurred by any such member on account of said disability, and in the event of any member of said fire department becoming disabled or maimed for life, or suffering death in the line of said duty, the board of trustees may, subject to the approval of the council in each instance, make a suitable allowance to the said member or his heirs. It shall be the duty of the city or town council to provide by ordinance a scale of maximum allowances before any benefit can be allowed, and the same shall not be exceeded by the board.

History: Sec. 3340, Rev. C. 1907. See also history of Sec. 5117.

5124. Embezzlement of fund. Any person who shall embezzle any of the moneys or other valuable thing belonging to the disability fund of the fire department of any city or town, or who shall take part in or aid in any scheme whereby the said fund may be defrauded, shall be guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state prison for not less than one nor more than ten years.

History: Sec. 3341, Rev. C. 1907. See also history of Sec. 5117.

5125. Annual report of clerks of cities having fire department. On or before October 31st, annually, the clerk of every city having an organized fire department, or a partly paid or volunteer department, shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require.

History: En. Sec. 1, Ch. 129, L. 1911.

5126. Reports of insurance companies. The commissioner of insurance shall include in the blank form furnished to each fire insurance company for its annual statement, a list of all such cities, and each company shall report therein the amount of premiums received by it during the preceding year in each incorporated city. Before July first following said October thirty-first, mentioned in the preceding section, the commissioner of insurance shall certify to the state auditor the name of each city which has had, for not less than one year, an organized fire department, and which has been so reported to him, and the amount of premiums received in each city in such year by each fire insurance company.

History: En. Sec. 2, Ch. 129, L. 1911.

5127. State auditor to pay cities fifty per cent. of licenses collected. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city his warrant for an amount equal to fifty per cent. of the licenses collected by the state auditor under section 6112 of these codes, in proportion to the premium so paid and collected by the said fire insurance companies in such cities to the total premiums paid and collected by such fire insurance companies in the entire state.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915.

Cited or applied as chapter 49, Laws of 1915, in Equitable Life Assur. Co. v. Hart, 55 Mont. 76, 86, 173 Pac. 1062.

5128. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of the said warrant of the state auditor, to pay to the treasurer of any such city, out of the

general revenue fund of this state, the amount in such warrant specified, which amount shall be paid into the disability fund of the fire department.

History: En. Sec. 4, Ch. 129, L. 1911.

5129. Fire department relief association. The members of the fire department or departments in each incorporated city in this state are hereby authorized to form themselves into an association, to be known as the fire department relief association of the city of.....(naming the city); provided, that no such association shall be formed, unless a majority of the members of the city council of a city in which the same is organized shall consent thereto. In the event of the formation of such fire department relief association, there shall be selected as officers of same by the members thereof the following named officers, to-wit, a president, secretary, and treasurer, and such other officers as may be considered necessary.

History: En. Sec. 5, Ch. 129, L. 1911.

5130. Report of secretary and treasurer of association—Examination of books and accounts. The secretary and treasurer of every such association so formed shall, annually, prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purpose the money has been paid and expended, and file it with the city clerk, and a duplicate with the state auditor. No money shall be paid to the treasurer of the city until such report is so filed. No one serving as a substitute or on probation, nor any fireman in the city having such association who is not a member thereof, shall be deemed a fireman within the meaning of this act. No treasurer of any such association shall enter upon his duties until he shall have given to the association a good and sufficient bond for the faithful discharge of his duties according to law, the amount of such bond to be fixed by said association. All the financial books and accounts of such association and city with reference thereto shall be subject at all times to examination by the state examiner and he is hereby authorized and empowered to make such examination when complaint is duly made to him that the money, or any part thereof, paid under the provisions of this act to the treasurer of any city, or such association, has been, or is being expended for an unauthorized purpose, and if such money, upon examination is found to have been expended, contrary to the authority given, he shall so report to the governor, upon whose direction to the state auditor no further warrants shall be issued to such city treasurer until the money so expended has been restored.

History: En. Sec. 6, Ch. 129, L. 1911.

5131. Duties of association and city treasurers. Whenever such fire department relief association is formed as herein provided for, and when the treasurer of such association has furnished the bond herein provided for, such treasurer shall receive all money in the hands of the city treasurer to the credit of said disability fund, giving to said city treasurer his receipt for same, and said city treasurer shall thereafter from time to time, as moneys are received by him for the credit of said fund, turn the same over to the treasurer of said relief association, taking proper receipts therefor.

History: En. Sec. 7, Ch. 129, L. 1911.

5132. Pensions to retired firemen. Every fire department relief association, whenever certificate of incorporation or by-laws so provide, and every board of trustees, may pay out of any moneys in the fund a service pension in an amount not exceeding one-half of the monthly salary last received by such pensioner as may be provided for, to each of its members who has heretofore retired, or may hereafter retire, or has reached or shall hereafter reach the age of fifty years, and who has done or hereafter shall do active duty for twenty years or more as a member of a volunteer, paid, or partially paid and partially volunteer fire department in the municipality where such association exists, or who, under the by-laws of the board of trustees, may be entitled to such pension. Such pension shall be uniform in amount, and may be decreased or increased within the amount above specified, whenever the amount of funds on hand renders such action advisable. No such pension shall be paid to any person while he remains a member of the fire department, and any person receiving such pension shall not be entitled to other relief from such association.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919.

5133. Payment of service pensions. Every firemen's relief association now or hereafter organized in any city in this state, having an organized fire department, which is now incorporated, or which may hereafter be incorporated, and every board of trustees may pay out of any funds it may have heretofore received, or may hereafter receive, service pensions in such amounts and in such manner as its by-laws shall designate, under the provisions of this act, not exceeding, however, one-half the sum last received as a monthly salary by such pensioned members monthly. Nothing herein contained shall be construed as permitting any member of a fire department relief association receiving benefits or allowance under the provisions of this act, and, at the same time, for the same casualty, an allowance under the Montana Workmen's Compensation Act.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919.

5134. Pensions to widows and orphans. Such firemen's relief association and such board of trustees may pay a pension to such of the widow and orphans of deceased firemen in such sums and under such limitations and conditions as its by-laws shall provide and permit, not exceeding however, a sum equal to the monthly salary last received by such deceased firemen, monthly to any such pensioner or to any one family, with the right to increase or decrease the amount of any such pension, when on account of the funds on hand, or lack of funds on hand, or other good reasons, such reduction or increase seems advisable and proper.

History: En. Sec. 10, Ch. 129, L. 1911.

5135. Revenue to be set aside as special fund. The amount so paid to any city treasurer, or to the treasurer of such firemen's relief association, under the provisions of this act, shall be set aside as a special fund, and may be appropriated and disbursed in the same manner as other funds belonging to said city or association are appropriated or disbursed, but only for the following purposes, namely:

1. For the use of sick, injured, or disabled firemen of any fire department of said city, and their widows and orphans.

2. For the payment of pensions, pursuant to the provisions of sections 5132 and 5133 of this code.

Any money remaining in said fund unexpended may be invested by said association or by said trustees as provided for by law.

History: En. Sec. 11, Ch. 129, L. 1911.

5136. Pensions exempt from legal process and non-assignable. Any payments made or to be made hereunder shall not be subject to judgments, garnishment, execution, or other legal process, and any person entitled to such pension shall not have the right to assign the same, nor shall the association or trustees have the authority to recognize any assignment or pay over any sum so assigned.

History: En. Sec. 12, Ch. 129, L. 1911.

5137. Source and control of funds. Such association and such board of trustees shall have full charge, management, and control of the funds herein provided for, which said funds shall be derived from the following sources:

1. From interest, rents, gifts, or money from other sources.
2. From funds received from the state of Montana.
3. From moneys raised by taxation under section 5119 of this code.

History: En. Sec. 13, Ch. 129, L. 1911.

5138. Hours of work of members of fire department in cities of first and second class. No fireman, or member or employee of the fire department of cities of the first and second class, shall be required to be on continuous duty to exceed fourteen hours of each twenty-four hour day, save and except the chief of such department, who shall be subject to call at any time; provided, that the chief of any department, or a captain thereof, may in his discretion, in cases of necessity, recall to service any member or employee of the fire department then off duty who shall be needed by such department at the time called.

History: En. Sec. 1, Ch. 91, L. 1917.

5139. Rules and regulations governing fire departments. The city councils or commissioners of cities of the first and second class shall have power to establish and promulgate rules and regulations governing the employment of the members or employees of their respective fire departments not inconsistent with this act.

History: En. Sec. 2, Ch. 91, L. 1917.

5140. Appointment of chief engineer of fire department—His powers and duties. The council of any city or town where there is no paid fire department may appoint a chief engineer of the fire department, to manage and control the fire-engines and apparatus furnished by the city or town for the extinguishing and the prevention of fires, to superintend and direct all fire companies, and to examine and inspect all buildings, chimneys, flues, and boilers, and other things within the city or town, and require the same to be put in a safe condition or removed, if liable to cause fire. In case a paid fire department is established in any city or town, the council may by ordinance provide for the maintenance of the same, and the employment of the officers and employees thereof.

History: En. Sec. 4816, Pol. C. 1895; re-en. Sec. 3325, Rev. C. 1907.

CHAPTER 51.

FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS—FIRE COMPANIES AND FIRE DISTRICTS.

Section 5141. Appointment of and Duties of Fire Warden.
5142. Removal of Dangerous Chimneys, etc.—Penalty.
5143. Fire Companies—How Organized.
5144. Elect Officers, Make By-Laws—Exempt Firemen.
5145. County Clerk May Issue Exempt Certificates.
5146. Seal and Record of Membership.
5147. Duties of Chief.
5148. Fire Protection—Establishment of Fire Districts.
5149. Directors of Fire Districts May Submit Question Issuance Fire Bonds.
5150. Bond Elections—Form and Registration of Bonds.
5151. Notice of Sale of Bonds—Proceeds and Delivery.
5152. Liability on Bonds.
5153. Levy and Collection of Tax.
5154. Payment and Liquidation of Bonds.
5155. Sinking Fund and Redemption.
5156. Payment of Interest by County Treasurer.
5157. Printing of Bonds and Coupons.
5158. Failure to Pay Proceeds of Sale of Bonds Into Treasury.

5141. Appointment of and duties of fire warden. The board of county commissioners must, upon petition of ten residents of any unincorporated city, town, or village in the county, appoint a fire warden for such city, town or village, whose duty it is to examine all chimneys, stoves, stovepipes, ovens, furnaces, boilers, and appurtenances thereto belonging.

History: En. Sec. 1, p. 101, L. 1876; re-en. Sec. 639, 5th Div. Rev. Stat. 1879; re-en. Sec. 1139, 5th Div. Comp. Stat. 1887; re-en. Sec. 3230, Pol. C. 1895; re-en. Sec. 2074, Rev. C. 1907.

5142. Removal of dangerous chimneys, etc.—Penalty. When any chimney, stove, stovepipe, oven, furnace, boiler, or appurtenance thereto is defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire-warden, on complaint of any citizen, either orally or in writing, or upon his own examination, or other satisfactory proof, must give written notice to the owner or occupant of the building or premises, directing the owner or occupant to repair the same so as to make it secure against accident by fire; and he may in the notice require the occupant or owner to replace any defective flue or stovepipe with a new and safe one; and if the occupant or owner neglects for the space of three days to comply with the terms of said notice, he is guilty of a misdemeanor and punishable accordingly.

History: En. Sec. 2, p. 101, L. 1876; re-en. Sec. 640, 5th Div. Rev. Stat. 1879; re-en. Sec. 1140, 5th Div. Comp. Stat. 1887; re-en. Sec. 3231, Pol. C. 1895; re-en. Sec. 2075, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1921.

5143. Fire companies—How organized. Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in unincorporated towns and villages are organized by filing, with the county clerk of the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed every three months. There must not be allowed to any such towns or villages more than one

company for each one thousand inhabitants, but one company must be allowed in any city, town, or village where the population is less than one thousand. There must not be allowed to any fire company more than twenty-eight certificate members.

History: En. Sec. 3232, Pol. C. 1895; re-en. Sec. 2076, Rev. C. 1907. See Cal. Pol. C. Sec. 3335.

5144. Elect officers, make by-laws, exempt firemen. Every such fire company must choose or elect a foreman, who is the presiding officer, and a secretary and treasurer, and may establish and adopt by-laws and regulations, and impose penalties, not exceeding five dollars, or expulsion for each offense. The officers and members of unpaid fire companies regularly organized and exempt firemen are entitled to the following privileges and exemptions, viz: Exemption from payment of poll-tax, road-tax, and head-tax of every description; exemption from jury duty; exemption from military duty, except in case of war, invasion, or insurrection. Every fireman who has served five years in an organized company in this state is an "exempt fireman," and must receive from the chief engineer of the department to which he belonged a certificate to that effect. Every active fireman must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs; such certificates must be countersigned by the secretary, and over the seal of the company, if one is provided. Each certificate entitles the holder to exemption from military and jury duty.

History: En. Sec. 3233; Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907.

5145. County clerk may issue exempt certificates. In lieu of issuing certificates to exempt firemen by the chief of the fire department, as provided in the last section, on the certificate of the foreman and secretary of any fire company, or the chief of the department, provision being made therefore in the by-laws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

History: En. Sec. 3234, Pol. C. 1895; re-en. Sec. 2078, Rev. C. 1907.

5146. Seal and record of membership. Every fire department regularly organized may adopt a department seal, the name of the particular fire department to which it belongs, which must be under the control of and for the use of the secretary, and be by him affixed to exempt certificates, certificates of active membership, and such other documents as the by-laws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the by-laws provide for the faithful performance of his duties. The secretary of the fire department, or fire company must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates. Every such certificate is prima facie evidence of the facts therein stated.

History: En. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907.

5147. Duties of chief. The chief of every fire department must inquire into the cause of every fire occurring in the town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all

fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by any justice of the peace.

History: En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1907.

5148. Fire protection—Establishment of fire districts. The board of county commissioners are authorized to establish fire districts in any unincorporated town or village, and at the time of the annual levy of taxes may levy a special tax upon all the property within such districts for the purpose of buying apparatus and maintaining the fire department of any such town or village, and such tax must be collected as are other taxes. All moneys so collected by the county treasurer shall be disbursed by him upon warrants signed by the treasurer of the fire company and countersigned by its foreman. In the drawing of such warrants against the funds so collected by the county treasurer, the foreman and treasurer of the fire company shall be governed by the by-laws of such fire company. It is provided that the provisions of this section shall not apply to payment of bonds and interest thereon as provided by sections 5149 to 5158 of this code.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921.

5149. Directors of fire districts may submit question issuance fire bonds. Whenever the board of county commissioners shall have established fire districts in any unincorporated town or village, said board of county commissioners shall be and is hereby constituted ex-officio a board of directors of such fire district. The board of directors of any duly established fire district in unincorporated towns or villages within this state shall, whenever a majority of the directors so decide, submit to the electors of the district the question whether the board shall be authorized to issue coupon bonds to a certain amount, not to exceed three per cent. of the taxable property in said district, and bearing a certain rate of interest not exceeding six per cent. per annum, and payable and redeemable at a certain time, for the purpose of purchasing fire equipment, necessary lands, erecting buildings for fire purposes, and establishing pipe-lines. No such bonds shall be issued unless a majority of all the votes cast at any such election shall be cast in favor of such issue.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921.

Cited or applied in State ex rel. Powers v. Dale, 47 Mont. 227, 229, 131 Pac. 670, Ann. Cas. 1914D, 227.

5150. Bond elections—Form and registration of bonds. Such election shall be held in the manner prescribed for the election of fire directors. The ballots shall be in form as follows:

"Shall bonds be sold to the amount of.....dollars and bearing not to exceed.....per cent. interest and for a period not to exceed.....years, for the purpose of purchasing fire equipment, necessary lands, erecting buildings for fire purposes, and establishing pipe lines?"

Bonds—Yes.
Bonds—No.

The elector shall prepare his ballot by crossing out thereon parts of the ballot in such a manner that the remaining part shall express his vote upon the question submitted. If a majority of the votes cast at such election are bonds "Yes," the board of directors shall issue such bonds in such form as the board may direct, and they shall bear the signature of the president of the board of directors, and shall be signed by the secretary of the said fire districts; and the coupons attached to the bonds shall be signed by the said president and secretary; provided, a lithographic or engraved facsimile of the signature of the president and secretary may be affixed to coupons only when so recited in the bonds, and the corporate seal of the fire district shall be attached to each of the bonds; and each bond so issued shall be registered by the county treasurer in a book provided for that purpose, which shall show the number and amount of each bond and the person to whom the same is issued or sold; and the said bonds shall be sold by the fire directors as hereinafter provided.

History: En. Sec. 2, Ch. 107, L. 1911.

5151. Notice of sale of bonds—Proceeds and delivery. The fire directors shall give notice by advertisement in some newspaper published in this state, for a period of not less than four weeks, to the effect that the said fire directors will sell said bonds (briefly describing the same), and stating the time when and place where such sale will take place; provided, that the said bonds shall not be sold for less than their par value, and that the said directors are authorized to reject any bids, and to sell said bonds at private sale, if they deem it for the best interest of the district; and all moneys arising from the sale of said bonds shall be paid forthwith into the treasury of the county in which such district may be located, to the credit of said district, and the same shall immediately be available for the purpose authorized by this title; provided, that no such bonds shall be delivered by the board of directors unless the moneys therefor have been paid into the county treasury.

History: En. Sec. 3, Ch. 107, L. 1911.

5152. Liability on bonds. The faith of each fire district is solemnly pledged for the payment of the interest and redemption of the principal of the bonds which shall be issued under the provisions of this act. And for the purpose of enforcing the provisions of this act, each fire district shall be a body corporate, which may sue and be sued by or in the name of the board of fire directors of such district.

History: En. Sec. 4, Ch. 107, L. 1911.

5153. Levy and collection of tax. The fire directors of each district shall ascertain and levy annually the tax necessary to pay the interest when it becomes due, and a sinking fund to redeem the bonds at their maturity; and said tax shall become a lien upon the property in said

fire district, and be collected in the same manner as other taxes for fire purposes.

History: En. Sec. 5, Ch. 107, L. 1911.

5154. Payment and liquidation of bonds. The county commissioners, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon; and during the balance of the term, high enough to pay such annual interest, and to pay annually a portion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and divide it by the number of years said bonds have to run; and all money so levied, when collected, must be paid into the county treasury to the credit of such district, kept in a separate fund, and be used for the payment of principal and interest on said bonds, and for no other purpose; provided, that the board may, with the surplus of such sinking fund, when the same shall be one thousand dollars or more, purchase any of the outstanding bonds issued by the board. Such purchase shall be made at the lowest price such bonds can be purchased at, but at no more than par value of such bonds; and whenever there shall be such a surplus of sinking fund amounting to the sum of one thousand dollars, the board shall purchase therewith like bonds on the same terms and conditions as hereinbefore specified.

If for any reason such bonds cannot be purchased as hereinbefore specified, such sinking fund shall be invested by the treasurer under the direction of the board of directors, at such times as the board shall direct, in the interest-bearing bonds of the United States or of the state of Montana, which shall be purchased at the lowest market price. Interest accruing upon such bonds shall be invested in the same manner, and for the same purpose, as sinking fund. Such bonds shall be held by the treasurer until the principal of any bonds issued by the board of directors shall become due, and shall be sold at the highest market price, and the proceeds applied to the payment of bonds; provided, further, that if at any time the board shall deem it best, it shall be lawful to sell such bonds for the purpose of purchasing the bonds issued by such board; but all such sales shall be at the highest market price, and the bonds of the board, purchased with the proceeds of such sale, shall be purchased at the lowest price they can be obtained for, and not above the par value of such bonds; provided, further, that the bonds first maturing shall be purchased, if they can be purchased, on terms as favorable to the board as others offered for sale to the said board. All bonds of the said board purchased under the authority hereby given, or paid by the board, shall be forthwith canceled as provided in the next succeeding section.

History: En. Sec. 6, Ch. 107, L. 1911.

5155. Sinking fund and redemption. When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall give notice to each bondholder, if known to him, and shall

post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof, and preference shall be given to the oldest issue; and if at the expiration of the said thirty days the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased and redeemed, by writing across the face of such bond or bonds, in red ink, the word "Redeemed," and the date of such redemption; provided, that whenever, in the judgment of the board of fire directors and prior to the redemption of said bonds, said board shall deem it advisable and for the best interests of the fire district to invest said sinking fund, or any part thereof, the board may, by an order entered upon their minutes, direct and require the county treasurer to invest said sinking fund, or any part thereof, in state or county bonds or warrants until such redeemable period.

History: En. Sec. 7, Ch. 107, L. 1911.

5156. Payment of interest by county treasurer. The county treasurer shall pay out of any moneys belonging to a fire district the interest upon any bonds issued under this title by such district, when the same shall become due, upon the presentation at his office of the proper coupon, which shall show the amount due, and the number of the bond to which it belonged; and all coupons so paid shall be reported to the fire directors at their first meeting thereafter.

History: En. Sec. 8, Ch. 107, L. 1911.

5157. Printing of bonds and coupons. The fire directors of any district shall cause to be printed or lithographed, at the lowest rates, suitable bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said fire district.

History: En. Sec. 9, Ch. 107, L. 1911.

5158. Failure to pay proceeds of sale of bonds into treasury. If any of the fire directors of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for by this title, they shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years.

History: En. Sec. 10, Ch. 107, L. 1911.

CHAPTER 52.

PARKS AND PLAYGROUNDS—BOARD OF PARK COMMISSIONERS.

Section 5159. Public Parks and Grounds—Additional Indebtedness of Municipalities to Provide.
5160. Powers of Municipal Councils Not Affected.
5161. Park Commissioners—Appointment and Organization—Records and Reports.
5162. Powers and Duties.
5163. Funds—How Disbursed.
5164. Meetings—General Regulations.
5165. Allowance of Claims.
5166. Cities and Towns Authorized to Establish Swimming Pools, Skating-Rinks, and Playgrounds.
5167. Power of Municipal Council With Respect to Same.

5159. Public parks and grounds—Additional indebtedness of municipalities to provide. A city or town council, in addition to the power it now has under the law, has and is hereby granted and given the further power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the purpose of purchasing and improving lands for public parks and grounds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not at any time exceed three per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; and provided, further, that no money must be borrowed on bonds issued for the purchase of lands and improving same for public parks and grounds until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby, and a majority vote cast in favor thereof.

History: En. Sec. 1, Ch. 55, L. 1909.

Power of legislature to control use to which property taken for purposes of a park or square is used, see note in 27 L. R. A. (N. S.) 938; Ann. Cas. 1912A, 1069.

Power of municipality to take and administer park as trustee, see notes in 17 Ann. Cas. 748; 10 A. L. R. 1378.

Park as a "public utility" within constitutional or statutory provision relating to purchase, construction, or repair of public utility by municipal corporation, see note in 9 A. L. R 1034.

5160. Powers of municipal councils not affected. Nothing in this act shall be so construed as to repeal or annul section 5039 of this code, or any part or portion thereof.

History: En. Sec. 2, Ch. 55, L. 1909.

5161. Park commissioners—Appointment and organization—Records and reports. There is hereby created in all cities of the first and second class a board of park commissioners, which shall be composed of the mayor of the city and six other persons, to be appointed by the governor of the state. The six persons so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 5004 of this code, for the office of mayor. The term of office of each park commissioner shall be two years from and after the first day of May of the year in which he is appointed, and until his successor is appointed and qualified, save and except that three of the commissioners first appointed shall hold office for the period of one year from and after the first day of May, 1901, and until their successors are appointed and qualified. Such board of park commissioners shall constitute a department of the city government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by section 430 of this code, which oath shall be filed in the office of the city clerk.

On the first Monday in May in each year, said board of park commissioners shall meet and organize by electing one of their number president, and one of their number vice-president, who shall hold their offices respectively for the term of one year. The president, and in his absence, the vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board, and perform such other duties as shall be required and directed by the board. The city clerk

shall be ex-officio clerk of the board of park commissioners, and shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "Record of Board of Park Commissioners of the City of ....." It shall be the duty of the city clerk, as such clerk of the board of park commissioners, to keep an accurate account of all transactions of said board separate from other city accounts, and to make and submit in writing to said board at the first meeting in January in each year a report under oath showing in detail all of the receipts and disbursements made by the board during the year, which report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer, and he shall perform such other services as the board shall require. In the absence of the clerk at any meeting held by the board, it shall designate one of its number as clerk pro tem. to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record book of said board. The minutes of said meeting in said record book contained, when approved by the board, shall be prima facie evidence of the matters and things therein recited in any court of this state.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913.

Note.—In the case of Gerry v. Edwards, 42 Mont. 135, 111 Pac. 734, the supreme court held the act of 1901 referred to in the history of the above section unconstitutional in so far as it attempted to confer upon the park board the power to levy taxes and violative of the theory of local self-government.

Matters pertaining to the creation and maintenance of public parks in cities are of a purely local and private concern, over which, under the doctrine of self-government, the municipalities have exclusive control. State ex rel. Gerry v. Edwards, 42 Mont. 135, 151, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

5162. Powers and duties. The board of park commissioners shall have the management and control of all parks belonging to the city, and of all trees and other plants upon the streets, avenues, boulevards, and public places within the city, and the right to designate the character and quality of all trees and plants planted in such parks, streets, avenues, boulevards, and public places. Said board of park commissioners shall have the following powers and be charged with the following duties:

1. To lay out, establish, improve, and maintain parkways, drives, and walks in the parks of the city, and to make plats thereof and to file the same in the office of the city clerk, and to determine when and what parks shall be opened to the public.

2. To cultivate, plant, maintain, and improve all trees and other plants required to be planted, cultivated, and maintained in the parks belonging to the city, and in the streets, avenues, boulevards, and public places in the city, and for that purpose to establish and maintain nurseries for the growth of trees and plants.

3. To make all rules and regulations necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues, alleys, boulevards, and public places under the care and control of said board, and for the protection of all birds inhabiting, frequenting, or nesting in such parks, streets, avenues, boulevards, and public places,

and all rules and regulations for the use of parks by the public, and to provide penalties for the violation of such rules and regulations, which rules and regulations shall have the force of city ordinances and be enforced in like manner as ordinances of the city are enforced.

4. To employ and discharge workmen, laborers, engineers, foresters, and others, and to fix their compensation, which shall not be less than the union scale of wages in force in each individual city of the first class; and to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board by this act, and to pay all obligations authorized to be incurred by the provisions of this act.

5. To lease all lands owned by the city heretofore acquired for parks, whether within or without the city, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the city; provided, that such lands shall not be leased for a longer term at any one time than five years, and not for a longer time than one year without the concurrence of two-thirds of the entire board of park commissioners.

6. To exercise all other powers incident to the duties enjoined by the provisions of this act.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907.

Note.—See note to preceding section. So much of the above section as was declared unconstitutional has been omitted from this code.

Cited or applied as section 2, Laws of 1901, p. 73, in State ex rel. Gerry v. Edwards, 42 Mont. 135, 141, 111 Pac. 734, Ann. Cas. 1912A, 1063, 32 L. R. A. (N. S.) 1078.

5163. Funds—How disbursed. All moneys paid out by the park commissioners under the provisions of this act shall be by warrant drawn upon the city treasurer, which shall be signed by the city clerk and countersigned by the president, or, in his absence by the vice-president of the board of park commissioners. All moneys raised by tax for park purposes, or received by the board of park commissioners for the sale of hay, trees, plants, or from the leasing of park lands, or from any other source, shall be paid into the city treasury, and the city treasurer shall keep all such moneys in a separate fund to be known as the park fund. Such board shall have no power to incur liability on behalf of the city in excess of moneys on hand in, or taxes actually levied for, said park fund.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907.

5164. Meetings—General regulations. Said board of park commissioners shall hold an annual meeting on the first Monday of May, and a meeting at least once in each month in each year, at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president, or, in his absence, the vice-president, upon giving to each member of said board at least twenty-four hours' notice in writing of the time and place of holding such meeting. A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board. No park commissioner shall receive compensation for his services rendered under the provisions of this act, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the

board. No park commissioner shall be interested in any contract made by the board or by its authority, or in the furnishing of any supplies for the use of the board. Any park commissioner who shall refuse or neglect, for the period of three consecutive months, to attend the meetings of said board without leave of absence from said board, or who shall fail for the period of twenty days from and after his appointment to qualify as in this act provided, shall be deemed to have vacated his office, and thereupon his successor may be appointed. All contracts made by said board shall be in the name of the city, and shall be signed by the city clerk and by the president, or, in his absence, by the vice-president, of said board.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907.

5165. Allowance of claims. Said board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the city, liability for which shall have been incurred by said board; but no claim shall be audited or paid until an itemized account of such claim in writing, verified by the oath of the claimant or his or its authorized agent, shall have been filed in the office of the clerk of said board; provided, that no order or resolution providing for the payment or expenditure of money, or creating an obligation in excess of the sum of twenty-five dollars, or authorizing the making of any contract, shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes by the clerk.

History: En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907.

5166. Cities and towns authorized to establish swimming pools, skating-rinks, and playgrounds. All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, may, in their discretion, construct, establish, maintain, and operate swimming pools, skating-rinks, and playgrounds within said cities or towns, and to defray the cost and expense of constructing, establishing, maintaining, and operating the same from the park funds of said city or town.

History: En. Sec. 1, Ch. 41, L. 1917.

5167. Power of municipal council with respect to same. Power and authority is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all by-laws, ordinances, resolutions, rules, and orders necessary for the establishment, maintenance, regulation, and operation of swimming pools, skating-rinks, and playgrounds constructed and operated within their limits, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using the same.

History: En. Sec. 2, Ch. 41, L. 1917.

CHAPTER 53.

PUBLIC CEMETERIES—CONTROL BY CITIES AND TOWNS.

Section 5168. Title to Cemetery Grounds.
5169. What Constitutes a Cemetery.
5170. Cemeteries—How Laid Out and Dedicated on Public Lands.
5171. Inhabitants of City, Town, or Village to Own Cemetery.
5172. Public Cemeteries—Under Whose Control.
5173. Who Exercise Jurisdiction and Control Over.
5174. Register Must Be Kept.

5168. Title to cemetery grounds. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village, and used by the inhabitants thereof continuously, without interruption, as a burial-ground for five years, is vested in the inhabitants of such city, town, or village, and the lands must not be used for any other purpose than a public cemetery, except that the bodies interred therein may be removed, and no other interred therein, upon the order of the board of county commissioners, city council, or other body having authority, when it appears that the public health is endangered, or for any other good cause, but a new cemetery must be purchased and laid out by proper authority and such bodies removed and interred therein, and the old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

History: En. Sec. 2880, Pol. C. 1895; re-en. Sec. 1988, Rev. C. 1907. See Cal. Pol. C. Sec. 3105.

Power of municipal corporation or other political body to hold land in trust for burial grounds, see note in 10 A. L. R. 1372; 17 Ann. Cas. 747.

Abandonment or sale by town or municipality of ground used for cemetery, see note in 42 L. R. A. (N. S.) 1216.

Power of municipal corporations to regulate, prohibit or discontinue cemeteries, see note in 87 A. S. R. 678.

5169. What constitutes a cemetery. Six or more human bodies buried at one place constitutes the place a cemetery.

History: En. Sec. 2881, Pol. C. 1895; re-en. Sec. 1989, Rev. C. 1907. Cal. Pol. C. Sec. 3106.

5170. Cemeteries—How laid out and dedicated on public lands. Incorporated cities or towns, and for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate of the public lands situated in or near such city, town, or village, not exceeding five acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the same a cemetery, must be recorded in the office of the county clerk of the county in which the same is located.

History: En. Sec. 2882, Pol. C. 1895; re-en. Sec. 1990, Rev. C. 1907. Cal. Pol. C. Sec. 3107.

5171. Inhabitants of city, town, or village to own cemetery. The inhabitants of any city, town, village, or neighborhood may, by subscription or otherwise, purchase or receive by gift or donation lands not exceeding one hundred and sixty acres, to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated for use for burial purposes, must thereafter be used for no other purpose, except as provided in section 5168.

History: En. Sec. 2883, Pol. C. 1895; re-en. Sec. 1991, Rev. C. 1907. Cal. Pol. C. Sec. 3108.

5172. Public cemeteries, under whose control. The public cemeteries of cities, towns, villages, or neighborhoods must be inclosed and laid off into lots, and the general management, conduct, and regulation of interments, permits to inter, or remove interred bodies, the disposition of lots, keeping the same in order, are under the jurisdiction and control of the cities and towns owning the same, if incorporated; if not, then under the

jurisdiction and control of the board of county commissioners of the county in which they are situated.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907. Cal. Pol. C. Sec. 3109.

5173. Who exercise jurisdiction and control over. The board of county commissioners, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries, may make general rules and regulations therefor, and appoint sextons and other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary, including the right by taxation to raise money, purchase land, lay out cemeteries, and manage them.

History: En. Sec. 2885, Pol. C. 1895; re-en. Sec. 1993, Rev. C. 1907.

5174. Register must be kept. The authority having the control of a public or private cemetery must require a register of name, age, birthplace, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

History: En. Sec. 2886, Pol. C. 1895; re-en. Sec. 1994, Rev. C. 1907.

CHAPTER 53-A.

DISPOSAL OF IMPOUNDED ANIMALS.

Section 5175. Impounding Animals—Duties of Cities and Towns.
5176. Contents of Notice.
5177. Service Upon Owner.
5178. Service Upon Secretary Livestock Commission.
5179. Service by Registered Mail.
5180. Duty Officers to Ascertain Brands.
5181. Secretary Livestock Commission to Ascertain Owner—Notice.
5182. Provisions of Act Mandatory.

5175. Impounding animals—Duties of cities and towns. Hereafter, when any livestock or domestic animals of any kind are impounded, seized, restrained or held by any city or town, or its officers or agents, it shall be the duty of such city or town, its officers or agents, to give notice to the owner of such livestock or domestic animals so impounded, seized, restrained or held by such city or town, if the owner is known, in the manner hereinafter provided.

History: En. Sec. 1, Ch. 161, L. 1921.

5176. Contents of notice. Said notice shall be in writing, and shall give the number, description, marks and brands of such stock, when impounded, seized restrained or held, with the reasons therefor, together with the amount of charges, fees and fines, if any, for which said stock is being held, and what disposition will be made of said stock if said charges, fees and fines are not paid, and when and where such disposition shall be made.

History: En. Sec. 2, Ch. 161, L. 1921.

5177. Service upon owner. If such owner be known, and if his post-office address shall be known as hereinbefore specified, such notice shall be served upon him or her personally.

History: En. Sec. 3, Ch. 161, L. 1921.

5178. Service upon secretary livestock commission. If such owner be unknown or if such owner is known but his postoffice address is unknown, such notice shall be served upon the secretary of the Montana livestock commission.

History: En. Sec. 4, Ch. 161, L. 1921.

5179. Service by registered mail. Service of such notice may be made personally or by registered mail, postage prepaid, properly addressed and placed in the United States postoffice, and at least eight days before the day fixed for the disposition of said stock.

History: En. Sec. 5, Ch. 161, L. 1921.

5180. Duty officers to ascertain brands. It shall be the duty of such city or town and its officers or agents to use reasonable diligence to ascertain any and all marks and brands on such stock, and in case such animals are not branded or marked, or the brand or marks are mutilated or undeterminable, such facts shall be noted in said notice.

History: En. Sec. 6, Ch. 161, L. 1921.

5181. Secretary livestock commission to ascertain owner—Notice. It is hereby made the duty of the secretary of the Montana livestock commission, upon service upon him of such notice, to ascertain the owner of such stock, if possible, and when the owner is ascertained, to immediately furnish such owner with the information contained in said notice, and to notify the said city or town, its officers or agents, of the name and postoffice address of such owner.

History: En. Sec. 7, Ch. 161, L. 1921.

5182. Provisions of act mandatory. The provisions hereof are mandatory and the owner of such livestock will not lose title or right of possession to his said stock unless the provisions hereof are strictly complied with.

History: En. Sec. 8, Ch. 161, L. 1921.

CHAPTER 54.

MUNICIPAL REGULATION OF PLUMBING—PLUMBER'S LICENSE.

Section 5183. Plumbers Must Procure License.
5184. Application for License.
5185. Board of Plumbing Examiners—Examination of Applicants.
5186. Application by Master or Journeyman Plumber for License.
5187. Examination Fees—Renewal of Licenses.
5188. Apprentices—Rules and Regulations.
5189. Use of Moneys Paid as License Fees.
5190. Revocation of Licenses.
5191. Quorum of Board of Examiners.
5192. Issuance of License Without Examination.
5193. Violation of Law a Misdemeanor.

5183. Plumbers must procure license. Any person working at the business of plumbing, in any incorporated city or town in this state containing more than three thousand inhabitants, either as a master plumber

or as a journeyman plumber, shall first secure a license as hereinafter provided.

History: En. Sec. 1, Ch. 29, L. 1913.

Validity and interpretation of statute imposing license tax on plumbers, see notes in 7 Ann. Cas. 580; 18 Ann. Cas. 181; Ann. Cas. 1913E, 1081; 5 L. R. A. (N. S.) 674; 8 L. R. A. (N. S.) 1116; 27 L. R. A. (N. S.) 283; 50 L. R. A. (N. S.) 421.

5184. Application for license. Any such person desiring to work at the business of plumbing in any such city or town shall file his application for a license with the secretary of the board of examiners of such city or town, and shall, at such time and place as may be designated by the board of examiners of plumbers of such city or town, be examined as to his qualifications for working in such business.

History: En. Sec. 2, Ch. 29, L. 1913.

5185. Board of plumbing examiners—Examination of applicants. Within sixty days after this act becomes a law, the mayor of each such city or town shall appoint a board of plumbing examiners, consisting of three members—one journeyman plumber, one master plumber, and the health officer of said city or town. Two of the members of said board shall be practical plumbers, well versed in modern sanitary plumbing, sanitation, and sewerage, and the members of said board shall serve for a period of three years from the date of their appointment; provided, however, the first board shall serve as follows: One member for one year, one member for two years, and one member for three years, and the mayor in making the appointment, shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board, or when a vacancy occurs, the mayor shall make a new appointment for unexpired term, or for a period of three years. In those cities which have a plumbing inspector, such plumbing inspector, shall, ex-officio, be a member of such board of examiners. The members of the said board shall be entitled to a compensation of five dollars per diem, each, for each and every day while actually engaged in the work of the board; the compensation, however, to be paid from the revenues realized under the provisions of this act, but not otherwise. Any applicant for a license to work at the business of plumbing in any such city or town shall be examined as to his qualifications by the board of examiners of plumbers for such city or town. It shall be the duty of the said board to examine each applicant for a license as provided for in this act, two to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of a master plumber or a journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber in any of said cities or towns.

History: En. Sec. 3, Ch. 29, L. 1913.

5186. Application by master or journeyman plumber for license. Any person, firm, or corporation, desiring to engage in or work in the business

of plumbing, either as a master plumber or as a journeyman plumber, in any of said cities or towns, shall apply to the secretary of said board of plumbing examiners in such city or town, by filing a written application with the secretary of the board, stating his place of residence, age, experience, and the place where he has acquired his experience, and shall at such time and place as may be designated by the said board, as herein provided for, be examined as to his qualifications for said license. In the case of a firm or corporation, the examination and issuing of a license to any one member of the firm, or to the manager of the corporation, shall satisfy the requirements of this act as to master plumbers, but not as to journeymen plumbers; provided, however, that no person shall do the work of a master plumber unless licensed as provided for in this act.

History: En. Sec. 4, Ch. 29, L. 1913.

5187. Examination fees—Renewal of licenses. No applicant for a master plumber's license shall be entitled to submit to the examinations prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of said board the sum of ten dollars as an examination fee, and no applicant for a journeyman plumber's license shall be entitled to submit to the examination prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of said board the sum of two dollars as an examination fee, such examination fee to be returned to the applicant in case he fails to pass the examination and is refused a license; each license when issued shall expire one year from the date of its issuance, and shall have no force or effect after the expiration of one year after the date of its issuance. Any license, however, issued to a master plumber or a journeyman plumber shall be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the secretary of the said board of plumbing examiners, and the payment of the sum of two dollars and fifty cents for a renewal of a master plumber's license, and the sum of one dollar for a journeyman plumber's license, and any such renewal shall also be for the period of one year.

History: En. Sec. 5, Ch. 29, L. 1913.

5188. Apprentices—Rules and regulations. Nothing in this act shall prohibit any person from working as an apprentice in said trade of plumbing with a plumber duly licensed by said board as herein provided for, and under such rules and regulations as may be prescribed from time to time by said board of plumbing examiners; provided, the name and residence of each apprentice, and the names and residences of their employers, shall be duly filed with said board, and a record in a suitable book, to be provided by said board, shall be kept by said board, showing the names and residences of such apprentices.

History: En. Sec. 6, Ch. 29, L. 1913.

5189. Use of moneys paid as license fees. All moneys paid for license fees as provided for in this act shall be placed in the custody of the city or town treasurer, who shall keep such sums in a distinct fund, and any moneys in such fund shall be applied in defraying any expenses incurred

by the board of examiners of plumbers in any such city or town in carrying out the provisions of this act.

History: En. Sec. 7, Ch. 29, L. 1913.

5190. Revocation of licenses. The license and permit granted as herein provided may be at any time revoked for incompetency, dereliction of duty, or other sufficient cause, after a full and fair hearing by said board.

History: En. Sec. 8, Ch. 29, L. 1913.

5191. Quorum of board of examiners. A majority of said board of plumbing examiners shall constitute a quorum for the purpose of transacting any and all business that may come before the board.

History: En. Sec. 9, Ch. 29, L. 1913.

5192. Issuance of license without examination. All master and journeymen plumbers, now engaged in the business of actually or regularly working at the trade of plumbing shall be entitled to a license, to be issued by said board of plumbing examiners immediately after its organization as provided for by this act, without submitting or being required to submit to any examination whatever, upon the payment by each of the applicants for such license of the sum of ten dollars in the case of the master plumber, and two dollars in the case of a journeyman plumber, and such license, when issued, shall be renewed from time to time annually as hereinbefore provided.

History: En. Sec. 10, Ch. 29, L. 1913.

5193. Violation of law a misdemeanor. Any person working at the business of plumbing, or maintaining or conducting a plumbing shop in any incorporated city or town in this state, containing more than three thousand inhabitants, who violates any provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than ten dollars and not more than one hundred dollars for each separate offense.

History: En. Sec. 11, Ch. 29, L. 1913.

CHAPTER 55.

TAXATION AND LICENSES.

Section 5194. Amount of Tax for Municipal Purposes—Distribution of Funds— Levy for Park Purposes.
5195. Cities and Towns May Raise Money by Taxation in Excess of Levy Now Permitted, How.
5196. Notice of Election.
5197. Submission of Question to State Object of Levy—Use of Funds—Balance.
5198. Separate Ballots When Levy for More Than One Purpose—Form of Ballot and Marking—Conduct of Election.
5199. Registration of Electors.
5200. Special Taxes and Assessments.
5201. Taxes in Cities Which Have Exceeded the Constitutional Limit of Indebtedness.
5202. City Authorized to Levy Special Taxes.
5203. Annual Tax—Equalization and Collection.
5204. Levy, etc., to Be Made Under This Chapter.
5205. Basis of Taxation.

5206. Duty of County Assessor.
5207. Copies of Assessment-Books to Be Furnished Cities and Towns.
5208. Charge of Assessor for Making Copies.
5209. Equalization of Taxes.
5210. Affidavit of Aggrieved Party.
5211. Preparation of Assessment-Book.
5212. Book to Be Furnished by City.
5213. Delivery of Book to City Clerk.
5214. Collection of Taxes.
5215. Duties of City Treasurer.
5216. Annual Tax Levy.
5217. Fiscal Year.
5218. Annual Appropriation—When and How Made.
5219. Road Poll-Tax.
5220. List of Persons Liable for Poll-Tax.
5221. Duties of City Clerk and Treasurer.
5222. Poll-Tax—How Expended.
5223. Work on the Streets, etc.
5224. License Tax May Be Levied.

5194. Amount of tax for municipal purposes—Distribution of funds—Levy for park purposes. The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities of the first class with a population of thirty-five thousand or over must not exceed one and two-tenths per centum of the assessed value of the taxable property in all such cities of the first class, and in all other cities or towns must not exceed one per centum on the assessed value of the taxable property of the city or town; and the council in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of maintaining public parks, the council in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding two mills on the dollar on the assessed value of the taxable property of the city or town.

History: Ap. p. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917. Cal. Pol. C. Sec. 4371.

Delegation by the legislature of the power to exercise the right of taxation, see notes in 74 Am. Dec. 590; 15 L. R. A. (N. S.) 62.

Right of municipality to tax own securities in hands of holder, see note in 19 Ann. Cas. 411.

Powers of municipal corporation to grant exemption from taxation, see notes in 7 Ann. Cas. 1013; 20 Ann. Cas. 286; Ann. Cas. 1918E, 1088; 15 L. R. A. 860; 29 L. R. A. (N. S.) 183.

Validity of statute providing for sale of municipal tax lien, see note in Ann. Cas. 1913C, 964.

5195. Cities and towns may raise money by taxation in excess of levy now permitted, how. Whenever the council of any city or town shall deem it necessary to raise money by taxation, in excess of the levy now allowed by law, for any purpose for which said city or town is authorized to expend moneys raised by taxation in said city or town, it shall submit the question of such additional levy to the legal voters of such city or town who are taxpaying freeholders therein, either at the regular annual election held in said city or town, or at a special election called for that purpose by the council of such city or town; provided, however, that such additional levy shall not exceed five mills.

History: En. Sec. 1, Ch. 12, L. 1919.

5196. Notice of election. Where the question of making such additional levy is so submitted, notice thereof shall be given by publication

for at least thirty days prior to such election in every newspaper published in said city or town, and by posting a like notice for the same period of time in a public place in each ward of said city or town.

History: En. Sec. 2, Ch. 12, L. 1919.

5197. Submission of question to state object of levy—Use of funds—balance. The submission of said question shall expressly provide for what purpose such additional levy is to be made, and, if authorized, the money raised for such additional levy shall be used for that specific purpose only; provided, that if any balance remain on hand after the purpose for which said levy was made has been accomplished, such balance may, by vote of the council, be transferred to any other fund of said city or town.

History: En. Sec. 3, Ch. 12, L. 1919.

5198. Separate ballots when levy for more than one purpose—Form of ballot and marking—Conduct of election. If at any time it is desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots, each of which ballots shall be in substantially the following form: Shall the city (or town) council be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made).

☐	Against Additional Levy.
☐	For Additional Levy.

The voters shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state. The election shall be held and the votes canvassed and returned as in other city or town elections. If the majority voting on the question are in favor of such additional levy or levies, the city or town council shall so certify, and such additional levy or levies of taxes shall be made by the city or town council for that year.

History: En. Sec. 4, Ch. 12, L. 1919.

5199. Registration of electors. The council may provide by ordinance for the registration of qualified electors who are tax-paying freeholders in such city or town, and no person shall be entitled to register or vote at such election who is not such tax-paying freeholder and qualified elector.

History: En. Sec. 5, Ch. 12, L. 1919.

5200. Special taxes and assessments. The council may also assess and levy the special taxes or assessments provided for in this title.

History: En. Sec. 4815, Pol. C. 1895; re-en. Sec. 3343, Rev. C. 1907.

Note.—The "title" above referred to embraced the entire municipal law included in sections 3202 to 3549, Revised Codes 1907.

5201. Taxes in cities which have exceeded the constitutional limit of indebtedness. All taxes heretofore levied and collected, or to be collected for municipal and administrative purposes by any city, the indebt-

edness of which equals or exceeds the limit provided in section 6 of article XIII of the constitution, may be used in payment of current expenses incurred during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city is hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund, and not otherwise; provided, that the aggregate of all taxes authorized for general municipal and administrative purposes shall not exceed one per cent. annually upon the assessed value of all taxable property in such city or town.

History: En. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907.

What constitutes "indebtedness" prohibited by law, see note in 44 A. S. R. 230.

Statutes legalizing excessive indebtedness, see note in 27 L. R. A. 703.

5202. City authorized to levy special taxes. Hereafter any city, the indebtedness of which equals or exceeds said limit, shall be authorized to levy and collect special taxes for municipal and administrative purposes, and the city council in making such levy shall designate the amount thereof for each of said purposes, and each tax, when collected, shall constitute a fund out of which the expenses incurred for the purpose for which such tax was levied shall be paid. The expenses incurred for any such purpose shall be paid out of the fund so to be provided therefor, and not otherwise.

History: En. Sec. 2, Ch. 21, L. 1903, re-en. Sec. 3345, Rev. C. 1907.

5203. Annual tax—Equalization and collection. The council has power to levy, collect, and equalize annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy, assessment, equalization, and collection of the same.

History: En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907.

Under this section and section 5216, as the latter stood before its amendment, a town council had power to levy taxes, and taxes levied for street purposes could not be worked out by taxpayers, if they elected to do so under the law as it then existed. Town of White Sulphur Springs v. Pierce, 21 Mont. 130, 132, 53 Pac. 103.

5204. Levy, etc., to be made under this chapter. Until the passage of such ordinance the levy, assessment, equalization, and collection of municipal taxes are, and the proceedings for such purposes must be, as provided in this chapter.

History: En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907.

5205. Basis of taxation. The assessment made by the county assessor for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

History: En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907.

The municipal authorities of an incorporated city could make a legal assessment in electing to take the assessment made by the county and state assessing authorities as the basis for the levy of municipal taxes on property within such city; and the levy of lawful taxes thereon by such city, according to the provisions of its charter and ordinances, constituted a legal levy. Lockey v. Walker, 12 Mont. 577, 583, 31 Pac. 639.

Under this section and section 5216, as it stood prior to its amendment, the assessment of property of a city was not completed until the date of the resolution of the city council fixing and levying the amount of taxes to be levied and assessed for such year. State ex rel. City of Butte v. Johnson, 16 Mont. 570, 572, 41 Pac. 706.

Under the provisions of this section and other statutes applicable and in force from time to time, the basis of taxation for a city or town has been the valuation made by the county assessor for state and county purposes. The city or town council has had no authority to amend or change the items listed in the roll furnished by him, its office being merely to ascertain the rate of taxation necessary to produce the amount required to meet the expenses of the city or town government, and to certify it to the county treasurer. Lockey v. City of Bozeman, 42 Mont. 387, 387, 113 Pac. 286.

5206. Duty of county assessor. It is the the duty of the county assessor, in making the assessment-book, to designate therein the real and personal property, stating each separately and distinctly, situated in the cities and towns within the county.

History: En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907.

5207. Copies of assessment-books to be furnished cities and towns. On or before the second Monday in July of each year the assessor must furnish to all cities of the third class and towns within his county which shall make written request for the same, on or before the first Monday in April of each year, a complete certified copy of his assessment-book, so far as such assessment book pertains to property within the limits of said cities and towns.

History: En. Sec. 1, Ch. 69, L. 1911.

5208. Charge of assessor for making copies. The assessor may charge such cities and towns five cents per folio of one hundred words for each copy of his assessment-book furnished such cities and towns as provided in the preceding section.

History: En. Sec. 2, Ch. 69, L. 1911.

5209. Equalization of taxes. The equalization of assessments of property made by the county board of equalization applies to the assessment of property in any city or town, and must be taken as the equalization thereof. But the council may at any time after the adjournment of said board, upon good cause shown, reduce the city or town taxes or penalties thereon as is just and equitable, or order any tax that has been improperly assessed or paid by mistake to be refunded.

History: En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907.

5210. Affidavit of aggrieved party. The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

History: En. Sec. 4866, Pol. C. 1895; re-en. Sec. 3352, Rev. C. 1907.

5211. Preparation of assessment-book. It is the duty of the county clerk, on or before the first Monday in October in each year, to make a duplicate of the corrected assessment-book for each city in the county, the treasurer of which is required by ordinance of such city to collect its taxes. Such book shall be styled "The Duplicate Assessment-Book for the City of .....," and must contain a copy of the "corrected assessment-book" of the county as far as the same refers to city property.

History: En. Sec. 4867, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3353, Rev. C. 1907.

It is the duty of the county clerk to deliver to the city treasurer the duplicate assessment-book required by this and

the following sections at the same time the original or duplicate is delivered to the county treasurer. State ex rel. City of Butte v. Weston, 29 Mont. 125, 129, 74 Pac. 415.

Cited or applied as section 4867, Political Code, before amendment, in State ex rel. City of Butte v. Johnson, 16 Mont. 570, 573, 41 Pac. 706.

5212. Book to be furnished by city. Such duplicate must be made in a book furnished by the city clerk of each city in the county, and ruled in columns specifying the different funds so that the city treasurer may extend the same and collect the taxes.

History: En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907.

Cited or applied as section 4868, Political Code, before amendment, in State ex rel. City of Butte v. Johnson, 16 Mont. 570, 573, 41 Pac. 706; as amended, in State ex rel. City of Butte v. Weston, 29 Mont. 125, 126, 74 Pac. 415.

5213. Delivery of book to city clerk. The county clerk must deliver such duplicate assessment-book to each city treasurer, and take his receipt therefor, having attached thereto the affidavit similar to the one set out in section 2161 of this code.

History: En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907.

The word "similar" in this section does not require the county clerk to make an affidavit identical with the one required by section 2161, but merely requires an affidavit covering all the facts showing that the clerk has done his duty in making the copy of the assessment-book. State ex rel. City of Butte v. Weston, 29 Mont. 125, 131, 74 Pac. 415.

5214. Collection of taxes—Delinquent taxes. The county treasurer of each county must collect the tax levied by all cities and towns in his respective county, except in case of such cities of the first and second and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment-book. The county treasurer must collect such city or town taxes, including unpaid road poll-taxes, at the same time as the state and county taxes, with the same penalties and interest in case of delinquency. All publications for sales for delinquent taxes shall include such city or town taxes, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law. All moneys received from sales, redemptions, and from sales by the county, after deed given by the county treasurer as provided by law, shall be credited to the state, county, and city or town, pro rata, in the same proportions as provided in sections 2234 and 2235 of this code.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; Sec. 3356, Rev. C. 1907.

Cited or applied as section 4870, Political Code, before amendment, in Town of White Sulphur Springs v. Pierce, 21 Mont. 130, 132, 53 Pac. 103; State ex rel. City of Butte v. Weston, 29 Mont. 125, 126, 74 Pac. 415; Lockey v. City of Bozeman, 42 Mont. 387, 397, 113 Pac. 286; as section 3356 in City of Butte v. Bennetts, 51 Mont. 27, 30, 149 Pac. 92, Ann. Cas. 1918C, 1019.

5215. Duties of city treasurer. In case an ordinance of any city of the first or second class shall provide for the collection of its taxes by its treasurer, such treasurer shall have the same power to collect municipal taxes as the county treasurer to collect state and county taxes, and the same right to give notice, add penalties, seize and sell property for delinquent taxes, give deeds to purchasers, and to do everything that a county

treasurer might do in the premises, except that he must make settlement with the city council.

History: En. Sec. 1, p. 224, L. 1897; re-en. Sec. 3357, Rev. C. 1907.

Cited or applied as section 3357, Revised Codes, in City of Butte v. Bennetts, 51 Mont. 27, 30, 149 Pac. 92, Ann. Cas. 1918C, 1019

5216. Annual tax levy. The council must, on or before the fifteenth day of September of each year, by resolution, determine the amount of city or town taxes for all purposes, to be levied and assessed on the taxable property in the city or town for the current fiscal year, and the city clerk must at once certify to the county clerk a copy of such resolution, and the county treasurer must collect the taxes as in this chapter provided; provided, that in cities where the council has provided by ordinance for the collection of their taxes by the city treasurer, the city clerk must certify a copy of such resolution to the city treasurer.

History: En. Sec. 379, 5th Div. Comp. Stat. 1887; amd. Sec. 4872, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3358, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1919; amd. Sec. 1, Ch. 9, Ex. L. 1919; amd. Sec. 1, Ch. 165, L. 1921.

Cited or applied as section 4872, Political Code, before amendment, in State ex. rel. City of Butte v. Johnson, 16 Mont. 570, 571, 41 Pac. 706; Town of White Sulphur Springs v. Pierce, 21 Mont. 130, 132, 53 Pac. 103.

5217. Fiscal year. The fiscal year of cities and towns begins on the first Monday of May in each year.

History: En. Sec. 4873, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3359, Rev. C. 1907.

5218. Annual appropriation—When and how made. The council must, in the last quarter in each fiscal year prior to the annual election, pass an ordinance to be known and termed the "annual appropriation for the city of ....., or town ....., for the year 19...," in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for the ensuing fiscal year, and there must be specified therein the amount appropriated for each separate object or fund, and the salary or compensation to be paid each officer of the city or town.

History: En. Sec. 380, 5th Div. Comp. Stat. 1887; amd. Sec. 4874, Pol. C. 1895; re-en. Sec. 3360, Rev. C. 1907.

The fact that the city council, in accordance with this section, appropriated a sum to pay for water furnished under a contract, does not make the city liable therefor, since the contract out of which the liability arose is void, and no lawful authority to pay it exists. State ex rel. Helena W. W. Co. v. City of Helena, 24 Mont. 521, 537, 63 Pac. 99, 81 Am. St. Rep. 453, 55 L. R. A. 336.

5219. Road poll-tax. All able-bodied male inhabitants of a city or town, between the ages of twenty-one and forty-five years, must pay an annual road poll-tax not exceeding three dollars.

History: En. Sec. 4875, Pol. C. 1895; re-en. Sec. 3361, Rev. C. 1907.

Cited or applied as section 4875, Political Code, in Snook v. City of Anaconda, 26 Mont. 128, 134, 66 Pac. 756; as section 3361, Revised Codes, in Ford v. City of Great Falls, 46 Mont. 292, 304, 127 Pac. 1004.

Constitutionality of poll-taxes, see notes in 12 Ann. Cas. 317; Ann. Cas. 1917E, 1208.

What are poll-taxes, and power of imposition thereof, see note in 29 L. R. A. 404.

Constitutionality of poll-tax as affected by exemptions therefrom, see note in 13 L. R. A. (N. S.) 901.

Classification for poll-tax purposes as affected by constitutional requirement of uniformity, see note in 1 Ann. Cas. 639.

Requiring citizen to work on highway as imposing poll-tax, see note in Ann. Cas. 1912A, 739.

5220. List of persons liable for poll-tax. The city clerk must make a list of all persons liable for such tax, and present the same to the council for inspection and correction at a regular or special meeting to be held not later than the third Monday of May. On or before the first regular meeting in June the council must direct a copy of such list, as corrected, certified by the clerk, to be delivered to the city treasurer, and the city treasurer must forthwith collect such taxes from the persons named in the list, and from such other persons liable for the same as he may add thereto; provided, that any person who is assessed for a property tax in the city may pay such poll-tax at the time he pays his general tax, and in such case the poll-tax shall be added upon the assessment list to other taxes of persons liable therefor paying taxes upon real and personal property, by the county clerk upon a list of the names of persons liable for the same being certified to by the city clerk.

History: En. Sec. 436, 5th Div. Comp. Stat. 1887; amd. Sec. 4876, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3662, Rev. C. 1907.

Cited or applied as section 4876, Political Code, before amendment, in Snook v. City of Anaconda, 26 Mont. 128, 134, 66 Pac. 756.

5221. Duties of city clerk and treasurer. The city or town clerk, in making such list, and the city or town treasurer in collecting such tax, have the same powers in reference thereto as the county assessor and county treasurer have in assessing and collecting the poll-tax provided for in sections 2273 to 2295, inclusive, of this code.

History: En. Sec. 4877, Pol. C. 1895; re-en. Sec. 1, p. 225, L. 1897; re-en. Sec. 3363, Rev. C. 1907.

Cited or applied as section 4877, Pol. Code, before amendment, in Snook v. City of Anaconda, 26 Mont. 128, 134, 66 Pac. 756.

5222. Poll-tax—How expended. The money so collected must be expended for street purposes in the city or town. No street or alley in a city or town is a county road or a part thereof, nor constitutes a part of a road district of a county.

History: En. Sec. 4878, Pol. C. 1895; re-en. Sec. 3364, Rev. C. 1907.

Cited or applied as section 4878, Political Code, in Snook v. City of Anaconda, 26 Mont. 128, 134, 66 Pac. 756; as section 3364, Revised Codes, in Ford v. City of Great Falls, 46 Mont. 292, 304, 127 Pac. 1004.

5223. Work on the streets, etc. The council has power to order any work provided in this title to be done upon the streets, alleys, or public places of a city or town.

History: En. Sec. 4879, Pol. C. 1895; re-en. Sec. 3365, Rev. C. 1907.

Cited or applied as section 4879, Political Code, in Snook v. City of Anaconda, 26 Mont. 128, 134, 66 Pac. 756; as section 3365, Revised Codes, in Ford v. City of Great Falls, 46 Mont. 292, 304, 127 Pac. 1004.

5224. License tax may be levied. The council may, by ordinance, license all industries, pursuits, professions and occupations, as provided in subdivision 3, of section 5039, of this code, and the city treasurer must collect the same in the manner and at the time prescribed by ordinance. The city clerk must issue such licenses.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907.

Delegation of power to municipal corporations to impose license fees, see note in 129 A. S. R. 267.

Power of municipal corporation to impose license fees, see note in 2 Ann. Cas 313.

CHAPTER 56.

SPECIAL IMPROVEMENT DISTRICTS.

Section 5225. Special Improvements—Powers of City Council.
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5225. Special improvements—Powers of city council. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places, or courts, for the purpose of this chapter, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way, and to order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

History: En. Sec. 1, Ch. 89, L. 1913.

Note.—For history of early improvement district acts, see Stadler v. City of Helena, 46 Mont. 128, 127 Pac. 454; sections 3367 to 3412, Revised Codes 1907 (except sections 3368 and 3390 to 3395), were repealed by chapter 89, Laws of 1913, which is here given as amended.

Cited or applied as chapter 89, Laws of 1913, in Hinzeman v. City of Deer Lodge, 58 Mont. 369, 375, 193 Pac. 395.

Purposes for which special assessments may be imposed, see note in 16 A. S. R. 371.

Assessment or exemption of public property, see notes in 33 A. S. R. 406; 132 A. S. R. 299.

5226. Special improvement districts—Placing wires underground—Cost per lineal foot. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts, and order the whole, or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city, graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, surfaced or resurfaced, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings, including the planting of grassplots and setting out of trees; sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances; waterworks, water-mains, and extensions of water-mains; pipes, hydrants, hose connections for irrigating purposes; appliances for fire protection, tunnels, viaducts, conduits, subways, break-waters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water; the opening of streets, avenues, and alleys; the planting of trees thereon; and to maintain, preserve and care for any and all of the improvements herein mentioned; and the construction or reconstruction in, over, or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances; pipes, hose connections for irrigating, hydrants and appliances for fire protection; and break-waters, levees, retaining walls and bulkheads; walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water; and to order any work to be done which shall be deemed neces-

sary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, or places or public ways, or property, or right of way of such city. The city council is also hereby authorized to create a district as hereinafter specified, for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

It is further provided that the council shall have the same jurisdiction and powers as in this section above provided, to (before doing any of the work mentioned in this act) require any public service corporation, or company, firm, or person occupying such streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, place in an underground conduit in such manner as may be directed by the city council, all wires, electric conduits, telephone, telegraph, power, or power transmission lines, or appurtenances thereto, or appliances owned, held, or enjoyed in connection therewith; provided, however, that the whole cost so assessed shall at no time exceed the sum of one dollar and fifty cents per lineal foot, plus the cost of the pipe so laid of the entire length of the water-mains laid in such district.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919. See also history of Sec. 5225.

A law providing for the creation of special improvement districts is a legislative declaration that all the property in the proposed district is benefited by the improvement, and to the same extent. McMillan v. City of Butte, 30 Mont. 220, 224, 76 Pac. 203.

Laws providing for the creation of special improvement districts, and imposing a tax by way of assessment upon the property legislatively determined to be benefited, are not open to the objection that they deprive the owner of his property without due process of law. McMillan v. City of Butte, 30 Mont. 220, 225, 76 Pac. 203.

In the absence of proof that the burden imposed on a property owner by a municipal assessment is altogether out of proportion to the benefit actually accruing to the property, he cannot assert that his property is thereby taken without compensation. McMillan v. City of Butte, 30 Mont. 220, 227, 76 Pac. 203.

Where property belonging to the federal government abuts on a street for the purpose of paving which a special improvement district is created, the city may devote its street fund or any money in its treasury not otherwise appropriated to the payment of that portion of the improvement which, but for its exemption from such imposition, would be properly assessable against such property. Ford v. City of Great Falls, 46 Mont. 292, 308, 127 Pac. 1004.

The whole theory of local taxation or assessments is that the improvements for which they are levied afford a remuneration in the way of benefits. Power v. City of Helena, 43 Mont. 336, 341, 116 Pac. 415, 36 L. R. A. (N. S.) 39.

Assessments for special municipal improvements, such as the construction of sewers or the building of sidewalks, are not taxes, and constitutional and statutory provisions exempting property from taxation have no application to such assessments. City of Kalispell v. School District, 45 Mont. 221, 226, 122 Pac. 742, Ann. Cas. 1913D, 1101.

The property of a school district, devoted exclusively to public school purposes, is, in the absence of express constitutional or statutory exemption, liable for the payment of assessments made for special municipal improvements. City of Kalispell v. School District, 45 Mont. 221, 230, 122 Pac. 742, Ann. Cas. 1913D, 1101.

With respect to special improvements, the "superficial area" rule is the rule of this state; it amounts to a legislative declaration that all property in a proposed district is, presumptively, equally benefited by the improvement contemplated. Mansur v. City of Polson, 45 Mont. 585, 595, 125 Pac. 1002.

The constitutional provision that a state shall not impose any taxes upon property therein belonging to the United States includes special assessments for street improvements. Ford v. City of Great Falls, 46 Mont. 292, 307, 127 Pac. 1004.

Where streets are to be improved, the fact that property, exempt from special assessment, such as that of the federal government and its instrumentalities, lies on one side of one of the streets is no obstacle to the city's proceeding with the improvement of that street. Ford v.

City of Great Falls, 46 Mont. 292, 307, 127 Pac. 1004.

The statutes of this state relating to the creation of special improvement districts not only qualify and limit the powers which the city council may exercise, but they define with particularity the mode in which the restricted authority may be used, and compliance with their provisions is the sine qua non to the creation of a special improvement district for making improvements the expenses of which is to be a charge against the property included. Shapard v. City of Missoula, 49 Mont. 269, 279, 141 Pac. 544; Cooper v. City of Bozeman, 54 Mont. 277, 283, 169 Pac. 801; Johnston v. City of Hardin, 55 Mont. 574, 581, 179 Pac. 824.

Where an owner joined in a petition for the creation of a special improvement district, and thereafter, in creating it, a large part of the property described therein was excluded by the city council, the petitioner was not estopped to subsequently attack the validity of the creation by the fact that he joined in the petition. City of Lewistown v. Warren, 52 Mont. 356, 357, 157 Pac. 954.

The limitation of $1.50 per lineal foot placed upon municipal improvements by this section has no application to street grading, draining, paving or curbing and gutter work. Reeve v. City of Billings, 57 Mont. 552, 189 Pac. 768.

This act is cited or applied as chapter 89, Laws of 1913, as amended, in Hawley v. City of Butte, 53 Mont. 411, 412, 164 Pac. 305; before amendment, in Chicago, Milwaukee & St. Paul Ry. Co. v. Poland, 54 Mont. 497, 501, 172, Pac. 541; Eby v. City of Lewistown, 55 Mont. 113, 117, 173 Pac. 1163

Cited or applied as section 2, chapter 89, Laws of 1913, before amendment, in Shapard v. City of Missoula, 49 Mont. 269, 275, 141 Pac. 544.

Right to require telegraph or telephone wires to be placed underground, see notes in 31 L. R. A. 806; 14 L. R. A. (N. S.) 654.

Revocation of right of electric company to maintain poles and wires in streets, see note in Ann. Cas. 1917E, 525.

5226a. Connections with water and gas-pipes. The city or town council shall have power to require connections from gas-pipes, water-pipes, steam-heating pipes, and sewers to the curb line of the adjacent property to be made before the permanent improvement of the streets whereon they are located, and to regulate the making of such connection on the streets already improved, or on unimproved streets; and in case the owners of the property on such streets shall fail to make such connections within the time fixed by the council, they may cause such connections to be made, and shall assess against the property in front of which said connections are made the entire cost and expense thereof. All assessments levied under the provisions of this section shall be enforced and collected in the same manner as other special assessments provided for in article V of this chapter, and amendments thereof, and all such assessments shall be a lien against the property.

History: En. Sec. 2, p. 213, L. 1897; re-en. Sec. 3368, Rev. C. 1907.

Note.—From the context the above reference to "Article V of this Chapter" would seem to allude to article 5 of chapter 3 of the Political Code of 1895, which in these codes is sections 5203 to 5224.

Right to levy special assessment against abutting property for laying water-pipes in street, see notes in 5 Ann. Cas. 905; 3 L. R. A. (N. S.) 817.

Right of gas or water company to damages for interference with pipes by municipality in making public improvements, see note in 6 Ann. Cas. 391.

Relaying of pipes in street necessitated by public improvements as entitling owner to damages, see note in 6 Ann. Cas. 391.

Municipal regulation of water-pipes in highways, see note in 10 Ann. Cas. 1100.

5227. Resolution of intention—Notice—Materials. Before creating any special improvement district for the purpose of making any of the improvements, or acquiring any private property for any purpose authorized by this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the

improvement or improvements which are to be made, and an approximate estimate of the cost thereof; provided, however, that when any improvement is to be made in paving, the city or town council may in describing the general character of the same describe several kinds of paving. Upon having passed such resolution the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having property within the proposed district at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such district; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights of way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

Where the special improvement contemplated is the paving of a street in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and one foot on each side of the rails to be of a different kind from that used in the remainder of the street; providing that the general character of the material to be used between the car tracks and one foot on each side of the rails be described in the resolution of intention, in the same manner as the general character of the material used for the rest of the contemplated pavement.

The lots or portions of lots fronting upon said excepted work, already done, shall not be included in the assessment for the class of work from which the exception is made; provided, that this shall not be construed so as to affect the special provisions as to grading contained in subdivision 3 of section 5238 of this code.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915. See also history of Sec. 5225.

Where a certain lot was assessed for municipal improvements for its entire area, the fact that only one-half of such lot was included in the description in the resolution creating the assessment district was immaterial. McMillan v. City of Butte, 30 Mont. 220, 227, 76 Pac. 203.

To make the complaint of a property holder asking a court of equity to be relieved from the payment of a special improvement tax levied on his property for the purpose of defraying the cost of the construction of a storm sewer, on the alleged ground that his property was so situated that it could not be benefited by the sewer, proof against a general demurrer, it must set forth that plaintiff appeared at the time and place designated in the resolution of the council for hearing objections to the proposed improvement, and that his protest was ignored; otherwise, after the improvement is made and warrants issued in payment thereof, he is estopped upon the face of his pleading. Power v. City of Helena, 43 Mont. 336, 342, 116 Pac. 415, 36 L. R. A. (N. S.) 39.

While a city council may not so change

the nature of a special street improvement set forth in the resolution of intention as to be materially and substantially different from that authorized, and the cost of the same increased in proportion, work which substantially follows that outlined in the resolution, though omitting one feature of the contemplated improvement, is not open to complaint in this respect. Mansur v. City of Polson, 45 Mont. 585, 594, 125 Pac. 1002.

The contents of the resolution, in so far as they relate to notice of what improvements are contemplated, are for the legislature to dictate, and so long as a reasonably comprehensive notice is provided for, the courts have no power to declare it insufficient, and a detailed description of the work intended to be done is unnecessary. Mansur v. City of Polson, 45 Mont. 585, 593, 125 Pac. 1002.

One who charges that a contemplated municipal improvement has been materially and substantially changed by the city council from the original plan as evidenced by the resolution authorizing it, has the burden of proving the materiality of the change. Mansur v. City of Polson, 45 Mont. 585, 594, 125 Pac. 1002.

A resolution providing that the cost of a special street improvement, comprising principal as well as side streets, should be paid for by the levy of an assessment based upon the "superficial area" rule, was not void as inequitable, in that under it owners of inside lots were required to bear the same proportion of expense as owners of corner lots of the same area, although the benefits to accrue to the former are disproportionate to those received by the latter. Mansur v. City of Polson, 45 Mont. 585, 595, 125 Pac. 1002; approving McMillan v. City of Butte, 30 Mont. 220, 76 Pac. 203.

The resolution of intention is the primary step to be taken in every instance and is the basis of the whole proceeding, the omission of which is fatal and renders all the subsequent proceedings nugatory. Shapard v. City of Missoula, 49 Mont. 269, 279, 141 Pac. 544.

The successive steps necessary to be taken by a city council in the creation of a special improvement district are: (1) The adpotion of a resolution of intention; (2) the service of the required notice; (3) a hearing and determination against protests; and (4) the passage of a resolution creating the district, the first three of which are jurisdictional, and a failure to take any one of these is fatal to the proceedings. Shapard v. City of Missoula, 49 Mont. 269, 278, 141 Pac. 544; Johnston v. City of Hardin, 55 Mont. 574, 579, 179 Pac. 824.

Though a mere informality in the resolution of intention to create an improvement district would not have rendered the effort of the city council to acquire jurisdiction nugatory, if the subsequent steps had been pursued in conformity with the statute, the proceeding was abortive where a resolution of intention was deemed sufficient to bring about the creation of the district. Shapard v. City of Missoula, 49 Mont. 269, 280, 141 Pac. 544. Compare Cooper v. City of Bozeman, 54 Mont. 277, 283, 169 Pac. 801.

By a resolution to create a special improvement district described as being bounded by certain lots, such lots were not incorporated in, but excluded from, the proposed district. City of Lewistown v. Warr, 52 Mont. 353, 355, 157 Pac. 953.

Proceedings for the imposition of a special improvement tax are in invitim, and before property can be held subject to the burden, it must be described with sufficient certainty that the owner cannot be misled; it being the intention of the statute that the resolution of intention shall contain a description of the proposed district by a line which marks its exterior boundaries. City of Lewistown v. Warr, 52 Mont. 353, 355, 157 Pac. 953.

Before a special improvement district can be created, the city council must pass a resolution of intention to do so, give notice of its passage, etc. Where the council, in an endeavor to create such a district, passed a resolution which proclaimed the creation of the district and an intention to assess the property liable for the cost of the improvement, the proceedings were void in limine for want of a proper resolution of intention. Cooper v. City of Bozeman, 54 Mont. 277, 282, 169 Pac. 801.

Failure to pass a proper resolution of intention to create a special improvement district cannot be corrected by subsequent interpretation at the hands of the council, to the effect that the resolution passed was meant to operate as one of intention. Cooper v. City of Bozeman, 54 Mont. 277, 284, 169 Pac. 801.

Where no work has been done under contracts for the installation of a special improvement, or warrants issued, the claim that a liberal and indulgent view of faulty proceedings in creating the district should be taken has no merit. Cooper v. City of Bozeman, 54 Mont. 277, 284, 169 Pac. 801.

Publication of a notice of intention to create a special improvement district which contained the proper reference to time and place for hearing objections to its final adoption was sufficient. Allen v. City of Butte, 55 Mont. 205, 207, 175 Pac. 595.

The city council as a special tribunal to conduct the hearing is clothed with limited powers only, and no presumption

in favor of its jurisdiction will be indulged. The statute measures its authority, and compliance with the terms of the statute is a condition precedent to the right to act. Johnston v. City of Hardin, 55 Mont. 574, 579, 179 Pac. 824.

Where a resolution of intention to create a special improvement district described the boundaries of an entirely different district from that referred to in the notice served upon the owner of property affected, the city council did not acquire jurisdiction to proceed with the improvement. Johnston v. City of Hardin, 55 Mont. 574, 580, 179 Pac. 824.

The caption of a notice is no part of the notice itself, and cannot be looked to to supply any deficiency in the notice. Johnston v. City of Hardin, 55 Mont. 574, 581, 179 Pac. 824.

In the absence of the statutory notice of the city council's intention to create a special improvement district, plaintiff property owner was not called upon to act, an inference deducible from his complaint that he had actual knowledge that his property was to be included in the proposed district being insufficient. Johnston v. City of Hardin, 55 Mont. 574, 581, 179 Pac. 824.

A resolution passed by the town council reciting the creation of an improvement district and that the resolution should be deemed one of intention to create, and creating it, followed by a description of its boundaries and of the character of the proposed improvements, with an estimate of the cost, etc., and that objections to its creation and the final adoption of the resolution would be heard in a certain place at a given time, held to have been in substantial compliance with statutory provisions. Harvey v. Town of Townsend et al., 57 Mont. 407, 188 Pac. 897.

Idem. Failure of the notice mentioned in this section to refer to the resolution for a description of boundaries is insufficient to vitiate the proceedings.

Cited or applied as chapter 89, Laws of 1913, as amended, in Hawley v. City of Butte, 53 Mont. 411, 412, 164 Pac. 305.

Landowner's right to notice and hearing of assessment for public improvements, see note in 28 L. R. A. (N. S.) 1201.

Right of mortgagee of property to notice of proceeding to levy special assessment, see note in Ann. Cas. 1912D, 536.

Paving ordinance as impairment of obligation of street-railway franchise, see note in 10 A. L. R. 897; 46 L. R. A. 203.

5228. Charges of cost of improvement upon extended district not fronting on street improved. Whenever the contemplated work or improvement, in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimates furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or lands fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment-roll whereon it was assessed for taxes for municipal purposes, the city council may make the expense of such work or improvement chargeable upon an extended district, and which may include other lots not fronting on the improvement, and which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvements, and to be assessed to pay the costs and expenses thereof.

History: En. Sec. 4, Ch. 89, L. 1913. See also history of Sec. 5225.

5229. Protests against proposed work. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work, or against the extent or creation of the district to be assessed, or both. Such protest must be in writing, and be delivered to the said clerk of the city council, who shall indorse thereon the date of its receipt by him. At the next regular meeting of the city council after the expiration of the time within which said protest may be so made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against

the proposed work, and the cost thereof is to be assessed upon the property fronting thereon, and the city council finds that such protest is made by the owners of a majority of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city council finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said clerk of the city council; except in case the improvements are the construction of sanitary sewers, when the said protest may be overruled by an affirmative vote of a majority of the members of the city council.

In determining whether or not sufficient protests have been filed in a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915. See also history of Sec. 5225.

An alleged protest to street paving, filed by abutting owners, stating the reasons why they did not desire the paving done during a certain year, and stating that they were willing to have the street paved two years later, and that payment therefor should be required in three annual instalments, was not an unqualified protest to the paving. McMillan v. City of Butte, 30 Mont. 220, 228, 229, 76 Pac. 203.

Taxes levied by a city for special improvement purposes are absolutely void, where the city council proceeds to create an improvement district, notwithstanding owners representing more than one-half of the area of the property to be assessed to defray the cost of such improvement, appear before it and object to the adoption of the resolution creating the district for the purpose indicated. Hensley v. City of Butte, 33 Mont. 206, 210, 83 Pac. 481.

For a decision under a former statute in regard to the right of property owners to appear before the conucil and protest against the making of the proposed improvement, see Hensley v. City of Butte, 36 Mont. 32, 92 Pac. 34.

A property owner in a city, who has signed a protest against the creation of a special improvement district, may, within the time allowed for presenting such protest, withdraw therefrom, and thus defeat the protest. Hawley v. City of Butte, 53 Mont. 411, 413, 164 Pac. 305.

The provision of this section that objections to a proposed special improvement shall be heard at the next regular meeting of the city council after the expiration of the fifteen days in which protest can be made, etc., is directory only. Harvey v. Town of Townsend, 57 Mont. 407, 188 Pac. 897.

City or applied as section 5, chapter 89, Laws 1913, before amendment, in Shapard v. City of Missoula, 49 Mont. 269, 277, 141 Pac. 544; Cooper v. City of Bozeman, 54 Mont. 277, 281, 169 Pac. 801.

Who may file remonstrance against local improvement, see note in Ann. Cas. 1918E, 837.

Right to withdraw names from petition or remonstrance relating to public improvement, see notes in 11 L. R. A. (N. S.) 372; 35 L. R. A. (N. S.) 1113.

5230. Jurisdiction to order proposed improvements. When no protests have been delivered to the clerk of the city council within fifteen days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said city council to be insufficient, or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. But before ordering any of said proposed improvements, the city council shall

pass a resolution creating the said special improvement district in accordance with the resolution of intention theretofore introduced and passed by the city council.

History: En. Sec. 6, Ch. 89, L. 1913; amd. Sec. 4, Ch. 142, L. 1915. See also history of Sec. 5225.

It is only after the lapse of fifteen days from the first publication of notice of intention to create an improvement district, and after all protests have been disposed of adversely to objecting property owners, that the city council shall be deemed to have acquired jurisdiction to order the improvement. Shapard v. City of Missoula, 49 Mont. 269, 278, 141 Pac. 544.

By failure of an objecting property owner to give notice of defects or irregularities in the proceedings to the council within sixty days after the contract for the work is let, he waives all claim for damages, under this section. Harvey v. Town of Townsend et al., 57 Mont. 407, 188 Pac. 897.

The passage of the resolution creating a special improvement district constitutes a sufficient order for the making of the contemplated improvements. Harvey v. Town of Townsend et al., 57 Mont. 407, 188 Mont. 897.

Cited or applied as chapter 89, Laws 1913, as amended, in Hawley v. City of Butte, 53 Mont. 411, 412, 164 Pac. 305; Cooper v. City of Bozeman, 54 Mont. 277, 282, 169 Pac. 801.

5231. Sufficiency of description after resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 7, Ch. 89, L. 1913. See also history of Sec. 5225.

5232. Bid for work and award of contract. Notice inviting proposals, and referring to the specifications on file, shall be published at least twice in a daily, semi-weekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three public places.

The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under sections 5225 to 5257 of this code, reserving the right to select the kind or type of material to be used in making any such improvements, after the bids or proposals therefor shall have been opened, examined, and declared.

The time fixed for the opening of bids shall be not less than ten days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per cent. of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the said city council, and said city council shall, in open session, publicly open, examine, and declare the same; provided, however, that no proposal or bids shall be considered unless accompanied by said check. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.

If the bids are rejected, or no bids are received, the city council may, within six months thereafter, readvertise for proposals or bids for the

performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder, or by the owners of over fifty per cent. of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into the general fund.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915. See also history of Sec. 5225.

Contracts for the construction of special street improvements, let without first giving ten days' notice for bids, and more than nine months after the award, were invalid as in contravention of the provisions of this section. Cooper v. City of Bozeman, 54 Mont. 277, 284, 169 Pac. 801.

Construction of phrase "lowest responsible bidder" or similar phrase in statute providing for letting of municipal contracts, see note in Ann. Cas. 1913C, 500.

Implied liability of municipality under contract let contrary to statute requiring competitive bidding, see note in Ann. Cas. 1917A, 1263.

Necessity of readvertisement where bidder to whom contract is awarded fails to comply with conditions or abandons work, see note in Ann. Cas. 1916D, 1189.

5233. Contract by owner to do work. The owners of three-fourths of the frontage of lots and lands liable to be assessed, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within three days after the said award, elect to take such work and enter into a written contract to do the whole work at a price at least five per cent. less than the price at which the same has been awarded, and all work done under such contract shall be subject to the same plans and specifications governing the lowest responsible bidder. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within three days, or to commence the work within fifteen days after the date of such written contract, and to prosecute the same with diligence to completion, it shall be the duty of the city council to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid.

History: En. Sec. 9, Ch. 89, L. 1913. See also history of Sec. 5225.

5234. Reletting contract after default of contractor. But if such original bidder neglects, fails, or refuses for fifteen days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the then lowest regular bidder. Should no bids be received in response to this second call for proposals, the council may again advertise for bids under the same proceedings at any time within six months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings or

assessments levied thereunder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work.

History: En. Sec. 10, Ch. 89, L. 1913. See also history of Sec. 5225.

5235. Default of contractor—Reletting of work. If the contractor or owner who may have taken any contract does not complete the same within the time limited in the contract or within such further time as the city council may give him, the city engineer shall report such delinquency to the city council, which may relet the unfinished portion of said work after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance; or the city shall have the right at its option to complete the contract, and deduct any cost in excess of the contract price thereof from any money, bonds, or warrants due such contractor, or owners, and in the event there is no money, bonds, or warrants due such contractor or owners, from which to deduct such cost, then and in such event the city shall have the right to sue such contractor or owners, and recover from him such cost.

History: En. Sec. 11, Ch. 89, L. 1913; amd. Sec. 6, Ch. 142, L. 1915. See also history of Sec. 5225.

5236. Bond of contractor. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council, with two or more sureties, and payable to such city, in a sum not less than twenty-five per cent. of the amount of the contract, conditioned for the faithful performance of the contract, and indemnifying the city from any detriment, damage, or loss growing out of said work; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions; provided, however, that nothing herein contained shall be construed as to prevent or prohibit the city council from requiring or accepting in any case a bond furnished by a surety company authorized to transact business in the state of Montana.

History: En. Sec. 12, Ch. 89, L. 1913. See also history of Sec. 5225.

Right of one furnishing labor or material to sue on bond given by public contractor, see note in Ann. Cas. 1916A, 758.

5237. Notice of defective proceedings—Penalty. At any time within sixty days from the date of the award of the contract any owner or other person, having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements, are irregular, defective, erroneous, or faulty, or that his property will be damaged by the making of any of the improvements in the manner contemplated, may file with the city clerk a written notice, specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding or in relation to the making of said improvements,

not made in writing and in the manner and at the time aforesaid, and all claims for damages therefor, shall be waived by such property owner; provided the notice of the passage of the resolution of intention has been actually published and the notices of improvements posted, as provided in this act.

History: En. Sec. 13, Ch. 89, L. 1913. See also history of Sec. 5225.

Note.—So much of the above section as makes the giving of the notice necessary in order to maintain an action for damages was held unconstitutional in Eby v. City of Lewistown, 55 Mont. 113, 120, 173 Pac. 1163.

Cited or applied as section 13, chapter 89, Laws of 1913, in Harvey v. Town of Townsend, 57 Mont. 407, 413, 188 Pac. 897.

Loss of right to contest assessment in proceeding for street or sewer improvement by waiver, estoppel or the like, see note in 9 A. L. R. 634.

5238. Methods for payment of improvements. To defray the cost of the making of any of the improvements provided for in this act, the city council shall adopt one of the two following methods of assessment:

(a) The city council shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any improvement district, provide that whenever any of the improvements herein provided for shall be along any side street, or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

(b) The city council shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under the provisions of section 5228 of this code; and provided, further, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

Whenever any portion of the surface of a street is occupied or used by any person, firm, or corporation under a franchise for railway or street railway purposes, the costs and expense of making such improvements between the rails and for one foot on each side thereof shall be paid by

the person, firm, or corporation owning such railway; and where double tracks of railway are laid along a street or streets, such person, firm, or corporation owning such railway shall pay the cost of the making of such improvement or improvements between such tracks and between all switches, turn-outs, and spurs.

Whenever any lot, piece, or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the city from its general fund.

It shall be lawful for the owner or owners of lots or land fronting upon any street, the width and grade of which shall have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in such grading, and proportions performed by each owner, and that the same is done to established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the city engineer, which certificate the engineer shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the city clerk shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned, respectively, by said certified owners and their successors in interest; provided, however, that

he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street, and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (excepting grading) on such street, in front of any block, at his or their own expense, and the city council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the city engineer at the time said order is passed.

The terms, lot, lots, lands, piece or parcel of land, wherever mentioned in this act, shall be deemed to include and shall include property owned or controlled by any person, firm, or corporation as a railroad, street, or interurban railroad right of way, and wherever a railroad, street, or interurban right of way shall front on or about or parallel or be included within or divide longitudinally any street improved under the provision of this act or shall be included within any district to be assessed for the cost of any improvement provided in this act, such railroad right of way (whether the same is owned in fee or as an easement) shall be included in the assessment and shall be assessed with the same effect as other lots, lands, or pieces or parcels of land are assessed, as provided in this act, and such railroad, street, or interurban railroad right of way shall be subject to sale for non-payment of assessments as in this act provided.

History: En. Sec. 14, Ch. 89, L. 1913. See also history of Sec. 5225.

To estop a taxpayer from attacking the validity of the creation of a special improvement district by payment of an instalment of the tax, the payment must have been voluntarily made. A city could not be prejudiced by the payment of such instalment tax, which, being invalid, if was not entitled to collect, and was therefore not in a position to claim an estoppel. City of Lewistown v. Warren, 52 Mont. 356, 357, 157 Pac. 954.

An easement in a city street in favor of a railway company for right of way purposes in crossing it is not susceptible of assessment for a special improvement, where the basis adopted for apportioning the cost thereof is front footage; nor is the tract itself assessable under such plan, since under it the lot or parcel of land bordering or abutting on the street on which the improvement was made must bear the cost proportionately, and a street cannot border or abut upon itself. Chicago, Milwaukee & St. Paul Ry. Co. v. Poland, 54 Mont. 497, 503, 172 Pac. 541.

Evidence to show the cost of filling plaintiff's lots and raising his buildings to grade, and the market value of the property before and after making the improvement, was competent and material in an action to recover damages occasioned by the change. Eby v. City of Lewistown, 55 Mont. 113, 128, 173 Pac. 1163.

Under allegations of the complaint that plaintiff's property had been permanently injured by change in street grade, rendered inaccessible and undesirable for the purposes for which used, necessitating large expenditures in filling and adjusting the lots to grade, etc., and defendant's denial of any damage whatever, the latter was entitled to introduce evidence tending to show that the property had not been injured, or that the damage was less than claimed by plaintiff. Eby v. City of Lewistown, 55 Mont. 113, 129, 173 Pac. 1163.

Power of municicaplity to levy assessments for local improvements, see note in 55 Am. Dec. 285.

Whether public property is subject to assessment for local improvements, see note in 33 A. S. R. 400; 132 A. S. R. 299; 16 Ann. Cas. 886; Ann. Cas. 1917D, 844; 23 L. R. A. 807.

Assessments for local improvements to be limited to benefits received, see notes in 68 A. S. R. 716; 82 A. S. R. 457; 14 L. R. A. 755.

5239. Sewer systems. A sewer system may be established in a city, which system may be divided into public, district, and private sewers.

Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and material, and under such regulations as may be prescribed by the council; and there may be constructed such branches and extensions of sewers already constructed, or to be constructed, as may be considered expedient.

To defray the cost of such public sewers, the council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the constitution and laws of the state.

It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

History: En. Sec. 15, Ch. 89, L. 1913. See also history of Sec. 5225.

The theory upon which a municipality may levy an assessment for a special improvement, such as the construction of a sewer, is that the property charged receives a corresponding physical, material, and substantial benefit from the improvement. Power v. City of Helena, 43 Mont. 336, 341, 116 Pac. 415; 36 L. R. A. (N. S.) 39.

Property subject to sewer assessment, see note in Ann. Cas. 1915D, 384.

5240. Assessment to pay cost of improvements. To defray the cost of making improvements in any special improvement district, or of acquiring property for the opening, widening, or extending any street or alley, or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all property in any district created for such purpose, by using for a basis for assessment one of the methods set forth in section 5238 of this code. Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, and the amount of each partial payment to be made, and the day when the same shall become delinquent.

The payment of assessments to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed twenty years, payments to be made in equal annual instalments.

History: En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915. See also history of Sec. 5225.

5241. Hearing of objections—Modification of assessment. Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office, subject to inspection for a period of five days, shall be published at least once in a newspaper published in the city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the

council, and the time for such hearing shall not be less than five days after the publication of such notice. At the time so fixed the council shall meet and hear all such objections, and for that purpose may adjourn from day to day, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within two days after its passage.

History: En. Sec. 17, Ch. 89, L. 1913. See also history of Sec. 5225.

5242. Care of street parking—Resolution levying assessment. Where trees have been planted, grass plots constructed, and grass sown thereon, or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed, and to otherwise maintain and preserve said improvements, as the council shall deem suitable and proper, and the whole cost of so maintaining said improvements in any improvement district shall be paid by assessing the entire district in either one of the two methods set forth in section 5238 of this code. It shall be the duty of said council to estimate, as near as practicable, the cost of maintaining the improvements in east district for the season; and before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining said improvements within the several districts, and in the manner as hereinabove provided. Said resolution levying assessments to defray the cost of maintenance of such improvements shall be in every manner prepared and certified to the same as a resolution levying assessments for making improvements in said special improvement districts, and the money collected therefor shall be paid into a fund known as "special improvement district No. ... maintenance fund," the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situate; provided, however, that the city council shall have the power not more than once in a year of changing by resolution the boundaries of any maintenance district.

History: En. Sec. 18, Ch. 89, L. 1913. See also history of Sec. 5225.

5243. Damages to property and payment thereof. Whenever the owner or any one interested in any property situated within any special improvement district, after having filed with the clerk the written notice required by section 5237 of this code, shall be awarded or recover any amount on account of damages sustained to such property by reason of the construction of any improvement in said special improvement district, if the resolution levying assessment to defray the cost of making such improvements in said district has not been passed and adopted by the city council, the amount so awarded or recovered shall be added to and constitute a part of the cost of the making such improvements; but if the resolution levying assessments to defray the costs and expenses of making said improvements has been passed and adopted by the city council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in said district for the purpose

of paying the amount so awarded or recovered. Said supplemental resolution shall be made and in every manner prepared and certified the same as the original resolution levying assessments to defray the cost of making such improvements.

History: En. Sec. 19, Ch. 89, L. 1913. See also history of Sec. 5225.

Cited or applied as section 19, chapter 89, Laws 1913, before amendment, in Eby v. City of Lewistown, 55 Mont. 113, 120, 173 Pac. 1163.

5244. Construction of sidewalks and curbs without formation of special improvement district. The city council may order sidewalks and curbs constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk or curb constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk or curb is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty days after the date of service of such notice to cause such sidewalk or curb to be constructed, the city may construct or cause such sidewalk or curb to be constructed, and shall assess the cost thereof against the property in front of which the same is constructed.

When any such sidewalk or curb is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as "special sidewalk and curb fund," which warrants shall bear interest at the rate of six per cent. per annum, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks and curbs may be spread over a term of not to exceed eight years, payment to be made in equal annual instalments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks and curbs have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913. See also history of Sec. 5225.

5245. Interest on assessments. Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged at the rate of six per cent. per annum, and the treasurer, in collecting such special assessment taxes, if the same are payable in one instalment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in instalments the treasurer shall, at the time of collecting the first instalment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and

thereafter he shall collect with each subsequent instalment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913. See also history of Sec. 5225.

5246. Costs and expenses considered as cost of improvements. The cost and expense connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, plats, engineering, superintendence, and inspection, and preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the city clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 22, Ch. 89, L. 1913. See also history of Sec. 5225.

5247. Assessments as lien upon property. Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 89, L. 1913. See also history of Sec. 5225.

Where the city council had acquired jurisdiction to order a special improvement and levy the assessment to pay for it, the assessment became a lien against the property benefited by it from the date the assessment became due, not affected by the circumstance that plaintiffs had recovered judgments against the city for damages caused by the improvement. Allen v. City of Butte, 55 Mont. 205, 209, 175 Pac. 595.

Priority of lien for special assessment over earlier incumbrance, see notes in Ann. Cas. 1913C, 1210; 35 L. R. A. 372; 30 L. R. A. (N. S.) 761.

Lien of special assessment as affected by sale of property for general tax, see note in Ann. Cas. 1913A, 678.

Priority as between liens for public improvements, see note in 5 A. L. R. 1301.

Personal liability for special assessments, see notes in 133 A. S. R. 930; 18 L. R. A. (N. S.) 1259; 29 L. R. A. (N. S.) 770; 17 Ann. Cas. 1255.

5248. Mistakes or misnomers not to invalidate assessment. When under any of the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

History: En. Sec. 24, Ch. 89, L. 1913. See also history of Sec. 5225.

5249. Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. .....
United States of America
State of Montana.

Warrant or (Bond No. .....) Dollars $.....

Interest at the rate of six per cent. per annum, payable annually. Special Improvement District Coupon Warrant or Bond.

..... Montana,

Issued by the city of ....., Montana.

The treasurer of the city of ....., Montana, will pay to ....., or bearer, the sum of ..... Dollars as authorized by resolution No. ..... as passed on the ..... day of ....., 19..., creating special improvement district No. ..... for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of ....., Montana.

This warrant (or bond) bears interest at the rate of six per cent. per annum from the date of registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of ..... in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened, and been performed, in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of ....., Montana, relating to the issuance thereof.

(Seal)

Dated at ....., Montana, this ..... day of ....., 19....

City of ....., Montana.

By ....., Mayor.

....., City Clerk.

Registered at the office of the city treasurer of ....., Montana, this ..... day of ....., 19....

.....,
City Treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at the rate of six per cent. per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall be signed by the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signature of the mayor and clerk; provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council. Said bonds shall be in denominations of one hundred dollars or fractions or multiples thereof, and may be issued in instalments, and may extend over a period not to exceed twenty years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided, that the treasurer shall first pay out of such special improvement district fund annually the interest on all outstanding warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date, so fixed, interest shall cease. When it is provided by the resolution creating the district that the work be paid for in warrants (or bonds), the city council shall, by resolution, fix the denominations of such warrants (or bonds), which may be of one hundred dollars, or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent. per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed twenty years from and after the date of issuance.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915. See also history of Sec. 5225.

5250. Payment in bonds and warrants. Whether provided in the call for proposals or not, all warrants let under the provisions of this act shall be payable in bonds or warrants issued under the provisions hereof, and the city council may provide by contract with the person, persons, or corporation, doing the work or making the improvement for the payment of which such warrants or bonds are issued, to deliver the said warrants or bonds in instalments as the work progresses, or upon the entire comple-

tion thereof; provided, however, that no warrants or bonds must be delivered to such contractor or contractors in excess of the amount of the work actually done at the time of the delivery, nor shall the total amount issued be excess of the total cost and expense of the said improvements, and no warrant or bond shall be delivered or received in payment of a less sum than its face value. And when it becomes necessary to pay for private property taken for the opening, widening, or extending of any street, avenue, or alley, or to pay any amount awarded or recovered on account of damages to any property caused by the making of any improvements, in money, in cases where the person whose property is so taken or damaged refuses to receive his pay in warrants or bonds, then the council shall have the power, under such regulations as it may prescribe, to sell such bonds or warrants for not less than par, and devote the moneys derived therefrom to the payment of the damages assessed or agreed upon for such property or the damages thereto.

History: En. Sec. 26, Ch. 89, L. 1913. See also history of Sec. 5225.

5251. Certification of special assessments to county clerk—Collection by cities. It shall be the duty of the city or town treasurer of every city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of section 5216 of this code, immediately after the fifteenth day of September of each year, and at the same time the copy of resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by said section 5216, to certify to the county clerk of the county in which such city or town is situated all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, and the county treasurer must collect the same in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him.

In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, such city or town treasurer shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him; and all of the provisions of section 5215 of this code shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes. When one payment becomes delinquent all payments shall, at the option of the city or town council, by appropriate resolutions duly adopted, become delinquent, and the whole property shall be sold the same as other property is sold for taxes.

History: En Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921. See also history of Sec. 5225.

5252. Correction of assessment—Collection upon relevy of tax. Whenever, by reason of any alleged non-conformity to any law or ordinance, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances, and may take all necessary steps to cor-

rect the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance, or resolution relating thereto; and may reassess and relevy the same with the same force and effect as an original levy; whenever any apportionment or assessment is made, and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon reassessment or relevy shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provisions of any law or ordinance specifying a time when, or order in which acts shall be done in a proceeding which may result in a special tax, shall be taken to be subject to the qualifications of this act. Any and every ordinance, or part thereof, of any council, heretofore passed in substantial conformity with this section, is hereby legalized.

History: En. Sec. 28, Ch. 89, L. 1913. See also history of Sec. 5225.

5253. Payment of tax under protest—Action to recover. When any tax levied and assessed under any of the provisions of this act is deemed unlawful by the party whose property is thus taxed, or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest, to the city or county treasurer, as the case may be, and thereupon such party so paying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid, or against the city in whose behalf the same was collected, to recover such tax or any portion thereof, so paid under protest; provided, however, that any action instituted to recover any tax paid under protest must be commenced within sixty days after the date of payment thereof. The tax so paid under protest shall be held by the city or county treasurer, as the case may be, until the determination of any action brought for the recovery thereof.

History: En. Sec. 29, Ch. 89, L. 1913. See also history of Sec. 5225.

Plaintiff, in an action to recover back a special improvement tax paid under protest, need not allege in the complaint that his claim had been presented to the city or town council for allowance before action was commenced, this section not contemplating presentation thereof as a condition precedent to his right to maintain the action. Harvey v. Town of Townsend et al., 57 Mont. 407, 188 Pac. 897.

Recovery of illegal tax or assessment paid under protest, see notes in 45 Am. Dec. 164; 8 Ann. Cas. 669; 10 Ann. Cas. 1050; Ann. Cas. 1913D, 568; Ann. Cas. 1915A, 495.

Necessity and sufficiency of statement of grounds in notice of protest required as condition of recovering back payment of unlawful tax, see note in 36 L. R. A. (N. S.) 476.

5254. Mistake in name or description not fatal. Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this act, unless it is impossible to identify the property from the description.

History: En. Sec. 30, Ch. 89, L. 1913. See also history of Sec. 5225.

Effect of misnomer of landowner in tax matters, see note in Ann. Cas. 1918D, 569.

5255. Owner of property—Definition of terms—Publication of notice. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lot and lands, by deeds duly

recorded in the county recorder's office in each county, or the person in possession of lands, lots, or portions of lots, or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" for the purpose of this act, according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

The words "work," "improved," and "improvement," as used in this act, shall include all work or the securing of property mentioned in this act, and also the construction, reconstruction, and repairs, of all or any portion of said work.

The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising, as provided in this act; also, the compensation of the persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

The notices, resolutions, orders, or other matter required to be published by the provisions of this act, shall be published in a daily newspaper or in a semiweekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that in case there is no daily, semiweekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semiweekly, or weekly newspaper, in three of the most public places in such city except herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer, or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein. The word "twice," as used in this act, referring to the number of times notices, resolutions, or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadam, or of bituminous rock or asphalt, or of wood, brick, or other material, whether patented or not, which the city council shall by ordinance or resolution adopt.

The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts, and places, which have been dedicated and accepted according to the law, or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

The term "city engineer," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no city engineer, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of the city engineer, and all provisions hereof applicable to the city engineer shall apply to such person so appointed.

The term "city council" is hereby declared to include any body or board which under the law is the legislative department of the government of the city.

In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the council or other chief executive officer of the municipality.

The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said council.

The term "quarter-block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street half way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

The term "city treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

The term "street intersection," wherever used in this act, shall be held to mean that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

History: En. Sec. 31, Ch. 89, L. 1913. See also history of Sec. 5225.

5256. Adjournment of hearing by council. Whenever, in proceedings hereunder, a time and place for hearing by the city council are fixed, and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power or jurisdiction of the city council in the premises shall not thereby be divested or lost, but the city council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act in as in the first instance.

History: En. Sec. 32, Ch. 89, L. 1913. See also history of Sec. 5225.

5257. Posting and publication of notices by clerk—Effect of errors in proceedings. Whenever any resolution, order, notice, or determination is required to be published or posted, and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder, when the same is actually published or posted for the time herein required.

History: En. Sec. 34, Ch. 89, L. 1913. See also history of Sec. 5225.

5258. Curative section concerning special improvements. All special improvement districts which any city or town council in the state of Montana has created or attempted to create since March 14, 1913, pursuant to the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, the creation or attempted creation of which was irregular because of the failure of any such city or town council, so creating or attempting to create the same, to proceed in the creation of any such districts, or in giving notice thereof, in the manner required by chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and any and all bonds and warrants issued or to be issued to defray the cost and expense incurred, or to be incurred in the construction of the improvements made or to be made in any such districts, and the assessments levied or to be levied in any such districts, are hereby legalized and validated, and the acts and proceedings of the city or town council of any such city or town done or had with reference thereto are hereby made of as binding force and effect, as though they were done and had in strict conformity with the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; provided, however, that a resolution of intention to create, or a resolution creating or attempting to create any such district, was duly and properly passed and adopted by the city or town council of any such city or town, and approved by the mayor thereof, prior to giving notice thereof; and provided, further, that notice of the passage of such resolution of intention to create, or resolution creating or attempting to create any such district, or notice of the creation or intention to create or attempted creation of any such district, and of the time and place when and where the city or town council of any such city or town would hear and pass upon all protests made by any owner of property in any such district liable to be assessed for the work done or proposed to be done therein, against the making of such improvement, or the creation of any such district, and describing the general character of the improvements proposed to be made, the estimated cost thereof, and referring to the resolution on file in the office of the city or town clerk of any such city or town, for the description of the boundaries of any such district, was published for five days in a daily newspaper, or in some one issue of a weekly paper published in any such city or town, or in case no newspaper was published in any such city or town, at the time such notice was given, then, provided, it was posted for five days in three public

places in such city or town; and provided, further, that a copy of such notice so published or posted was mailed to every person, firm, or corporation, or to the agent of every person, firm, or corporation, having property within any such district, at his last known address, upon the same day such notice was first published or posted; and provided, further, that said notice was published or posted and mailed on a day not less than fifteen days prior to the date set for hearing and passing upon all protests made in any such district; and provided, further, that at the next regular meeting of the city or town council of any such city or town after the expiration of said fifteen days, the city or town council of any such city or town, proceeded to hear and pass upon, and did hear and pass upon all protests made in any such district; and provided, further, that no sufficient protests were made in any such district to prevent further proceedings therein, as provided in chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done, and had by the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana for the letting of any contract for the construction of any improvements in any such district, and the resolutions, ordinances, notices, acts, and proceedings required to be passed, adopted, approved, given, done, and had by said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, for the issuance and delivery or sale of any bonds or warrants of any such district were or shall be duly and regularly passed, adopted, approved, given, done, and had in conformity with the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana, and the laws of the state of Montana relating thereto; and provided, further, that the assessment to defray the cost of making the improvements in any such district was or shall be duly and regularly passed, adopted, and approved, and notice thereof duly and regularly given, and a copy of the resolution levying any such assessment, certified to by the city or town clerk, delivered to the city or town treasurer of any such city or town, within two days after its final passage, as required by the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that the sum levied and assessed, or to be levied and assessed, against the property of any such district did not or shall not exceed the cost and expense of making the improvements therein; and provided, further, that the improvements made or to be made in any such district are improvements which a city or town can legally make under the provisions of said chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana; and provided, further, that nothing herein contained shall be deemed to affect or disturb rights acquired under any judicial decision made in any cause involving the procedure of any special improvement district created or attempted to be created under the provisions of chapter 89 of the acts of the thirteenth legislative assembly of the state of Montana.

History: En. Sec. 9, Ch. 142, L. 1915.

Note.—The chapter above referred to is sections 5225 to 5257 of this code.

Defects in the proceedings necessary to confer jurisdiction upon the city council to create a special improvement dis-

trict, such as in the passage of a resolution of intention, giving notice of its passage, etc., are not cured by the provisions of this section. Cooper v. City of Bozeman, 54 Mont. 277, 285, 169 Pac. 801.

Cited or applied as section 9, chapter 142, Laws of 1915, in Hinzeman v. City of Deer Lodge, 58 Mont. 369, 374, 193 Pac. 395.

5259. Creation of special improvement districts for lighting streets—Apportionment of cost. The city or town council of any city or town is authorized to create special improvement districts embracing any street or streets or public highway therein, or portions thereof, and property abutting thereon, for the purpose of lighting such street or streets or public highway, and to require not more than three-fourths and not less than one-fourth of the cost of installing and maintaining such lighting system to be paid by the owners of the property abutting upon some portion of the street or streets or public highway embraced within such districts, including any street or other railway therein, and to assess and collect such portion of such cost by special assessment against said property.

History: En. Sec. 1, Ch. 143, L. 1915.

Note.—Chapter 98, Laws of 1911, an act regulating the creation of lighting districts, was repealed by chapter 143, Laws of 1915, which is here given.

Cited or applied as section 1, chapter 98, Laws of 1911, in Helena etc. Ry. Co. v. City of Helena, 47 Mont. 18, 34, 130 Pac. 446.

Street lighting as a local improvement assessable against property benefited, see note in L. R. A. 1917A, 1098.

5260. Proportion to be borne by abutting property—Street railways. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps, and other suitable or necessary appliances for the purpose of lighting said streets or public highways, and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, not less than one-fourth nor more than three-fourths, as shall be determined by the city and town council, shall be borne by property embraced within said district abutting upon some portion of the street or public highway within such district to be lighted, each parcel of land so abutting to be assessed in the proportion which the street frontage of each parcel of land bears to the street frontage of the entire district to be lighted; and the owner of any street or other railway upon the street or public highway, or portion thereof, within the district, shall be assessed for such part of the entire cost and expense of such installation, electrical current, and maintenance, not exceeding one-sixth thereof, as the city or town council may determine.

History: En. Sec. 2, Ch. 143, L. 1915.

Liability of street railway to special assessment for street improvement, see notes in 46 L. R. A. 193; 15 L. R. A. (N. S.) 487.

Assessment of railroad right of way for street improvements, see notes in 2 Ann. Cas. 587; 12 Ann. Cas. 635; Ann. Cas. 1916E, 579; 28 L. R. A. 249; 12 L. R. A. (N. S.) 112; 40 L. R. A. (N. S.) 935.

Assessment of parkway occupied by street railway company for street improvement, see note in 10 A. L. R. 164.

5261. Resolution of intention—Protests—Hearing—Public property—Contracts for work and materials. Before creating any special improvement lighting district in any such city or town, for the purpose of lighting any street or streets or public highway, or section thereof, in accordance with the provisions of this act, the council shall pass a resolution of inten-

tion so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements which are to be made, and an approximate estimate of the cost thereof; also an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first year, and the proportion of such cost to be assessed against the abutting property, including such street or other railway.

Upon having passed such resolution, the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly newspaper in the city or town, or in case no newspaper be published in such city or town, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having property within the proposed district, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement so proposed to be made, and state the estimated cost thereof; also the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first year; and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district, and such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

At any time within fifteen days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work, or against the extent or creation of the district to be assessed, or both. Such notice must be in writing and be delivered to the said clerk of the city council, who shall indorse thereon the date of its receipt by him.

At the next regular meeting of the city council, after the expiration of the time within which said protests may be so made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon property fronting thereon, and if the city council finds that such protest is made by the owners of a majority of the property fronting on the proposed work, no further proceedings shall be taken for a period of six months from the date when said protests was received by the said city clerk of said city council.

In determining whether or not sufficient protests have been filed in a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time.

When no protests have been delivered to the clerk of the city council within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, or when a protest shall have been found by the city council to be insufficient, or shall have

been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements; but before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

The city or town council may cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances, for the purpose of lighting said streets, to be procured and erected by contract or by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide, and after such lighting system has been installed, may, by contract, in such way and manner as the council shall elect, cause the lights to be maintained thereon and electrical current furnished therefor; provided, that the posts in any such district shall be of uniform size and character, and shall be distributed uniformly upon the street or streets or public highways, or section thereof to be lighted in any such district.

History: En. Sec. 3, Ch. 143, L. 1915.

5262. Objections to irregular proceedings. At any time within sixty days from the date of the award of any contract by a city or town council under the provisions of this act, or at any time within sixty days from the date, the city or town council requires or instructs the street commissioner, or any other official of the city or town, to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets of said city or towns, to be procured and erected, any owner or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous or faulty, or that his property will be damaged by the making of any improvements in the manner contemplated, may file with the city clerk, who shall deliver the same to the city or town council, a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty, or in what manner and to what extent his property will be damaged by the making of said improvements. All objections to any act or proceeding, or in relation to the making of said improvements not made in writing and in the manner at the time aforesaid, and all claims for damage therefor, shall be waived by such property owners; provided, the notice of the passage of the resolution of intention has been actually published, and the notices of improvements posted as provided in this act.

History: En. Sec. 3(a), Ch. 243, L. 1921.

5263. Bonds and warrants—Interest—Redemption. All cost and expenses incurred in the construction of the improvement specified in this act shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special improvement lighting district No..... fund." Said warrants or bonds shall be in the denomination of one hundred dollars or fractions or multiples thereof; and may be issued in

instalments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight years, and shall hear interest at the rate of six per cent. per annum from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk.

History: En. Sec. 4, Ch. 143, L. 1915.

5264. Preparatory expense—Accounts by engineer. The cost and expense connected with and incidental to the formation of any such district, including the cost of preparation of plans, specifications, maps, plats, engineering, superintendence, and inspection, including the compensation of the city engineer for work done by him, and the cost of printing and advertising as provided in this act, and the preparation of assessment-rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district; and it shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district, and certify the same to the ctiy clerk, whose duty it shall be to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 5, Ch. 143, L. 1915.

5265. Resolution assessing cost of improvement—Notice—Hearing. It shall be the duty of the city or town council to ascertain the cost of installing such lighting system, and on or before the first Monday in October pass and finally adopt a resolution levying and assessing all of the property embraced within said district, including any street or other railway, with not less than one-fourth nor more than three-fourths of the entire cost of installing the same; each lot or parcel of land in said district to be assessed for that part of the whole cost which its linear feet in front of or abutting said street, avenue, alley, or public highway bears to the total number of linear feet in front of or abutting the streets, avenues, alleys, or public highways included within said special improvement district, and levying and assessing against any street or other railway upon such street or public highway, or portion thereof, included in such district, not to exceed one-sixth of the total cost of such installation, electrical current, and maintenance, which proportion shall be determined by the city or town council. Any such resolution shall contain a list in which shall be described each lot or parcel of land, and any street or other railway with the name of the owner thereof, if known, and the linear number of feet fronting or abutting upon the street or public highway to be lighted, and the amount levied thereon set opposite. Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights, and supplying electrical current therefor for the first year, as determined by the city or town council, is on file in his office subject to inspection for a period of five days, shall be published at

least once in a newspaper published in the city. Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the city or town council, and the time for such hearing shall not be less than five days after the publication of such notice. At the time so fixed, the council shall meet and hear all such objections, and for the purpose may adjourn from day to day, and may modify such resolution in whole or in part. A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within two days after its passage to the city treasurer. All moneys derived from the collection of such assessments shall constitute a fund to be known as "Special improvement lighting district No. ..... fund."

History: En. Sec. 6, Ch. 143, L. 1915.

5266. Contract for maintenance of lights—Assessment to pay cost. The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect; provided, however, that the city or town council shall not let a contract for a period to exceed three years. It shall be the duty of the city or town council to estimate, as near as practicable, the cost of maintaining such lights and furnishing electrical current therefore each year, and the proportion thereof to be assessed against the abutting or other property, including any such street or other railway, and before the first Monday in October pass and finally adopt a resolution levying and assessing said property, including any such street or other railway within said district, with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be specially assessed against said property. Said resolution levying and assessing said portion of the cost of maintenance, and for furnishing electrical current therefor, shall be prepared and certified to in the same manner as the resolution provided for in the preceding section, and the same notice and hearing shall be given thereon, and shall be adopted and certified, and the assessment collected, in the same manner, as near as may be, as in the case of the resolution provided for in the preceding section. All moneys derived from the collection of the assessments provided for in such resolution shall be paid into a fund known as "Special improvement lighting district No. .....maintenance fund," and the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of electrical current for which the tax is levied, and such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district, and for no other purpose. Any special assessment levied and made for any of the purposes aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied, from and after the date of the final passage and adoption of the resolution leving the same; which lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

History: En. Sec. 7, Ch. 143, L. 1915.

5267. Effect of mistake as to ownership of property. When, under any of the provisions of this act, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no

misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect such assessment, or render it void or voidable.

History: En. Sec. 8, Ch. 143, L. 1915.

5268. Remedies for correction of errors. All remedies, provisions, and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this act for the correction of errors or omissions in the adoption of any resolution or proceeding, or in the levy of any assessment, or for the collection thereof, or for the enforcement of any such levy by sale of the property against which any assessment shall be made, or for the redemption of such property from such sale, or otherwise applicable to the administration of this act, shall be available in the administration hereof, the same to all intents and purposes as would be the case were such remedies, provisions, and means made a part hereof.

History: En. Sec. 9, Ch. 143, L. 1915.

5269. Discontinuance of operation of system—Procedure. If, at any time after the creation of any special improvement lighting district, a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths of the total number of linear feet of the property fronting or abutting upon any street or public highway, or portion thereof, included within such district, asking that the maintenance and operation of such special lighting system, and the furnishing of electrical current therefor, in such district be discontinued, the city or town council shall thereupon, by resolution, provide for discontinuing the maintenance and operation of the lighting system; provided, however, that if the city or town council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

History: En. Sec. 10, Ch. 143, L. 1915.

5270. Repealing and saving clauses. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that each and every special improvement lighting district created, or attempted to have been created, and each and every bond and warrant issued, and each and every assessment made and heretofore created under and by virtue of any of the acts of 1911 and 1913, shall not be invalidated, but the same are hereby validated, legalized, and approved.

History: En. Sec. 11, Ch. 143, L. 1915.

5271. Property of the United States not liable for costs. Whenever any lot, piece, or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the cost and expenses of said work or improvement, and the cost of said work

or improvement in front of said lots, pieces, or parcels of land shall be paid by the city from its general fund.

History: En. Sec. 12, Ch. 143, L. 1915.

Liability of property of United States to assessment for local improvements, see notes in 16 Ann. Cas. 886; Ann. Cas. 1917D, 844.

5272. Street-sprinkling. Whenever the council of any city or town desires to sprinkle the whole or any part of their city or town, as provided in this chapter, it shall provide by ordinance a method of doing said work, and paying for the same under the following restrictions and regulations.

History: En. Sec. 24, p. 218, L. 1897; re-en. Sec. 3390, Rev. C. 1907.

Cited or applied as section 3390, Revised Codes, in Stadler v City of Helena, 46 Mont. 128, 135, 127 Pac. 454.

Power of municipality to levy special assessment to pay cost of sprinkling streets, see notes in 12 Ann. Cas. 611; 24 L. R. A. 412; 18 L. R. A. (N. S.) 182.

Power to compel street railway to sprinkle tracks, see note in 36 L. R. A. (N. S.) 235.

Power to improve and repair streets as conferring power to expend money for sprinkling, see note in 5 L. R. A. (N. S.) 434.

5273. Same—Creation of districts. A resolution dividing the whole or any part of their city or town into sprinkling districts, to be known and designated by number, shall be passed; said resolution shall plainly define the boundaries of the several districts, or enumerate the streets, alleys, and public places, or any part thereof, constituting the different districts.

History: En. Sec. 25, p. 218, L. 1897; re-en. Sec. 3391, Rev. C. 1907.

5274. Same—Change of district. When once defined, sprinkling districts shall not be changed during the same calendar year, but may be changed by resolution the following year, or any year thereafter.

History: En. Sec. 26, p. 218, L. 1897; re-en. Sec. 3392, Rev. C. 1907.

5275. Assessment to pay for work. The sprinkling in districts so established may be done by contract, or by forces employed by the city or town, or by both, in such manner as the council may elect, and it shall be the duty of said council to estimate, as near as practicable, the cost of sprinkling in such districts so established for the season, and before the first Monday in November of each year they shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to not less than seventy-five per cent. of the entire cost of said work, exclusive of the cost of sprinkling parks and public places.

History: En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907.

5276. Same—Ratio of assessment. The rate of taxation in each sprinkling district shall be determined by dividing the total cost of sprinkling the same by the total number of linear feet of property in front of or bordering upon which sprinkling has been done, and each lot or parcel of land shall be assessed for as many linear feet as border upon any street that has been sprinkled.

History: En. Sec. 28 p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907.

5277. Same—Method of levy of assessment. The resolution levying the assessment to defray the cost of sprinkling shall contain a list in

which shall be described the lot or parcel of land assessed, with the name of the owner thereof, if known, and the amount levied thereon set opposite; such resolution shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying special assessment to defray the cost of sprinkling in the several districts is on file in his office and subject to inspection for a period of five days, shall be published at least once in a newspaper published in a city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so set, the council shall meet at their regular place of meeting and hear all objections which may be made to such assessment, or any part thereof, and may adjourn from time to time, for that purpose, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer on or before the first Monday in October, and such assessment shall shall be placed upon the tax-roll, and collected in the same manner as other taxes.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907.

Cited or applied as section 3395, Revised Codes, in Stadler v. City of Helena, 46 Mont. 128, 133, 135, 127 Pac. 454.

CHAPTER 57.

MUNICIPAL BONDS.

Section 5278. Creation of Indebtedness—Submission to Taxpayers.
5279. Notice of Election—Ballots—Registration of Voters.
5280. Notice of Sale of Bonds.
5281. Form of Bond.
5282. Disposition of Proceeds of Sale.
5283. Tax for Interest and Sinking fund.
5284. Redemption of Bonds.
5285. Funded Debt.
5286. Proceedings to Fund.
5287. Mode of Redemption.
5288. Refunding Bonds.

5278. Creation of indebtedness—Submission to taxpayers. Whenever the council of any city or town, having a corporate existence in this state, or hereafter organized under the provisions of this title, shall deem it necessary to borrow money or contract indebtedness under its powers, as set forth in subdivision 64 of section 5039 of this code, or amendments thereto, the question of issuing bonds or contracting such indebtedness shall first be submitted to the qualified electors of such city or town in the manner hereinafter set forth; provided, that taxpayers only, as defined by section 544 of this code, shall be entitled to vote on questions concerning the construction, purchase, or securing of a water plant, water system, water supply, or sewerage system.

History: Sec. 3454, Rev. C. 1907.

Note.—Sections 5278 to 5284 were enacted as sections 1 to 7, pp. 226 to 228, Laws of 1897, appearing as section 3454 to 3460, Revised Codes 1907.

Cited or applied as section 3454, Revised Codes, in Carlson v. City of Helena, 39 Mont. 82, 104, 102 Pac. 39, 17 Ann. Cas. 1233.

Municipal bonds and defenses thereto, see note in 98 Am. Dec. 664.

Rights of holders of municipal bonds, see note in 51 A. S. R. 823.

For authorities on question of creation of municipal indebtedness, see notes in 37 L. R. A. (N. S.) 1058; L. R. A. 1917E, 437.

5279. Notice of election—Ballots—Registration of voters. Notice of such election must be published for a period of not less than three weeks in some newspaper published in the city or town, if there be one, and if not, then in the newspaper published at a point in the state nearest to the city or town, and such notice must be posted in not less than three public places in the city or town. The notice must state the time and place of holding the election, the amount and character of the bonds proposed to be issued, and the particular purpose therefor. At such election the ballots must contain the words "Bonds—Yes," "Bonds—No;" and in voting, the elector must make a cross thus, "X," opposite the answer for which he intends to vote. Such election must be conducted and canvassed and the returns made in the same manner as other city or town elections. The council may provide by ordinance for the registration of the taxpayers or qualified electors of such city or town, and no person shall be entitled to register or vote as such election who is not a taxpayer or qualified elector as hereinbefore set forth.

History: Sec. 3455, Rev. C. 1907. See also history of Sec. 5278.

This section does not require that the notice of an election called for the purpose of obtaining authority to issue water and sewer bonds shall state the time of payment of interest thereon, inasmuch as section 5283 provides that it shall be paid semi-annually, and the elector must be presumed to have understood that the time of payment would be that fixed by the statute. Carlson v. City of Helena, 39 Mont. 82, 111, 102 Pac. 39, 17 Ann. Cas. 1233.

Necessity of compliance with statutory requirements in notice of election to vote on issue of municipal bonds, see note in 18 Ann. Cas. 1137.

Necessity that propositions submitted to voters be stated singly, see note in 2 Ann. Cas. 369.

Object or purposes that may be combined in a single question as to the issuance of bonds submitted to voters of a municipality, see note in 26 L. R. A. (N. S.) 665.

Validity of ordinance authorizing incurring of indebtedness or appropriation of money for two or more purposes, see note in 14 L. R. A. (N. S.) 519.

5280. Notice of sale of bonds. If the majority of the votes cast at the election be for "Bonds—Yes," the council must give notice by advertising in some paper published in the city or town, if there be one, and if not, then in the newspaper published at a point in the state nearest to the city or town, and also in some newspaper published in New York city for a period of not less than four weeks, to the effect that the city or town will sell such bonds, briefly describing them, at public auction, and stating the time when and place where such sale will take place.

History: Sec. 3456, Rev. C. 1907. See also history of Sec. 5278.

Cited or applied as section 3456, Revised Codes, in Carlson v. City of Helena, 38 Mont. 581, 587, 101 Pac. 163.

5281. Form of bond. Such bonds must be in such form as the council, by ordinance, directs, and be in the denominations of one hundred dollars or multiples thereof. The bonds and coupons attached must be signed by the mayor and the city or town clerk, and the date of issue must be registered by the clerk; provided, a lithographic or engraved facsimile of the signatures of the mayor and the city or town clerk may be affixed to the coupon only, when so recited in the bond. The bonds must be sold at not less than their par value, and at a rate not exceeding six per cent. per annum, payable semi-annually; provided, that the bonds may be sold either to the bidder offering the highest price for them, or the bidder offering to purchase the bonds at the lowest rate of interest, which rate shall not

exceed six per cent. per annum, and a notice of sale must clearly state which form of bids is required. In case bonds authorized to be issued to fund outstanding bonds or warrants shall not be sold at or after the advertised date of sale, the city may exchange the same at not less than par for such outstanding bonds or warrants at their face value, with accrued interest added.

History: Sec. 3457, Rev. C. 1907. See also history of Sec. 5278.

5282. Disposition of proceeds of sale. The money arising from the sale of bonds must be paid into the city or town treasury, and applied only to the purposes for which the bonds were issued.

History: Sec. 3458, Rev. C. 1907. See also history of Sec. 5278.

5283. Tax for interest and sinking fund—Place of payment. A tax to be fixed by ordinance must be levied each year for the purpose of paying interest on the bonds, and to create a sinking fund for their redemption. The treasurer of such city or town must pay, in lawful moneys of the United States, on each first day of January and the first day of July after the issue of the bonds, the interest due thereon, upon presentation at his office of the proper coupons, which must show the amounts due and the number of the bonds to which they severally belong. In case the purchaser of such bonds gives the treasurer notice in writing that he wishes the bonds so held by him, and the interest thereon, to be paid in New York city, then such bonds and coupons shall be payable in New York city at such bank as shall be designated by the city or town treasurer, and all bonds and coupons so paid must be returned to the city or town council at its next monthly meeting, and must be immediately canceled by the clerk.

History: Sec. 3459, Rev. C. 1907. See also history of Sec. 5278.

The legislature, in the enactment of this section, clearly evinced the intention that the interest instalments falling due, from time to time, upon water and sewer bonds, should not be deemed an indebtedness within the meaning of the constitution, but that they should be paid out of the special fund thus created. Carlson v. City of Helena, 39 Mont. 82, 102, 102 Pac. 39, 17 Ann. Cas. 1235.

The requirement of the constitution, that the revenues derived from a water plant shall be devoted to the payment of a debt contracted for a water supply, does not imply a prohibition upon the legislature to grant the authority to a municipality to make additional provision for payment, which it has done in this section. Carlson v. City of Helena, 39 Mont. 82, 108, 102 Pac. 39, 17 Ann. Cas. 1233.

Cited or applied as section 3459, Revised Codes, in Carlson v. City of Helena, 38 Mont. 581, 587, 101 Pac. 163.

5284. Redemption of bonds. The bonds shall be made payable in not to exceed twenty years, and redeemable at such times as are prescribed in the ordinance directing their issue. Whenever, at any time after such bonds become redeemable, the sum in the sinking fund equals or exceeds one thousand dollars, the city or town treasurer must cause a notice to be published in one newspaper published in such city or town, that he will in thirty days from the date of such notice redeem said amount of the bonds which may then be payable, giving the number thereof, and calling for said bonds in their numerical order; and if, at the expiration of said thirty days, the holder of any bond thus called fails or neglects to present the same for payment, interest thereon must cease; but the treasurer must at all times thereafter be ready to redeem the same on presentation. Such notice must also be sent by mail to the bank in New York city which the

treasurer has designated as the bank at which the bonds and the interest thereon will be paid.

History: Sec. 3460, Rev. C. 1907. See also history of Sec. 5278.

This section is mandatory in its provisions, both as to the term during which the bonds may run and as to the requirement that the council must reserve the option to redeem prior to maturity. The requirement in both these respects is a limitation upon the power to issue the bonds, and disregard of it in either would render them void. Carlson v. City of Helena, 39 Mont. 82, 109, 102 Pac. 39, 17 Ann. Cas. 1233.

5285. Funded debt. The council of any city or town having a floating indebtedness of ten thousand dollars or more may fund the indebtedness and issue bonds with coupons attached thereto, as hereinafter provided in this chapter.

History: En. Sec. 4982, Pol. C. 1895; re-en. Sec. 3461, Rev. C. 1907.

A city may, through its council, issue bonds for the purpose of funding its floating indebtedness, without submitting the matter to a vote of the taxpayers. Parker v. City of Butte, 58 Mont. 531, 535, 193 Pac. 748.

5286. Proceedings to fund. The council, by a resolution, must declare that the existing indebtedness of the town or city shall be funded by the issuance of such bonds. The bonds must be issued for a sum not less than one hundred dollars nor more than one thousand dollars. The interest thereon must not exceed six per cent. per year, payable semi-annually, and may issue to any person holding city or town warrants, indebtedness, or just claims against a city or town prior to the passage of such resolution, at par.

History: En. Sec. 4983, Pol. C. 1895; re-en. Sec. 3462, Rev. C. 1907.

The power of the legislature to grant authority to cities and towns to fund an existing indebtedness cannot be questioned. Parker v. City of Butte, 58 Mont. 531, 535, 193 Pac. 748.

5287. Mode of redemption. The issuance of such bonds, the payment of interest thereon, and redemption thereof, must be made in the same manner, and the same proceedings had as provided in relation to other municipal bonds, except that such bonds are redeemable and payable at such time as prescribed in the ordinance.

History: En. Sec. 9, p. 228, L. 1897; re-en. Sec. 3463, Rev. C. 1907.

5288. Refunding bonds. The city or town council of any city or town of the state of Montana shall have and is hereby given, in addition to the power already conferred upon it, authority to issue refunding bonds upon the credit of said city or town (and sell or dispose of the same), for the purpose of providing the necessary funds to pay maturing, redeemable, or optional bonds, under the following conditions, to-wit:

1. When there is not sufficient money to the credit of said city or town applicable to pay any of said bonds;

2. When, in the judgment of the city or town council, to levy and collect a tax, for the purpose of paying any of said bonds, would be a hardship and a burden to said city or town;

3. All bonds issued under the provisions of this section shall bear upon their face the words, "Refunding city or town bonds," as the case may be, and shall also recite in the body of the bonds that "This bond is issued for the purpose of providing funds to pay maturing, redeemable, optional, and outstanding bonds," as the case may be;

4. Said bonds shall bear interest at a rate not to exceed six per cent. per annum, with interest payable semi-annually, and payable and redeemable within a period not exceeding twenty years from the date of the issue; provided, said bonds shall not exceed in amount the face value of the bonds (and any accrued interest thereon) which they are issued to replace;

5. The city or town council shall fix the denomination, term, rate, and form of said bonds, not inconsistent with the requirements hereinbefore set forth; and may issue, dispose of, or sell said bonds, at any time deemed necessary and expedient to enhance, preserve, and maintain the credit of said city or town;

6. Said bonds, when offered for sale, shall be advertised for sale in not less than one newspaper of general circulation, published in the state of Montana, for a period of not less than four weeks preceding the date fixed for the sale of said bonds, and said bonds may, in the discretion of the said city or town council be advertised in a financial newspaper published in the city of New York of general circulation; said advertisement shall briefly describe the bonds, stating the time when, and the place where said sale shall take place; provided, that said bonds shall not be sold at less than par value and accrued interest, and the said city or town council is authorized to reject any bids made, and sell said bonds at private sale, or exchange them for outstanding bonds, if they deem it for the best interest of the said city or town to do so, and it shall not be necessary to hold any election or submit the matter of the issuance of the bonds authorized by this act to the electors of said city or town;

7. Said bonds and coupons attached shall be signed by the mayor and clerk of said city or town; provided, a lithographic or engraved facsimile of the signatures of the mayor and clerk may be affixed to the coupons only when so recited in the bonds, and the corporate seal of said city or town shall be affixed to each bond;

8. Each bond so issued shall be registered by the city or town clerk in a book provided for that purpose, which shall show the date, number, term, and amount of each bond, and the person or persons to whom the bonds are issued and sold.

History: En. Sec. 1, Ch. 124, L. 1903; re-en. Sec. 3464, Rev. C. 1907.

Refunding bonds as indebtedness within meaning of debt limit provisions, see note in L. R. A. 1917E, 451.

CHAPTER 58.

ABATEMENT OF SMOKE NUISANCE.

Section 5289. Injurious Smoke May Be Abated.
5290. Petition for Abatement.
5291. Contract for Abatement.
5292. Bonds.
5293. Election.
5294. Notice of Election.
5295. Character of Bonds.
5296. Sale of Bonds.
5297. Payment of Bonds.
5298. Modification of Contract.
5299. Provisions Concerning Election.

5289. Injurious smoke may be abated. It shall be lawful for any county or incorporated city or town in any county in this state, where

injurious and unhealthy smoke and fumes exist, to make contracts for the abatement thereof, and to issue and dispose of bonds for that purpose, subject to the limitations and conditions hereinafter provided.

History: Sec. 3430, Rev. C. 1907.

Note.—Sections 5289 to 5299 were enacted as sections 1 to 11, pp. 142 to 146, Laws of 1893; re-enacted as sections 4831 to 4841, Political Code 1895, appearing as sections 3430 to 3440, Revised Codes 1907.

Municipal control over smoke as a public nuisance, see notes 39 L. R. A. (N. S.) 551; 18 L. R. A. (N. S.) 156; 32 L. R. A. (N. S.) 554.

5290. Petition for abatement. Wherever a petition is presented to the board of county commissioners of any county, or to the council of any incorporated city or town, signed by at least one hundred of the resident taxpayers of such county or incorporated city or town, requesting that a contract be made and vote taken under this act, it shall be the duty of the board of county commissioners of such county or council of such incorporated city or town, as the case may be, to enter into and make a contract for the abatement of such injurious and unhealthy smoke or fumes, or for conducting or carrying the same away, so as to remove or lessen the injurious and unhealthy results thereof as effectually as the same can be done. Such contract shall be entered into and made with such person or persons, corporation or corporations, and contain such provisions and conditions as will, in the opinion of the board of county commissioners or council of said incorporated town or city, as the case may be, best accomplish the purpose aforesaid, and shall take effect and be in force as provided in this act.

History: Sec. 3431, Rev. C. 1907. See also history of Sec. 5289.

5291. Contract for abatement. Whenever a contract shall have been entered into as aforesaid, it shall be reduced to writing and executed by the parties in due form of law, and three copies thereof deposited with the clerk of the board of county commissioners or clerk of the council, as the case may be, for public inspection and examination, and the person or persons, corporation or corporations, with whom said contract shall have been made, shall execute their or its bond or bonds with sufficient sureties to such board of county commissioners or city or town, conditioned for the full and faithful performance of all the terms and conditions on their part, the terms, conditions, and penalty of which shall be approved by the contracting board or council, which said bond or bonds shall be in full force and effect upon the ratification thereof as hereinafter provided, the condition of which shall be expressed therein.

History: Sec. 3432, Rev. C. 1907. See also history of Sec. 5289.

5292. Bonds. For the purpose of raising moneys to meet the payments under the terms and conditions of said contract, and other necessary and proper expenses in and about the same, and the approval or disapproval thereof, it shall be the duty of the board of county commissioners, if the petition be presented to it within thirty days thereafter, to ascertain the existing indebtedness of the county in the aggregate, and within sixty days after ascertaining the same to submit to the electors of such county the proposition to approve or disapprove the said contract, and the issuance of bonds necessary to carry out the same, which shall not exceed five per centum of the value of the taxable property

therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring said indebtedness; and if said petition be presented to the council of any incorporated city or town, then within thirty days thereafter they shall ascertain the aggregate indebtedness of such city or town, and, within sixty days after ascertaining the same, submit to the electors of such city or town the proposition to approve or disapprove said contract, and the issuance of bonds necessary to carry out the same, which shall not exceed three per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner hereinbefore provided, and if disapproved, the expenses of such election shall be paid out of the general fund of such county, city, or town, as the case may be.

History: Sec. 3433, Rev. C. 1907. See also history of Sec. 5289.

5293. Election. The vote upon such proposition shall be had at an election for that purpose to be held, conducted, counted, and results ascertained and determined in the manner and by the same officers provided by law for general elections, except as otherwise herein provided, and the proposition to be submitted shall be upon printed tickets or ballots, upon each of which shall be printed the following: "For the contract and bonds," "Against the contract and bonds," the former above the latter, and the elector shall indicate his vote by a cross opposite the one or the other for which he votes; and if it appears from the result of such election that a majority of the votes cast were "For the contract and bonds," then said contract shall be in full force and effect, and the said bonds shall be issued and disposed of in the manner hereinafter provided. If it shall appear from the result of such election that there was a tie, or a majority of said votes were cast "Against the contract and bonds," then the said contract and bond given for its fulfilment shall be null and void and of no effect, and said bonds and none thereof shall be issued.

History: Sec. 3434, Rev. C. 1907. See also history of Sec. 5289.

5294. Notice of election. The board of county commissioners of the county in which such election is to be held, or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating the objects thereof, the time and place of holding the same, such conditions of the contract as in their judgment are proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them, the amount of bonds proposed to be issued, when payable, and the interest they are to bear, with a description of the tickets or ballots to be used, in some newspaper printed and published and circulated in the county, or city, or town, as the case may be, in which such election shall be held, at least three times a week for at least six consecutive weeks next preceding such election, and if no newspaper be printed, published, and circulated therein, then in some newspaper printed and published in some county nearest thereto.

History: Sec. 3435, Rev. C. 1907. See also history of Sec. 5289.

5295. Character of bonds. The bonds to be issued upon the conditions and under the provisions aforesaid shall bear the date of their issuance; shall be designated as sanitary coupon bonds of the county, city,

or town issuing the same; shall be of a denomination not less than five hundred nor more than one thousand dollars each; shall be payable at such place in New York city or elsewhere at the discretion of the board or council issuing the same; shall bear interest at the rate of six per cent. per annum, payable thirty years after the date thereof, with the privilege of paying the same at any time after five years from such date, which interest shall be payable semi-annually at the place whereat the principal is payable, and for which interest coupons shall be attached to said bonds. If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof, and his seal thereto attached; and if issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk, and the seal thereof attached.

History: Sec. 3436, Rev. C. 1907. See also history of Sec. 5289.

5296. Sale of bonds. The board of county commissioners or council, as the case may be, may provide by said contract for the delivery of said bonds, or any part thereof, at their face value, upon the terms and conditions in said contract provided, or may sell and dispose of the same, or any part thereof, to raise funds to carry out said contract, and use such funds for that purpose, and for the payment of any expert or experts, or any incidental expenses proper and necessary in and about said contract, and the carrying out of the same. And in the event said bonds are sold, they shall be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation, which may be printed and published in each county in the state, and also by publication in at least three newspapers of general circulation, printed and published in the cities of Boston and New York. Such notice shall be published at least once a week, and shall contain, in substance, a description of said bonds, as set out in the preceding section of this act, and the proceeds of the sales thereof shall be paid over to the county treasurer or the city or town treasurer, as the case may be, and kept as a separate and independent fund for the purposes herein provided, and shall be known as the sanitary coupon bond fund, and shall be deposited and kept in such a manner, and at such bank or banks, as the board of county commissioners of the county or council of the city or town, owning such funds, may direct, and which shall not be paid out or disbursed except upon warrants or orders drawn thereon by the board of county commissioners or council of such incorporated city or town, signed and attested in the manner provided by law.

History: Sec. 3437, Rev. C. 1907. See also history of Sec. 5289.

5297. Payment of bonds. The faith of the county or incorporated city or town issuing bonds under the provisions of this act is solemnly pledged for the payment of the principal and interest according to the tenure of said bonds and the coupons attached to the same, and the board of county commissioners of the county or council of the incorporated city or town, issuing said bonds, shall ascertain and levy and assess a tax sufficient to pay the interest upon said bonds, and form such sinking fund for the payment of the principal thereof as may be necessary and proper, in the manner provided by law or ordinance, which shall become a lien

and be collected as other taxes, and shall be kept as a separate fund, as hereinbefore provided, and all bonds, coupons, orders, and warrants issued and drawn under the provisions of this act shall be promptly paid, registered, and entered in books kept for that purpose, and correct and proper entries made in respect thereto, and the same when paid shall be canceled and preserved, and proper entries made thereof, as provided by law in cases of other bonds, warrants, and orders.

History: Sec. 3438, Rev. C. 1907. See also history of Sec. 5289.

5298. Modification of contract. In the event it shall be found expedient and proper in executing said contract to modify or change the same in some of the minute details thereof, and such modifications or change shall be agreed upon by the parties thereto, the same may be made with the approval of the judge or judges of the district forming such county, or the judge or judges of the district in which such county or incorporated city or town is included, and, when so approved, shall have the same force and effect as if originally contained therein.

History: Sec. 3439, Rev. C. 1907. See also history of Sec. 5289.

5299. Provisions concerning election. No registration under the election laws of this state shall be required for the purposes of the election herein provided for, and the registration had at the last election preceding the same shall govern and control as if especially had and done for the purposes of the election to be held under this act.

History: Sec. 3440, Rev. C. 1907. See also history of Sec. 5289.

CHAPTER 59.

DAMAGE CAUSED BY CHANGE OF GRADE.

Section 5300. Damages Must Be Paid on Change of Grade.
5301. Appraisement of Damages.
5302. Time for Report to Be Made.
5303. Appeals and Proceedings Thereunder.
5304. Issues Made.
5305. Costs—How Taxed.

5300. Damages must be paid on change of grade. When the grade of any street or sidewalk in any city or town is established by the corporate authority of such city or town, and a building shall thereafter be constructed upon a lot abutting on said street, no change must be made in the grade of such street or sidewalk which requires the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering are ascertained and paid, as is hereinafter provided.

History: En. Sec. 4940, Pol. C. 1895; re-en. Sec. 3441, Rev. C. 1907.

Right of abutting owner to damages for change of grade, where improvements have been made in reliance on established grade, see note in Ann. Cas. 1916E, 371.

Joinder in petition for change of grade as waiver of, or estoppel to claim, compensation for resulting damage, see note in 20 Ann. Cas. 876.

Duty of municipality to care for surface water on raising grade, see note in 65 L. R. A. 253.

Liability of municipal corporation for nuisance caused by change of highway grade, see note in 1 L. R. A. (N. S.) 129.

Right to damages for deprivation of switch connections with railroad on change of street grade, see note in Ann. Cas. 1914C, 273.

5301. Appraisement of damages. In case the council of such city or town and the owner of such building are unable to agree upon the amount of such damages, the council must appoint three disinterested freeholders of such city or town to appraise such damages. The appraisers so appointed, after being duly sworn, must appraise the damage and make two written reports thereof, signed by at least a majority of them, one of which must be delivered to the clerk of such city or town, to be immediately filed in his office, and the other to the owner of the building.

History: En. Sec. 4941, Pol. C. 1895; re-en. Sec. 3442, Rev. C. 1907.

When all the circumstances detailed in the next preceding section exist, the power of the city to appoint a board of appraisers and clothe it with any authority is made further to depend upon the inability of the city and owner to agree, which, of course, implies effort, and before the appointment is made, it should appear that they were in fact unable to agree. State ex rel. City of Butte v. District Court, 48 Mont. 614, 617, 139 Pac. 791.

5302. Time for report to be made. Such report must be made and delivered within ten days after the appointment of the appraisers.

History: En. Sec. 4942, Pol. C. 1895; re-en. Sec. 3443, Rev. C. 1907.

5303. Appeals and proceedings thereunder. Within twenty days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the district court, within the county in which such city or town is located, a copy of such report, certified by the clerk of such city or town, and file with said clerk and serve on the opposite party a notice of appeal from such report, whereupon the clerk of the district court must cause such proceedings to be entered on the register of actions, designating such city or town as plaintiff, and the owner of the building as defendant, and the question of the amount of damages may be tried by a jury or the court.

History: En. Sec. 4943, Pol. C. 1895; re-en. Sec. 3444, Rev. C. 1907.

5304. Issues made. The report of the appraisers is the complaint, all the material facts of which in reference to damages are considered denied, and these constitute the issues to be tried.

History: En. Sec. 4944, Pol. C. 1895; re-en. Sec. 3445, Rev. C. 1907.

5305. Costs—How taxed. In case the owner of the building appeals and the damages are not increased, or in case the city or town appeals, and the damages are decreased in the district court, the costs must be paid by the defendant. In all other cases, or in the case no appeal is taken, the costs must be paid by the city or town.

History: En. Sec. 4945, Pol. C. 1895; re-en. Sec. 3446, Rev. C. 1907.

Cited or applied as section 3446, Revised Codes, in State ex rel. City of Butte v. District Court, 48 Mont. 614, 616, 139 Pac. 791.

CHAPTER 60.

VACATION AND ABANDONMENT OF STREETS, PARKS, AND TOWN SITES.

Section 5306. Council May Discontinue Streets.
5307. Notice Must Be Given.
5308. Vacation of Plats in Abandoned Town Sites.
5309. Vacation of Parks, Boulevards, and Public Places in Unincorporated Towns.

5306. Council may discontinue streets. The council may discontinue a street or alley in a city or town, or any part thereof, upon the petition in writing of all the owners of lots on the street or alley, if it can be done without detriment to the public interest.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907.

Cited or applied as section 3479, Revised Codes, in Barnard Realty Co. v. City of Butte, 48 Mont. 102, 113, 136 Pac. 1064.

Power to vacate street, see note in 2 Ann. Cas. 87.

Persons entitled to compensation on vacation of street, see notes in 15 Ann. Cas. 687; Ann. Cas. 1913D, 790; Ann. Cas. 1916C, 238.

5307. Notice must be given. Before acting upon such petition a notice must be published or posted in three public places, stating when such petition will be acted on, and what street or ally, or part thereof, is asked to be vacated. Such notice must be published in a newspaper or posted at least one week before the petition is acted on.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907.

Cited or applied as section 3480, Revised Codes, in Barnard Realty Co. v. City of Butte, 48 Mont. 102, 113, 136 Pac. 1064.

5308. Vacation of plats in abandoned town sites. When there shall have been filed in the office of the county clerk in any county in this state a plat of any village or town site, and such village or town site shall not contain any postoffice, store, or other business house, and the lands upon which the same is situated shall be owned by one or more persons, the county commissioners of the county in which such village or town site is situated may, upon petition of the persons owning all the real estate occupied by such village, upon such conditions as may be reasonable, vacate the lots, streets and alleys, parks and boulevards, in such village or town site, and the designation of such property shall be made by metes and bounds, and the same shall be assessed accordingly.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907.

5309. Vacation of parks, boulevards, and public places in unincorporated towns. Whenever a petition signed by freeholders, owning at least two-thirds of the property fronting on any street of any unincoporated town site in this state, shall be presented to the board of county commissioners of the county in which such town site is situated, praying said board to vacate any park, boulevard, or other public place, bordering on said street and the adjoining property, and not used for road or highway purposes, which park, boulevard, or public place has been dedicated to public use, such board shall hear said petition, and, if in its judgment it appears to be for the best interests of the public that such petition be granted, it shall, by order of the board, duly entered upon its minutes, declare such park, boulevard, or public place vacated, and thereupon the land included therein shall attach to and become part of the adjoining lots of said town site, and the title thereto pass with conveyance of said lots.

History: Sec. 1, Ch. 60, L. 1907; Sec. 3549, Rev. C. 1907.

Cited or applied as section 3549, Revised Codes, with preceding sections, in Brown v. Foster, 48 Mont. 114, 118, 135 Pac. 993.

CHAPTER 61.

ENTRY OF TOWN SITES ON PUBLIC DOMAIN FOR INCORPORATED CITIES AND TOWNS.

Section 5310. Council to Enter Land in United States Land Office.
5311. Filing Approved Plat.
5312. Survey.
5313. Plat Must Be Made in Duplicate—Contents.
5314. Notice of Survey.
5315. What Dedicated to Public Use.
5316. What Plat Must Show.
5317. Assessment to Pay Expenses.
5318. Claims for Lands.
5319. Deficit in Expenses—Mode of Collection.
5320. Deed to Be Given After Six Months—Adverse Claims.
5321. Mining Claims.
5322. Settlement of Adverse Claims.
5323. Notice of Filing Plat.
5324. Sale of Delinquent Lands.
5325. Redemption.
5326. Unclaimed Lands.
5327. School Lots.
5328. Payment of Expenses—Disposition of Surplus Moneys.
5329. Informality Not to Invalidate.
5330. City or Town Site on School Lands.

5310. Council to enter land in United States land office. It is the duty of the city or town council of any city or town in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any incoporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes of proceedings, at a regular meeting, to authorize the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this article and the intentions of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of congress.

History: En. Sec. 5060, Pol. C. 1895; re-en. Sec. 3493, Rev. C. 1907.

Conclusiveness of decisions of the Land Department as to town sites, see note in L. R. A. 1918D, 621.

Right to change lot lines of occupants after entry under the town site act, see note in 30 L. R. A. (N. S.) 183.

5311. Filing approved plat. The corporate council of every city and town, situated upon the public lands of this state, must, within three months after date of receipt at the United States district land office of the approved plat of the township, embracing the lands upon which the town or city is situated, file in said land office an application in writing, describing the tract of land thus occupied, and thereafter make proof and payment for the tract in the manner required by law.

History: En. Sec. 5061, Pol. C. 1895; re-en. Sec. 3494, Rev. C. 1907.

5312. Survey. The said council must, after the filing of the application, if not previously done, cause a survey to be made by some compe-

tent person of the lands which the inhabitants of said city or town may be entitled to claim under the said act of congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated in any manner to public use, and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said city or town site must be designated on the map, showing the name or names of the possessor or occupants and claimants if other than the occupant of each particular lot and parcel of land; and in case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely.

History: En. Sec. 5062, Pol. C. 1895; re-en. Sec. 3495, Rev. C. 1907.

5313. Plat must be made in duplicate—Contents. A plat thereof must be made in duplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county clerk of the county wherein the city or town is situated, and one must be deposited with the city or town clerk. These plats shall be considered public records, and must each be accompanied with a copy of the field notes, and the county clerk must make a record thereof in a book to be kept by him for that purpose. The said surveyor must number the blocks as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats, field notes, and records.

History: En. Sec. 5063, Pol. C. 1895; re-en. Sec. 3496, Rev. C. 1907.

5314. Notice of survey. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or town site not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in any newspaper or newspapers published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and the council is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

History: En. Sec. 5064, Pol. C. 1895; re-en. Sec. 3497, Rev. C. 1907.

5315. What dedicated to public use. All streets, roads, lanes and alleys, public squares, school lots, cemeteries, commons, parks, and levees, surveyed, marked, and platted on the map of any city or town site, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use by the filing of such city or town plat in the office of the county clerk, and become the property of such

town or city, and be subject to the control of the council or other municipal authority of such town or city.

History: En. Sec. 5065, Pol. C. 1895; re-en. Sec. 3498, Rev. C. 1907.

5316. What plat must show. Such plat must show such matters as are contained in section 4981 of this code, and must be made, kept, and filed in the same manner as provided in section 4988 of this code.

History: En. Sec. 5066, Pol. C. 1895; re-en. Sec. 3499, Rev. C. 1907.

5317. Assessment to pay expenses. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre, and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre, and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not otherwise be improved, or uninclosed, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him into the city or town treasury.

History: En. Sec. 5067, Pol. C. 1895; re-en. Sec. 3500, Rev. C. 1907.

5318. Claims for lands. Every person, company, corporation, or association, claimant of any city or town lot or parcel of land within the limits of such city or town site, must present to the council, by filing the same with the clerk thereof, within six months after the plat has been filed in the office of the county clerk, his, her, or its affidavit, verified in person or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of said city or town site as will fully exhibit the particular lot or parcel of land so claimed, with the abuttals; and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall thereon certify to be due for the assessment mentioned in the preceding section, together with the further sum of five dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this

chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

History: En. Sec. 5068, Pol. C. 1895; re-en. Sec. 3501, Rev. C. 1907.

5319. Deficit in expenses—Mode of collection. If it is found that the amounts hereinbefore specified as assessments and fees for cost and expenses prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in section 5317 of this code; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for is issued.

History: En. Sec. 5069, Pol. C. 1895; re-en. Sec. 3502, Rev. C. 1907.

5320. Deed to be given after six months—Adverse claims. At the expiration of six months after the issuance of such certificate, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, or to his, her, or its heirs, administrator, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this chapter provided concludes the rights of third persons; but such third persons may have their action in the premises to determine their alleged interest in such lands against such grantee, his heirs or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or its assigns, unless such action shall be commenced within two years after such deed shall have been filed for record in the office of the county clerk of the county where such lands are situate. Nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the passage of this code.

History: En. Sec. 5070, Pol. C. 1895; re-en. Sec. 3503, Rev. C. 1907.

5321. Mining claims. Whenever mining claims have been located prior to the passage of this code, and where the same are prior in location to the claim of any occupant for other purposes, such mining rights, according to the metes and bounds so located and claimed, are not in any manner affected by the provisions of this chapter; nor must any sale be made nor any title be conveyed by reason of any sale of such lands so

claimed for mining purposes, until after the occupancy of such mining claims shall have been abandoned by the holders thereof.

History: En. Sec. 5071, Pol. C. 1895; re-en. Sec. 3504, Rev. C. 1907.

Location of mining claim on town site, see note in 7 L. R. A. (N. S.) 796.

5322. Settlement of adverse claims. In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject-matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed in accordance with the facts; but in all other cases of adverse claim the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the city or town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment. In case no such action be commenced within the time herein prescribed, the council must deliver a deed to the party in possession, as provided in this chapter.

History: En. Sec. 5072, Pol. C. 1895; re-en. Sec. 3505, Rev. C. 1907.

5323. Notice of filing plat. The said council must give public notice by advertising for four weeks in any newspaper published in said city or town, and if there be no newspaper published in said city or town, then by publication in some newspaper having the most general circulation in such city or town, and not less than five written or printed notices must be posted within the limits of such city or town site; such notice must state that the plat thereof has been filed in the clerk's office. If any person, company, association, or any other claimant of lands in such city or town, fails, neglects, or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this article, within six months after the filing of said plat, the clerk must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessment certified to by such clerk as due, under this article; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the said council must advertise all such lots and parcels of land for sale, in the same manner as real estate is required to be advertised under execution.

History: En. Sec. 5073, Pol. C. 1895; re-en. Sec. 3506, Rev. C. 1907.

5324. Sale of delinquent lands. At the time of the sale mentioned in the advertisement, the marshal of the city or town must sell all such parcels of land so remaining delinquent at public auction to the highest bidder for cash, at some public place within the limits of the city or town site; and he must give the purchaser at such sale a certificate of his purchase, setting forth therein the description of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed

in the next section; but no sale must be made for less than the whole amount of assessments and the costs of making the sale, which costs shall be divided pro rata among the several parcels offered for sale.

History: En. Sec. 5074, Pol. C. 1895; re-en. Sec. 3507, Rev. C. 1907.

5325. Redemption. At any time within six months after such sale, the original claimant is entitled to redeem such premises by paying to the purchaser, or the clerk of the council for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs or assigns, is entitled to demand and receive from the council a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs or assigns, to writ of assistance from the district court having jurisdiction of the premises.

History: En. Sec. 5075, Pol. C. 1895; re-en. Sec. 3508, Rev. C. 1907.

5326. Unclaimed lands. If there be any unoccupied or vacant unclaimed lands within the limits of such city or town site, the council must cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, schoolhouse lots, parks, and levees, and cause all necessary roads, streets, lanes, and alleys to be laid out through the same and dedicated to public use; and the council may sell the same in suitable parcels to possessors of adjoining lands or to other persons of said town at a price not less than five dollars per acre or fraction of an acre; and in case two or more claimants apply for the same tract, or parcel of the same tract, they must sell the same by auction to the highest bidder. If any such lands remain unsold at the end of six months after the filing of the town plat, the council has power to sell such vacant lands at public or private sale in such manner and on such terms as they may deem advisable for the best interests of the town, and shall give deeds therefor to the several purchasers.

History: En. Sec. 5076, Pol. C. 1895; re-en. Sec. 3509, Rev. C. 1907.

5327. School lots. All school lots and parcels of land reserved for school purposes must be conveyed to the school trustees of the school district in which such city or town is situate, without cost or charge of any kind whatever.

History: En. Sec. 5077, Pol. C. 1895; re-en. Sec. 3510, Rev. C. 1907.

5328. Payment of expenses—Disposition of surplus moneys. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter are a charge upon the city or town treasury of each particular city or town ordering the work to be done, to be paid out of the treasury, upon the order of the council; and all moneys paid for lands or to defray the expenses of carrying into effect the provisions of this chapter shall be paid into the city or town treasury by the officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be paid into the general fund.

History: En. Sec. 5078, Pol. C. 1895; re-en. Sec. 3511, Rev. C. 1907.

5329. Informality not to invalidate. No mere informality, failure, or omission on the part of any of the persons or officers named in this chapter

invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this chapter is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed.

History: En. Sec. 5079, Pol. C. 1895; re-en. Sec. 3512, Rev. C. 1907.

5330. City or town site on school lands. When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title and purchase the same from the state and dispose of the same in the manner provided in this chapter for the disposing of lands purchased from the United States.

History: En. Sec. 5080, Pol. C. 1895; re-en. Sec. 3513, Rev. C. 1907.

CHAPTER 62.

ENTRY OF TOWN SITES ON PUBLIC DOMAIN FOR UNINCORPORATED CITIES AND TOWNS.

Section 5331. District Judge to Enter at Land Office.
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5331. District judge to enter at land office. It is the duty of the judge of the district court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situated in the county of such district judge, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and the

regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven," and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of congress.

History: En. Sec. 5100, Pol. C. 1895; re-en. Sec. 3514, Rev. C. 1907.

Note.—For earlier acts, see sections 2011 to 2030, Fifth Division Complied Statutes 1887.

In this section there is a distinct recognition of a town as an entity without incorporation or municipal charter. State ex rel. Powers v. Dale, 47 Mont. 227, 229, 131 Pac. 670, Ann. Cas. 1914D, 227.

5332. Estimate of expenses. The district judge of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any unincorporated town, whose names appear upon the assessment roll for the year preceding such application —which petition shall set forth the existence, name, and locality of such town; whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands the quarter-sections or lesser subdivisions covered thereby must be stated; the estimated number of its inhabitants; the number of separate lots or parcels of land within such town site, and the amount of land to which they are entitled under said act of congress— must estimate the cost of entering such land, and of the survey and recording of the same, and must indorse such estimate upon said petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said district judge may cause an enumeration of the inhabitants of such town to be made by some competent person, who must be appointed for that purpose by such judge; and such enumeration must be returned by the person making the same, exhibiting therein names of all the heads of families and occupants of lots, lands, or premises within such town site, alphabetically arranged, verified by his oath, to the judge.

History: En. Sec. 5101, Pol. C. 1895; re-en. Sec. 3515, Rev. C. 1907.

5333. Survey of lands. The judge must thereupon cause a survey to be made by some competent person of the lands which the inhabitants of said town may be entitled to claim under the said act of congress, located according to the legal subdivision of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments. Such surveys must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, levees, or parks, cemeteries, and commons, as the same exist, and have been heretofore dedicated in any manner to public use; and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association, within said town site, must be designated on the plat, showing the name or names of the possessor or occupant and claimant, if other than the occupant, of each particular lot and parcel of land. In case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor,

if the same be demanded by any person, shall designate the lines (in different color from the body of the plat) of such part of any premises so disputed or claimed adversely. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which shall be duly certified under oath by the surveyor, one of which shall be filed with the county clerk of the county wherein the town is situated, one must be deposited with the judge, and one must be deposited with the justice of the peace resident in or nearest to such town.

History: En. Sec. 5102, Pol. C. 1895; re-en. Sec. 3516, Rev. C. 1907.

5334. Plats as public records—Contents of plats. These plats are public records, and must be accompanied with a copy of the fieldnotes, and the county clerk shall make a record thereof in a book to be kept by him for that purpose. The surveyor must number the blocks, as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town site surveyed as herein provided, which said numbers are a sufficient description of any parcel of land in said plat when mentioned by reference to such town plats.

History: En. Sec. 5103, Pol. C. 1895; re-en. Sec. 3517, Rev. C. 1907.

5335. Notice of survey to be given. Before proceeding to make such survey, at least ten day's notice must be given by the judge, by posting within the limits of such town site not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in a newspaper published in such town, if one there be. The survey of said town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and the said judge is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

History: En. Sec. 5104, Pol. C. 1895; re-en. Sec. 3518, Rev. C. 1907.

5336. What dedicated to public use. All streets, roads, lanes, and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked, and platted on the map of any town site, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county clerk, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becames incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city.

History: En. Sec. 5105, Pol. C. 1895; re-en. Sec. 3519, Rev. C. 1907.

In this section there is a distinct recognition of a town as an entity without incorporation or municipal charter. State ex rel. Powers v. Dale, 47 Mont. 227, 229, 131 Pac. 670, Ann. Cas. 1914D, 227.

5337. What plat must show. Such plat must show the same matters as are contained in section 4981 of this code, and must be made, filed and kept in the same manner as prescribed in section 4988 of this code.

History: En. Sec. 5106, Pol. C. 1895; re-en. Sec. 3520, Rev. C. 1907.

5338. Assessment for expenses. Each lot or parcel of said land having thereon valuable improvements, or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, must be rated and assessed by the judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, must be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre, and not exceeding one-quarter of an acre in area, must be rated and assessed at the sum of two dollars; and each lot and parcel of such lands exceeding one-quarter of an acre, and not exceeding one-half of one acre in area, must be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half an acre in area must be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land inclosed, which may not be otherwise improved, or uninclosed, claimed by any persons, corporation, or association, must be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there are two or more separate buildings, occupied or used ordinarily as dwellings, or for business purposes, each such building, for the purposes of this section, is considered as standing on a separate lot of land, but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said town lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry, and purchase, and the costs and expenses attendant upon the making of such survey and recording thereof.

History: En. Sec. 5107, Pol. C. 1895; re-en. Sec. 3521, Rev. C. 1907.

5339. Disposition of surplus funds. Any sum of money remaining, after defraying all the necessary expenses of location, entry, surveying, platting, and recording of lands, and the expenses of the judge hereinafter mentioned, must be deposited in the county treasury, to the credit of the fund of each particular town, and kept separate by the county treasurer, to be paid out by him only on the written order of such judge, until after the expiration of the time for a final settlement of the affairs of such town lands, as hereinafter provided, at which time any and all balances of moneys so remaining to the credit of each town shall be transferred by such county treasurer to the school fund of the particular school district in which said town is situated.

History: En. Sec. 5108, Pol. C. 1895; re-en. Sec. 3522, Rev. C. 1907.

5340. Claimants to make affidavits. Every person, corporation, or association, claimant of any town lot or parcel of land within the limits of such town site, must present to the judge, within six months after the plat has been filed in the office of the county clerk, his, her, or its affidavit, verified in person, or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof, as against all other persons, to the best of his knowledge and belief, to

which must be attached a copy of so much of the plat of the town site as will fully exhibit the particular lot or parcel of land so claimed, with the abuttals; and every such claimant, at the time of filing such affidavit, must pay to such judge such sum of money as such judge shall thereon certify to be due for the assessment mentioned in section 5338 of this code, together with the further sum of five dollars, to be appropriated to the payment of the expenses incurred in carrying out the provisions of this chapter, and the judge must thereupon give to such claimant a certificate containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The judge must procure a bond book for each town in his county, wherein he must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

History: En. Sec. 5109, Pol. C. 1895; re-en. Sec. 3523, Rev. C. 1907.

5341. Additional assessments to pay expenses. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the judge must estimate the deficiency, and assess such deficiency pro rata upon all the lots and parcels of lands in such town, and declare the same upon the basis set down in section 5338 of this code, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for is issued.

History: En. Sec. 5110, Pol. C. 1895; re-en. Sec. 3524, Rev. C. 1907.

5342. Deeds to be delivered in six months—Adverse claims. At the expiration of six months after the issuance of the certificate mentioned in the preceding section, if there has been no adverse claim filed in the meantime, the judge must make, execute, acknowledge, and deliver to each claimant or to his, her, or its heirs, administrators, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed. No conveyance of any such lands, made as in this chapter provided, concludes the rights of third persons; but such third persons may have their actions in the premises to determine the alleged interest in such lands against such grantee, his heirs, or assigns, to which they may deem themselves entitled either in law or equity. No action for the recovery of the possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or its assigns, unless such action is commenced within two years after such deeds have been filed for record in the office of the county clerk of the county where such lands are situated. Nothing herein must be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate when such action is barred by law at the time of the passage of this code.

History: En. Sec. 5111, Pol. C. 1895; re-en. Sec. 3525, Rev. C. 1907.

5343. Mining claims. Whenever mining claims have been located and held bona fide for mining purposes, such mining rights, according to the metes and bounds located and claimed, must not in any manner be affected by the provisions of this chapter; nor must any sale be made nor any title be conveyed by reason of any sale or pretended sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims has been abandoned by the holders thereof.

History: En. Sec. 5112, Pol. C. 1895; re-en. Sec. 3526, Rev. C. 1907.

5344. Adverse claims—Actions for possession. In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the judge by an agreement in writing, specifying particularly the subject-matter in dispute, and may agree that his decision shall be final; in which case the said judge may hear the proofs, and must execute a deed in accordance therewith; but in all other cases of adverse claim, the party out of possession must commence his action in a court of competent jurisdiction within six months after the filing of the town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the judge, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the judge must execute and deliver a deed of such premises in accordance with the judgment. In case no such action is commenced within the time herein prescribed, the judge must deliver his deed to the party in possession, as provided in section 5342 of this code.

History: En. Sec. 5113, Pol. C. 1895; re-en. Sec. 3527, Rev. C. 1907.

5345. Notice of filing plat. The judge must give public notice, by advertisement, for four weeks in some newspaper published in the county, if one there be, and if there be no newspaper published in said county, then by not less than five written or printed notices posted within the limits of such town site, that the plat thereof has been filed in the county clerk's office; and if any person, company, or association, or other claimants of lands in such town, fails, neglects, or refuses to make application to the judge for a deed, and to pay the sum specified, within six months after the filing of said plat, the judge must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessments certified to by such judge as due under section 5338 of this code; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the judge must advertise all such lots and parcels of land for sale in the same manner as real estate is required to be advertised under execution.

History: En. Sec. 5114, Pol. C. 1895; re-en. Sec. 3528, Rev. C. 1907.

5346. Sale of delinquent lands. At the time of sale mentioned in said advertisement, the judge must sell all such parcels of land so remaining delinquent, by public auction, to the highest bidder for cash, at some

public place within the limits of said town site; and he must give to the purchaser at such sale a certificate of his purchase, setting forth therein a description of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the next section; but no sale must be made for less than the whole amount of assessments, and the costs of making the sale, which costs must be divided pro rata among the several parcels offered for sale.

History: En. Sec. 5115, Pol. C. 1895; re-en. Sec. 3529, Rev. C. 1907.

5347. Redemption. At any time within six months after such sale, the original claimant is entitled to redeem such premises by paying to the purchaser, or to the judge for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs, or assigns, is entitled to demand and receive from the judge a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs, or assigns, to a writ of assistance from the district court having jurisdiction of the premises.

History: En. Sec. 5116, Pol. C. 1895; re-en. Sec. 3530, Rev. C. 1907.

5348. Laying out and sale of unoccupied or unclaimed lands. If there be any unoccupied or vacant unclaimed lands within the limits of such city or town site, the judge may cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, schoolhouse lots, parks and levees, and cause all necessary roads, streets, lanes, and alleys to be laid out through the same and dedicated to public use; and the judge may sell the same in suitable parcels to possessors of adjoining lands residing thereon, or to other persons, at a price not less than ten dollars per lot; and in case two or more claimants apply for the same lot or lots, he must sell the same by auction to the highest bidder for cash. If any such lots remain unsold at the end of six months after the filing of the town plat, the said judge must sell said unclaimed lots, on application, at public auction to the highest bidder for cash, and give deeds therefor to the several purchasers; but, nevertheless, the judge may sell and he is hereby empowered to sell and execute deeds for any unoccupied, vacant, and unsurveyed portions of a town site, without first causing the same to be surveyed or platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided, whenever it shall be made to appear to the judge, by a written application to purchase the same, established by evidence that the unsurveyed portions of the town site sought to be purchased are irregular and fragmentary strips or pieces of land within the exterior boundaries of the town site, and that they are unoccupied and vacant, and that it would be an unnecessary expense and impracticable to cause the same to be first surveyed or platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided; and the sale of such unoccupied, vacant, and unsurveyed portions of a town site shall be conducted, as near as may be, in the manner provided for the sale of town lots, except that the price to be paid for any one irregular, fragmentary, unoccupied, vacant, and unsurveyed portion of a town site shall not be less than one

hundred dollars; and all deeds heretofore executed by the judge who has sold and conveyed irregular, fragmentary, unoccupied, vacant, and unsurveyed portions of a town site are hereby confirmed and made lawful, valid, and effectual as if such, or any, unsurveyed portion of the town site had first been surveyed and platted into blocks, lots, roads, streets, and alleys, or otherwise subdivided.

History: En. Sec. 5117, Pol. C. 1895; amd. Sec. 1, Ch. 99, L. 1903; amd. Sec. 1, Ch. 130, L. 1907; re-en. Sec. 3531, Rev. C. 1907; amd. Sec. 1, Ch. 22, L. 1911.

Cited or applied as section 5117, Political Code, before amendment, in State ex rel. Hicklin v. Webster, 28 Mont. 104, 109, 72 Pac. 295.

5349. School lots. All school lots and parcels of land reserved for school purposes, as aforesaid, by order of the judge, must be conveyed to the school trustees of the school district in which such town is situate, without cost or charge of any kind whatever.

History: En. Sec. 5118, Pol. C. 1895; re-en. Sec. 3532, Rev. C. 1907.

5350. Vacancy in office of judge. In case a vacancy occurs from any cause in the office of district judge during the pendency of any of the proceedings to be taken under this chapter, upon the election or appointment of a successor, it is the duty of the county clerk to make out a certificate, under seal, showing the facts and name of such successor, and file the same in his office, and record such certificate in a book of deeds, and attach the original to the town site book in his office.

History: En. Sec. 5119, Pol. C. 1895; re-en. Sec. 3533, Rev. C. 1907.

5351. Clerical work must be performed by clerk of district court. All the clerical work under this chapter must be performed by the clerk of the district court, and the fees received therefor paid into the county treasury.

History: En. Sec. 5120, Pol. C. 1895; re-en. Sec. 3534, Rev. C. 1907.

5352. Accounts of judge. Every district judge, when fulfilling the duties imposed upon him by the act of congress aforesaid and by this chapter, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the county treasurer of his county, and at the end of one year from the time when the town plat of any town is filed in the county clerk's office, he must settle up all the affairs pertaining to said town, and pay over to the county treasurer all moneys belonging to said town, for the use and benefit of the school district in which said town may be situate. If any claims to lands in such town are the subject of litigation, the same must be finally settled by such judge whenever the final judgment has been rendered.

History: En. Sec. 5121, Pol. C. 1895; re-en. Sec. 3535, Rev. C. 1907.

5353. Deposit of books with county clerk. Whenever the affairs of any such town shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of his county, to be thereafter kept in the custody of the county clerk as public records.

History: En. Sec. 5122, Pol. C. 1895; re-en. Sec. 3536, Rev. C. 1907.

5354. Informalities or irregularities not to invalidate—Legalizing deeds. No mere informality, failure, or omission, on the part of any person or officer named in this chapter, invalidates the acts of such person or officer, but every certificate or deed granted to any person, pursuant to the provisions of this chapter, is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed. And if the original or first deed executed by the district judge granting and conveying any lot or lots be lost or destroyed, or cannot be found, and if such deed or deeds so executed have not been recorded in the office of the county clerk of the county in which the property is situated, the district judge shall, upon written application stating the facts, execute and deliver another deed or deeds, as the case may be, to the purchaser of such lot or lots, or to his heirs or grantees, upon a showing sustained by evidence satisfactory to the district judge that the original or first deed or deeds were executed and have been lost or destroyed, or cannot be found, and have not been recorded; and all deeds heretofore executed by the district judge in lieu of the original or first deed or deeds, which have been lost or destroyed, or which could not be found, and which have not been recorded in the office of the county clerk of the county in which the property is situated, are hereby legalized, confirmed, and made valid and effectual, as if such deed or deeds were the original, first, and only deed or deeds executed therefor.

History: En. Sec. 5123, Pol. C. 1895; re-en. Sec. 3537, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1911.

5355. City or town site on school lands. When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title, and purchase the same from the state, and dispose of the same in the manner provided in this chapter for disposing of lands purchased from the United States.

History: En. Sec. 5124, Pol. C. 1895; re-en. Sec. 3538, Rev. C. 1907.

5356. District judge authorized to execute deeds—Procedure. Whereever an entry has heretofore been made at a land office by a probate court of any county in the territory, now state of Montana, for a tract of land for a town site, under the provisions of an act of congress entitled, "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred sixty-seven, or other and subsequent acts of congress relating to entering lands for town site purposes, and such entry shall have been allowed and patent therefor shall have been issued by the United States to such probate court, or a judge thereof and it shall appear to the district judge of the county in which such town site is situated by a verified petition filed with the clerk of said district court, that no deed has been issued by the probate judge of such county or the district judge thereof as ex-officio probate judge, for any lot or tract of land situated in such town site other than streets, alleys, parks, or school sites, or that a deed for any such lot or tract has been issued, but has not been recorded, and has been lost or cannot be found, the district judge shall set a day for the hearing of said petition, and cause notice thereof to be published in a newspaper published in the county wherein such lands

are situated for four successive weeks, and upon proof of such publication being made, and at such hearing shall examine such petition and claim thereunder, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the district judge shall find that the claimant or claimants is in possession of such lot or tract of land or shall by reference to abstracts of title or other evidence produced in support thereof, find that the title to such lot or tract of land has been derived and deraigned from the person or persons who may have originally entered such lot or purchased the same at a sale thereof, as provided by the laws of the territory of Montana, or the state of Montana, and no conflicting claims shall have been filed, the said district judge shall, upon the payment of the fees originally provided for the issuance of a deed for such lot or lots, proceed forthwith to make and issue to such claimant or claimants a good and sufficient deed for such lot or tract of land.

History: En. Sec. 1, Ch. 9, L. 1919.

5357. Notice of entry. Immediately after such survey and plat have been made, or if a survey and plat have been made previous to the entry according to the provisions of 2013 of this chapter, then immediately after the entry of the lands at the proper land office as provided in 2011 of this chapter (these references are to repealed sections Compiled Statutes 1887), the corporate authorities or the district judge, as the case may be, shall cause a notice to be published in all the newspapers published in such town, or if no newspaper be published in such town, then by advertisement posted up in twelve of the most public places in such town, for at least two months, giving notice of such entry, and requiring every claimant or claimants of any town lot or lots, to file in the office of such incorporate authorities, or in the office of the clerk of the district court of such district judge, in the county in which such town site, is situated, as the case may be, a statement of his or their claims within two months from the date of the first publication of such notice.

Note.—Sections 5357 to 5365 were enacted as sections 1 to 9, pp. 139 to 142, L. 1893; re-enacted as sections 5125 to 5133, Political Code 1895; appearing as sections 3539 to 3547, Revised Codes 1907. The language of section 5527 of this code seems to necessitate the retaining of these sections in the permanent laws of the state, although they appear to be of no practical use in view of the complete procedure provided in sections 5310 to 5330 and 5331 to 5355 of this code.

5358. Statement of claim. Such statement shall be made in writing, signed by the party or parties making the same, and verified by the affidavit of such party or parties, and shall be recorded at length in a well-bound book, to be provided and kept for such purpose by such incorporate authorities or clerk of the district court of such district judge, as the case may be. Such statement shall specify the grounds of such claims, particularly describing the lot or lots claimed, the date, as near as may be, of the occupation of such lot or lots, and by whom; what improvements have been made on such lot or lots, and the value thereof; and that such lot or lots are now actually possessed and occupied by such claimant, or that the right to such occupation is in the claimant, if such lot or lots are occupied by another.

History: Sec. 3540, Rev. C. 1907. See note to Sec. 5357.

5359. Proof of claim. All claimants of any lot or lots in any town site preempted under the provisions of this chapter shall, within six months from and after the expiration of the notice mentioned and provided for in section 5357 of this code, make proof of such claim and of the facts contained in such statement before the corporate authorities aforesaid, or the district judge, as the case may be, and pay the price hereinafter fixed upon such lot or lots, and no proof shall be permitted to be made after the expiration of the time prescribed in this section; provided, that the district judge, at chambers, shall and he is hereby authorized to appoint, by appropriate entry upon the minutes of his court, some suitable person who is a notary public as referee, to hear and take down in writing any and all proof of such claim, and of the facts contained in such statement, and to prepare all deeds to such lot or lots so claimed and proven, and report the same to said district judge, and thereupon it shall be the duty of said district judge to examine the proofs and execute deeds to the claimant or claimants, as provided for in section 5361 of this code.

History: Sec. 3541, Rev. C. 1907. See note to Sec. 5357.

5360. Claimant of three or more lots. The number of lots which any one claimant shall be entitled to preempt, under the provisions of this chapter, shall be two, not exceeding in area four thousand two hundred square feet each, and such additional lot or lots upon which such said claimant may have substantial improvements of the value of not less than two hundred and fifty dollars. When any claimant shall make application to enter more than two lots, he shall prove, in addition to other matters of proof required by this chapter, to the satisfaction of said incorporate authorities or district judge, as the case may be, by the affidavit of one or more reliable witnesses, the nature, character, and actual cash value of the improvements upon such additional lot so sought to be entered by him; provided, said district judge may, and he is hereby authorized to, appoint a referee to take such proof, by affidavit, as provided in this act.

History: Sec. 3542, Rev. C. 1907. See note to Sec. 5357.

5361. Award of lots. The said district judge or corporate authorities, as the case may be, shall proceed to award the lot or lots claimed, as provided for in this chapter, and for that purpose shall, as soon as practicable, and as near as practicable in the order of time of the filing of statements of claims, examine each and every claim, as herein provided, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the same shall be found to comply with the provisions of this chapter, and no conflicting claim shall have been filed, the said district judge or corporate authorities, as the case may be, shall upon payment of the purchase price, as hereinafter prescribed, proceed forthwith to make such claimant or claimants a good and sufficient deed for such lot or lots.

History: Sec. 3543, Rev. C. 1907. See note to Sec. 5357.

5362. Fees of referee. The fees of such referee shall be, in case such claim or claims are not contested, five dollars for taking and reporting

such proofs and preparing such deeds for each town lot, and in contested cases the fees of such referee shall be ten dollars for each lot.

History: Sec. 3544, Rev. C. 1907. See note to Sec. 5357.

5363. Hearing on contest. In all cases where there is a dispute or contest in regard to the right to the deed to any lot or lots, the district judge or corporate authorities, as the case may be, shall hear the testimony relating thereto, at such time as they may fix therefor, and after two days' notice of such time and place of hearing given to each and every contestant, they shall proceed to hear and decide such claims in accordance with the principles of right and justice and the provisions of this chapter; and in case there be no appeal taken from such decision, as hereinafter provided, then after ten days from the rendering of such decision, the said district judge or corporate authorities, as the case may be, shall proceed to make a deed, as provided for in this act, to the person or persons to whom the lot or lots may have been awarded; provided, the corporate authorities or district judge, as the case may be, may adjourn from time to time, as they may deem just, for the fair adjudication of such claim or claims; and provided, further, that said district judge may, and he is hereby authorized to, appoint some suitable person who is a notary public as referee, to hear such contests and take all the proofs in writing and report the same to the district judge, who shall thereupon, and upon such proofs, adjudicate and determine the rights of the parties as herein provided.

History: Sec. 3545, Rev. C. 1907. See note to Sec. 5357.

5364. Appeal. In case any claimant or claimants of any lot or lots which may have been awarded, as provided in section 5361 of this code, shall feel aggrieved by such decision, such claimant or claimants may take an appeal to the district court of the county in which the same is located. Such appeal may be made by filing with the clerk of the district court a notice in writing of such appeal, and a complaint in the matter of an action for the recovery of the possession, or, if the party be in possession, to establish his right to the same; and a copy of such notice and complaint shall be served upon each and all of the parties contesting, and in all respects the pleadings and proceedings thereafter shall be governed by the same rules applicable to actions originally commenced in the district court.

History: Sec. 3546, Rev. C. 1907. See note to Sec. 5357.

5365. Effect of appeal. When a notice of appeal to the district court shall have been filed with the clerk of the district court, the power to make a deed, as provided for in section 5359 of this code, shall be suspended until the appeal is dismissed or finally determined; and upon such dismissal or final determination, such judge or corporate authorities aforesaid shall make a deed to the party found by such determination to be entitled thereto.

History: Sec. 3547, Rev. C. 1907. See note to Sec. 5357.

CHAPTER 63.

COMMISSION FORM OF GOVERNMENT.

Section 5366. Any City May Reorganize Under Commission Form.
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5366. Any city may reorganize under commission form. Any city may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 57, L. 1911.

Cited or applied as chapter 57, Laws of 1911, in Shapard v. City of Missoula, 49 Mont. 269, 280, 141 Pac. 544.

Right to adopt commission form of government, see notes in Ann. Cas. 1912C, 999; Ann. Cas. 1915A, 1217.

Commission form of municipal government, see notes in Ann. Cas. 1917C, 1103, 1125, 1132; Ann. Cas. 1918D, 878.

Constitutionality of commission form of government, see notes in 35 L. R. A. (N. S.) 802; 41 L. R. A. (N. S.) 111; 51 L. R. A. (N. S.) 632; L. R. A. 1917A, 1260.

5367. Submission to electors—Petition and order of election. Upon a petition being filed with the city council, signed by not less than twenty-five per cent. of the qualified electors of such city registered for the last preceding general city election, praying that the question of reorganization under this act be submitted to the qualified electors of such city, said city council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganiza-

tion of such city, under the provisions of this act, shall be submitted to the qualified electors of such city.

Such order of the city council shall specify therein the time when such election shall be held, which must be within ninety days from the date of the filing of such petition.

History: En. Sec. 2, Ch. 57, L. 1911; amd. Sec. 1, Ch. 2, L. 1915.

5368. Proclamation of election. Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called, and the date of holding such special election, which proclamation shall be published for ten consecutive days in each daily newspaper published in said city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such city.

History: En. Sec. 3, Ch. 57, L. 1911.

5369. Ballots—Form. At such election the ballots to be used shall be printed upon plain, white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of ..... the question of reorganization of the city of ..... under chapter (name of chapter containing this act) of the acts of the twelfth legislative assembly," and shall be substantially in the following form:

For reorganization of the city of ..... under chapter (name of chapter containing this act) of the act of the twelfth legislative assembly.

Against reorganization of the city of ..... under chapter (name of chapter containing this act) of the acts of the twelfth legislative assembly.

Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

History: En. Sec. 4, Ch. 57, L. 1911.

5370. Certificate of result of election—No further election for two years. If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder, each, a certificate stating that such proposition was adopted.

If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of two years thereafter.

History: En. Sec. 5, Ch. 57, L. 1911.

5371. Calling of election to elect city officers. If a majority of the votes cast at such election shall be in favor of such proposition, the city council must, at its first regular meeting held thereafter, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which such city shall be entitled, which order shall specify the time of holding such election, which must be within ninety days after

the making of said order, and the mayor shall thereupon issue a proclamation setting forth the purposes for which such special election is called and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such city, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said city, and also in at least ten of the most public places in said city.

History: En. Sec. 6, Ch. 57, L. 1911; amd. Sec. 2, Ch. 2, L. 1915.

5372. Manner of conducting election—Canvassing votes. Such election shall be conducted, the vote canvassed, and result declared in the same manner as provided by law in respect to other city elections.

History: En. Sec. 7, Ch. 57, L. 1911.

5373. Laws governing city—Ordinances—Territorial limits and property. All laws governing cities of the first, second, and third classes, and not inconsistent with the provisions of this act, shall apply to and govern cities organized under this act. All by-laws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this act. The territorial limits of such city shall remain the same as under the former organization, and all rights and property of every description, which were vested in any such city under its former organization, shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided for in this act.

History: En. Sec. 8, Ch. 57, L. 1911.

5374. Number of councilmen—Vacancies, and how filled. In every city of the third class, there shall be a mayor and two councilmen; in every city of the second class, a mayor and two councilmen; in every city of the first class having a population of less than twenty-five thousand, a mayor and two councilmen, and in every city of the first class having a population of twenty-five thousand or more, a mayor and four councilmen, and the mayor and all councilmen shall be elected at large.

If any vacancy shall occur in the office of mayor or councilmen, the remaining members of the council shall, by majority vote, elect a person to fill such vacancy until the next general city election, and if, in filling such vacancy, a tie vote should occur, then the person to fill said vacancy shall be determined by lot in such manner as said council may provide.

History: En. Sec. 9, Ch. 57, L. 1911.

5375. Beginning of term of office. The mayor and councilmen elected at such special election shall qualify, and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this act shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter pro-

vided, shall cease and determine as soon as the council shall by resolution declare.

History: En. Sec. 10, Ch. 57, L. 1911.

5376. Tenure of office—Expiration of term. The terms of office of the mayor and all councilmen elected at such special election shall expire on the first Monday in May of the year following their election. At the first regular city election held in the year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than twenty-five thousand. The mayor elected at such first general city election shall hold office for two years; one of the councilmen elected at such first city election shall hold office for one year; and the other of such councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; a mayor and four councilmen shall be elected in cities having a population of twenty-five thousand or more; and the mayor elected at such first general city election shall hold office for two years. Two of the councilmen elected at such first general city election shall hold office for one year, and the other two of the councilmen elected at such first general city election shall hold office for two years, beginning with the first Monday in May of that year; and the terms of office of the mayor and all councilmen thereafter elected shall be two years.

The councilmen elected at the first general city election shall decide by lot in such manner as they may select, which thereof shall hold the office of councilman the term of which expires one year thereafter, and which thereof shall hold the office of councilman, the term of which expires two years thereafter.

History: En. Sec. 11, Ch. 57, L. 1911.

5377. Nomination of candidates—Primary election. Candidates to be voted for at all general municipal elections at which a mayor or councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nominations shall be held on the second Monday preceding the municipal election. The judges of election appointed for the municipal election shall be the judges of the primary election, and it shall be held at the same places, as far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

Any qualified elector of said city who is the owner of any real estate situated therein, desiring to become a candidate for mayor or concilman, shall, at least ten days prior to said primary election, file with the city clerk a statement of such condidacy in substantially the following form:

State of Montana, }
County of.....} ss.

I, ..., being first duly sworn, say that I reside at.....street, city of....., county of....., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted

upon at the primary election to be held on the.....Monday of....., 19.., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) .....

Subscribed and sworn to (or affirmed) before me by..... .....on this.....day of....., 19...

(Signed) .....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following from:

Petition accompanying nominating statement.

The undersigned, duly qualified electors of the city of ...., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed in the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the.....Monday of ....., 19... We further state that we know him to be a qualified elector of said city and a man of good moral character, and qualified, in our judgment, for the duties of such office.

Names of qualifying electors.	Number.	Street.
.....	.....	.....
.....	.....	.....

Each signer of a nomination paper shall sign but one such nomination paper for the same office, except where more than one officer is to be elected to the same office, in which case he may sign as many nomination papers as there are officers to be elected, and only one candidate shall be petitioned for or nominated in the same nomination paper.

Immediately upon the expiration of the time of filing the statements and petitions for candidates, the said city clerk shall cause to be published for three consecutive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words, "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words, "Vote for (giving the number of persons to be voted for)." The ballot shall be printed upon plain substantial, white paper, and shall be headed:

Candidates for nomination for mayor and councilmen of the city of .....at the

Primary Election;

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form: (Place a cross in the

square preceding the names of the parties you favor as candidates for the respective positions).

Official Primary Ballot.

Candidates for nomination for mayor and councilmen of the city of .....at the

Primary Election.

For Mayor.

(Name of candidate.)

(Vote for one.)

For councilman.

(Name of candidate.)

(Vote for ..... (Giving number to be voted for).

Official ballot attest:

(Signature) .....

City Clerk.

Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election shall be qualified to vote at such primary election and any person offering to vote may be orally challenged by any elector of the city upon any or all of the grounds set forth and specified in section 706 of this code, and the provisions of sections 707 to 714, inclusive, of this code shall apply to all challenges made at such election. Judges of election shall immediately upon the closing of the polls count the ballots and ascertain the number of votes cast in such precinct for each of the candidates for mayor and councilman, and make return thereof to the city clerk upon the proper blanks to be furnished by the city clerk within six hours of the closing of the polls. On the day following the primary election the city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers in said city, at least once, the result thereof. Said canvass by the city clerk shall be publicly made. If a mayor is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for mayor. If one councilman is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for councilmen. If two councilmen are to be elected at such general municipal election, the four persons receiving the highest number of votes shall be the candidates for councilmen, and if three councilmen are to be elected at such municipal election, the six persons receiving the highest number of votes shall be the candidates for councilmen, and if four councilmen are to be elected at such general municipal election, the eight persons receiving the highest number of votes shall be candidates for councilmen at such general election, and these shall be the only candidates for mayor and councilmen at such general election.

All electors of cities under this act, who, by ordinances governing cities incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections

under this act; and the ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable, and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as by law provided for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this act.

Every person who has been declared elected mayor or councilman, shall, within ten days thereafter, take and file with the city clerk his oath of office in the form and manner provided by law, and shall execute and give suffcient bond to the municipal corporation in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the judge of the district court of the county in which such city is situated, and filed with the clerk and recorder of the county in which such city is situated.

History: En. Sec. 12, Ch. 57, L. 1911.

5378. Penalty for working for candidate. Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars or be imprisoned in the county jail not exceeding thirty days.

History: En. Sec. 13, Ch. 57, L. 1911.

5379. Bribery—False answers concerning qualifications of elector—Voting by disqualified person. Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person wilfully voting or offering to vote at such election who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars; and be imprisoned in the county jail not less than ten nor more than ninety days.

History: En. Sec. 14, Ch. 57, L. 1911.

5380. City to be governed by mayor and councilmen—Right to vote. Every city shall be governed by a mayor and councilmen, as provided in section 5374 of this code, each of whom shall have the right to vote on all questions coming before the council.

History: En. Sec. 15, Ch. 57, L. 1911.

5381. Quorum of councilmen—Recording votes and proceedings. In cities having a mayor and two councilmen, the mayor and one councilman or two councilmen shall constitute a quorum; and the affirmative vote of the mayor and one councilman, or the affirmative vote of two councilmen, shall be necessary to adopt or reject any motion, resolution, or ordinances, or pass any measure, unless a greater number is provided for in this act.

In cities having a mayor and four councilmen, the mayor and two councilmen, or three councilmen, shall constitute a quorum, and the affirmative vote of the mayor and two councilmen, or the affirmative vote of three councilmen, shall be necessary to adopt or reject any motion, resolution, or ordinances, or pass any measure, unless a greater number is provided for in this act.

Upon every vote the ayes and nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

History: En. Sec. 16, Ch. 57, L. 1911.

5382. Rights and powers of mayor—Approval of measures. The mayor shall preside at all meetings of the council; he shall have the same power to vote as other members of the council; he shall have no power to veto any measure; but every resolution or ordinance passed by the council must be signed by the mayor, or by two councilmen, and must be recorded before the same shall be in force.

History: En. Sec. 17, Ch. 57, L. 1911.

5383. Powers of council—Departments of government. The council shall have and possess and the council and its members shall exercise all executive, legislative, and judicial powers and duties now had, possessed, and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of water-works trustees, board of library trustees, attorney, assessor, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws.

The executive and administrative powers, authority, and duties in such cities shall be distributed into and among departments as follows:

In cities having a mayor and two councilmen, into three departments—

1. A department of accounts, finance, and public property;
2. A department of public safety and charity;
3. A department of streets, public improvements, and parks.

In cities having a mayor and four councilmen, into five departments—

1. A department of public affairs;
2. A department of accounts and finance;
3. A department of public safety and charity;
4. A department of street and public improvements;
5. A department of parks and public property.

The council shall determine the powers and duties to be performed by each department of the city; shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such rules

and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

History: En. Sec. 18, Ch. 57, L. 1911.

5384. Supervisory powers of mayor and councilmen—Election and removal of officers—Police judge. In cities having a mayor and two councilmen, the mayor shall be superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four aldermen, the mayor shall be superintendent over the department of public affairs, and the mayor shall have general supervision over all departments of the city and over all matters connected with said city, and the council shall, at its first regular meeting after the election of its members, designate, by majority vote, one councilman to be superintendent over each department of the city, but such designation may be changed whenever it appears that the public service would be benefited thereby.

The council shall at its first regular meeting after the election of its members, or as soon thereafter as practicable, elect by majority vote the following officers: A city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and such other officers and assistants as shall be provided for by ordinance, and which may be necessary to the proper and efficient conduct of the affairs of the city; provided, however, that the council, may, by ordinance, consolidate any of the offices the election to which is made by the council, and may require any officer elected by the council to perform the duties of any other officer; and shall appoint a police judge with the authority now conferred by existing laws. Any officer or assistant, elected or appointed by the council, may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this act.

History: En. Sec. 19, Ch. 57, L. 1911.

5385. Creation or discontinuance of other offices—Compensation. The council shall have power from time to time to create, fill, and discontinue offices and employment other than herein prescribed, according to their judgment of the needs of the city, and, by majority vote of all the members, remove any such officer or employee except as otherwise provided for in this act; and may, by resolution or otherwise, prescribe, limit, or change the compensation of such officers or employees.

History: En. Sec. 20, Ch. 57, L. 1911.

5386. Place of office of councilmen—Salaries and compensation. The council shall have their office at the city hall, and their total compensation shall be as follows: In cities of the third class having a population of less than three thousand, the annual salary of the mayor shall be six hundred dollars, and the annual salary of each councilman shall be five hundred dollars; in cities of the third class having a population of three thousand or more, the annual salary of the mayor shall be one thousand dollars, and the annual salary of each councilman shall be nine hundred dollars; in cities of the second class, the annual salary of the mayor shall be one thousand six hundred and fifty dollars, and the annual salary of

each councilman shall be one thousand five hundred dollars; in cities of the first class having a population of less than thirty thousand, the annual salary of the mayor shall be three thousand dollars, and the annual salary of each councilman shall be two thousand five hundred dollars; in cities of the first class having a population of thirty thousand and less than fifty thousand, the annual salary of the mayor shall be four thousand dollars, and the annual salary of each councilman shall be three thousand dollars; and in cities of the first class having a population of fifty thousand or more, the annual salary of the mayor shall be four thousand five hundred dollars, and the annual salary of each councilman shall be three thousand five hundred dollars.

Any increase in salary occasioned by the advance in class or increase in population of any city shall commence with the month next after the official publication of the census showing such advance in class or increase in population.

Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

The salary or compensation of all other employees of such city shall be fixed by the council, and shall be payable monthly, or at such shorter periods as the council shall determine.

History: En. Sec. 21, Ch. 57, L. 1911.

5387. Meetings of council—Vice-president. Regular meetings of the council shall be held on the first Monday after the election of councilmen, and thereafter at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen. All meetings of the council, whether regular or special, at which any person not a city officer is admitted, shall be open to the public.

The mayor shall be president of the council and shall preside at its meetings, and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for vice-president of the council, and in case of a vacancy in the office of mayor, or the absence or inability of the mayor, he shall perform the duties of the mayor.

History: En. Sec. 22, Ch. 57, L. 1911.

5388. Ordinances and franchises—How adopted or granted. Every ordinance or resolution appropriating money, or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges, or public places in any such city shall be granted, renewed, or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas, or water-works, electric light, or power plant, heating plant, telegraph or telephone systems, or

other public service utilities, or renewal or extension of any such franchise or grant within such city, must be authorized or approved by a majority of the electors voting thereon at a general or special election, as provided in sections 5075, 5076, and 5077 of this code.

History: En. Sec. 23, Ch. 57, L. 1911.

The fact that a city has adopted the commission form of government does not render an ordinance or resolution, enacted as in this section directed, any the less indispensable as a part of the proceedings for the creation of an improvement district. Shapard v. City of Missoula, 49 Mont. 269, 280, 141 Pac. 544.

5389. Officers not to be interested in contracts, receive passes, or do electioneering. No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or materials, supplies, or services to be furnished or performed for the city; and no such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gas-works, water-works, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city, any interurban railway, street railway, gas-works, water-works, electric light or power plant, heating plant, telegraph line, or telephone exchange, or other business using or operating under a public franchise, any frank, free pass, free ticket, or free service, or accept or receive, directly or indirectly, from any such person, firm, or corporation, any other service upon terms more favorable than is granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor, and every such contract and agreement shall be void.

Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views, or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

History: En. Sec. 24, Ch. 57, L. 1911.

5390. Civil service. Immediately after organizing, the council shall, by ordinance, appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after his appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for six years, who shall take the place of a commissioner whose term of office expires. The chairman of the commission for each

biennial period shall be the member whose term first expires. No person while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than three years next preceding their appointment.

The council may remove any of said commissioners during their term of office for cause, a majority of councilmen voting in favor of such removal, and shall fill any vacancy that shall occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission shall hold its meetings; it shall have a clerk, who shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

Before entering upon the duties of his office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, and to obey the laws, and to aid to secure and maintain an honest and efficient force, free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

Said commission shall, on the first Monday of April and October of each year, or oftener if it shall be deemed necessary, under such rules and regulations as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical, and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who, according to the records, have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service, prior to the date of the next regular examination, shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed thirty days.

All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules and regulations as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall, within twenty-four hours thereafter, report such suspension or discharge, and the reason therefor, to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension, according to the facts. Such employee (or the officer discharging or suspending him) may, within five days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

The council shall have the power to enforce the attendance of wit-

nesses, the production of books and papers, and power to administer oaths in the same manner and with like effect, and under the same penalties, as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

Said commissioners shall make an annual report to the council, and it may require a special report from said commissioners at any time; and said council may prescribe such rules and regulations for the proper conduct of the business of the said commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and restrictions on payment to persons improperly employed.

The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this act relating to the civil service commission.

The provisions of this section shall apply to all appointive officers and employees of such city, except those especially named in section 5384 of this code, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed.

All officers and employees in any said city shall be elected or appointed with reference to their qualifications and fitness, and for the good of the public service, and without reference to their political faith or party affiliations.

It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

Every elective officer in any such city shall, within thirty days after qualifying, file with the city clerk, and publish at least once in the daily newspaper of general circulation, or weekly, if there be no daily newspaper published, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section shall be a misdemeanor, and give ground for the removal from office.

History: En. Sec. 25, Ch. 57, L. 1911.

5391. Publication of report by council—Examination of accounts. The council shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the daily newspapers of the city, and to the persons who shall apply therefor at the office of the city clerk. At the end of each year the council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publication of statements of monthly expenditure.

History: En. Sec. 26, Ch. 57, L. 1911.

5392. Revision of appropriations made by former council. If, at the beginning of the term of office of the first council elected in such city

under the provisions of this act, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal, or change said appropriations, and to make additional appropriations.

History: En. Sec. 27, Ch. 57, L. 1911.

5393. Rules for construction of law—Definition of terms. In the construction of this act the following rules shall be observed, unless such construction would be inconsistent with the manifest intent, or repugnant to the context of the statute;

1. The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this act;

2. When an office or officer is named in any law referred to in this act, it shall, when applied to cities under this act, be construed to mean the office or officer having the same function or duties under the provisions of this act, or under ordinances passed under authority thereof;

3. The words "franchise" or "right" shall include every special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, which does not belong to citizens generally by common right;

4. The word "electors" shall be construed to mean persons qualified to vote for elective offices at regular municipal elections.

History: En. Sec. 28, Ch. 57, L. 1911.

5394. Recall of elective officers. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five per cent. of all qualified electors registered for the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of such paper shall make oath before an officer competent to administer oaths that the statements therein are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If

the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than seventy days nor more than eighty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other elections.

As far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk, at least ten days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to a vote at said special election, equal in number to at least ten per cent. of the entire number of persons registered to vote at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in section 5377 of this code, so far as the same is applicable, substituting the word "special" for the word "primary" in such statement and petition, and stating therein that such person is a candidate for election instead of nomination. The ballot for such special election shall be in substantially the following form:

Official Ballot.

Special election for the balance of the unexpired term of.....
as ..... for .....

(Vote for one only.)

(Name of candidates.)

Name of present incumbent.

Official ballot attest.

(Signature),.....,
City Clerk.

The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon the qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of the election, the office shall be deemed vacant. If the incumbent receive the highest number of votes, he shall continue in office. The said method of removal shall be cumulative, and additional to the methods heretofore provided by law.

History: En. Sec. 29, Ch. 57, L. 1911; amd. Sec. 3, Ch. 2, L. 1915.

5395. Ordinance—How submitted—Petition and election. Any proposed ordinance may be submitted to the council by petition signed by electors of the city equal in number to the percentage hereinafter required. The signature, verification, inspection, certification, amendment, and submission of such petition shall be the same as provided for petition under

the preceding section. If the petition accompanying the proposed ordinance be signed by electors equal in number to twenty-five per centum of the entire number of persons registered to vote at the last preceding general election, and contains a request that the said ordinance be submitted to a vote of the people, if not passed by the council, such council shall either:

(a) Pass each ordinance without alteration within twenty days after the attachment of the clerk's certificate to the accompanying petition; or,

(b) Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless a general municipal election is fixed by law within thirty days thereafter, and at such special or general municipal election, if one is so fixed, such ordinance shall be submitted to the vote of the electors of such city.

But if the petition is signed by not less than ten nor more than twenty-five per centum of the electors, as above defined, then the council shall, within twenty days, pass said ordinance without change, or submit the same at the next general city election occurring after the clerk's certificate of sufficiency is attached to said petition.

The ballots used when voting upon said ordinance shall contain these words: "For the ordinance" (stating the nature of the proposed ordinance), and "Against the ordinance" (stating the nature of the proposed ordinance). If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by the petition of which shall be adopted by a vote of the people cannot be repealed or amended except by a vote of the people.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section; but there shall not be more than one special election in any period of six months for such purposes.

The council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this act to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in each of the daily newspapers published in such city, and if there be none, then one time in each weekly newspaper published therein; such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

History: En. Sec. 30, Ch. 57, L. 1911.

5396. Taking effect and suspension of ordinances. No ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this act, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency, and is passed by a two-thirds vote of the council, shall go into effect before ten days from the time of its final passage; and

if, during said ten days, a petition signed by electors of the city equal in number to at least twenty-five per centum of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of such ordinance, be presented to the council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance; and if the same is not entirely repealed, the council shall submit the ordinance, as is provided by subdivision (b) of the preceding section, to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of the preceding section, except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided.

History: En. Sec. 31, Ch. 57, L. 1911.

5397. Abandonment of commission form. Any city which shall have operated for more than one year under the provisions of this act may abandon such organization hereunder and accept the provisions of the general law of the state then applicable to cities of its population.

Upon the petition of not less than twenty-five per cent. of the electors of such city registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the city of (name the city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population; or if formerly organized under special charter shall resume said special charter?"

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such city, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided for by section 5394 of this code, in so far as the provisions thereof are applicable; or if now organized under special charter, may resume said special charter. Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question shall not be submitted again for a period of two years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of two years.

History: En. Sec. 32, Ch. 57, L. 1911; amd. Sec. 1, Ch. 128, L. 1913.

5398. Petition for abandonment. Petition provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house

number in which the petitioner resides, his age, and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

History: En. Sec. 33, Ch. 57, L. 1911.

5399. Effect of act upon existing laws. All acts and parts of acts, and all laws, not inconsistent with any of the provisions of this act, now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect, and shall be considered and construed as not repealed by this act, except in so far as the same may be in conflict or inconsistent with the provisions of this act.

History: En. Sec. 34, Ch. 57, L. 1911.

CHAPTER 64.

COMMISSION-MANAGER PLAN OF GOVERNMENT.

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5519. Property Vests in New Municipality—Improvements Payable by Special Assessments—Unpaid Indebtedness of Old Municipalities.
5520. Rental of County Buildings—Contracts With County Commissioners for Work—Rate of Compensation.

5400. Any city may reorganize under commission-manager form. Any municipality may abandon its organization and reorganize under the provisions of this act, by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 152, L. 1917.

5401. Submission of question to electors—Petition and order of election. Upon a petition being filed with the city or town council, signed by not less than twenty-five per cent. of the qualified electors of such municipality registered for the last preceding general municipal election, praying that the question of reorganization under this act be submitted

to the qualified electors of such municipality, said city or town council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this act shall be submitted to the qualified electors of such municipality.

Such order of the city or town council shall specify therein the time when such election shall be held, which must be within ninety days from the date of filing of such petition.

History: En. Sec. 2, Ch. 152, L. 1917.

5402. Proclamation of election. Upon the city or town council ordering such special election to be held, the mayor of such municipality shall issue a proclamation setting for the purpose for which such special election is held, and the date of holding such special election, which proclamation shall be published for ten consecutive days in each daily newspaper published in said municipality, if there be such, otherwise once a week for two consecutive weeks in each weekly newspaper published therein, and such proclamation shall also be posted in at least five public places within such municipality.

History: En. Sec. 3, Ch. 152, L. 1917.

5403. Ballots—Form. At such election, the ballots to be used shall be printed on plain white paper, and shall be headed "Special election for the purpose of submitting to the qualified electors of (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteen legislative assembly," and shall be substantially in the following form:

For reorganization of the (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteen legislative assembly.

Against reorganization of the (city, town) of (name of city or town) under chapter (name of chapter containing this act) of the acts of the fifteenth legislative assembly.

Such election shall be conducted, and vote canvassed and result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 4, Ch. 152, L. 1917.

5404. Certificate of result of election—No further election for two years. If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder, each, a certificate stating that such proposition was adopted.

If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of two years thereafter.

History: En. Sec. 5, Ch. 152, L. 1917.

5405. Calling of election to elect commissioners. If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within two weeks thereafter, and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall

be entitled, which order shall specify the time of holding such election which must be within ninety days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the purpose for which such special election is held and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such municipality, if there be such, otherwise for two successive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said municipality, and also in five of the most public places in said municipality.

History: En. Sec. 6, Ch. 152, L. 1917.

5406. Manner of conducting election—Canvassing votes. Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 7, Ch. 152, L. 1917.

5407. Laws governing city—Ordinances—Territorial limits and property. All laws governing municipalities of like population, and not inconsistent with the provisions of this act, shall apply to and govern municipalities organized under this act. All by-laws, ordinances, and resolutions lawfully passed and in force in any such municipality under its organization, not in conflict herewith, shall remain in force until altered or repealed by the commission under the provisions of this act. The territorial limits of such municipality shall remain the same as under the former organization, and all rights and property of every description which were vested in any such municipality under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind, shall be affected by such change, unless otherwise provided for in this act.

History: En. Sec. 8, Ch. 152, L. 1917.

5408. Organization of communities or groups of communities as municipality—Election proclamation—Election of commissioners. Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part, or unincorporated, which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall desire to be organized into or annexed to an incorporated city or town under the provisions of this act, the board of county commissioners of such county may, or upon the presentation of a petition signed by not less than twenty-five per cent. of the qualified electors in such community or group of communities must, issue a proclamation ordering a special election to be held, at which election the question of the organization of such community or group of communities as a municipality under the provisions of this act shall be submitted to the qualified electors within the proposed municipal district. Said proclamation shall specify the time when and the places where such election shall be held, which must be within ninety days from the date of filing such petition, and shall define the boundaries of said proposed municipal district, which shall include all such communities and cities, and such additional adjacent territory as

shall, in the judgment of the board of county commissioners, provide for future urban growth.

If a majority of the legal voters at said election vote in favor of the organization of such municipal district, or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of said elections, and immediately thereafter shall give notice for thirty days in a newspaper published within the proposed municipal district, or if none be published therein, by posting notices in six public places within the limits of said district of the time and place or places of holding the first election for commissioners of such municipal district under this law. At such election all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for six months are qualified electors. The board of county commissioners must appoint judges and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner prescribed by law for the election of county officers, and the commissioners so elected must qualify in the manner prescribed by law for county officers.

History: En. Sec. 9, Ch. 152, L. 1917; amd. Sec. 1, Ch. 44, L. 1919.

5409. Powers of municipalities under commission-manager plan. The inhabitants of any municipality, coming under the provisions of this act, as its limits now are, or may hereafter be, shall be a body politic and corporate and have a corporate name, and as such shall have perpetual succession, and may use a corporate seal. Through its duly elected officers, it may sue and be sued; may acquire property in fee simple or lesser interest, or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property, and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease, and operate and regulate public utilities; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the municipality may lawfully tax; may borrow money on the faith and credit of the municipality by the issue or sale of bonds or notes of the municipality; may appropriate money of the municipality for all lawful purposes; may create, provide for, construct, regulate and maintain all things of nature of public works and improvements; may levy and collect assessments for improvement districts and other local improvements; may license and regulate persons, corporations, and associations engaged in any business, occupation, profession, or trade; may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the municipality, and all nuisances and the causes thereof; may regulate the construction, height, and the material used in all buildings, and the maintenance and occupancy thereof; may regulate and control the use, for whatever purpose, of the streets and other public places; may create, establish, abolish, and organize offices, and fix the salaries and compensations of all officers and employees; may make and enforce local sanitary and police and other regu-

lations; and may pass such ordinances as may be expedient for maintaining and promoting peace, good government, and welfare of the municipality, and for the performance of the functions thereof. The municipality shall have all powers that now are or hereafter may be granted to municipalities by the constitution or laws of Montana; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this act, or when not prescribed therein, in such manner as shall be prescribed by the ordinances or resolutions of the commission.

History: En. Sec. 10, Ch. 152, L. 1917.

5410. Form of government to be known as "Commission-manager plan"—Composition of commission—Powers. The form of government provided for in this act shall be known as the "Commission-manager plan," and sall consist of a commission of citizens, who shall be elected at large in the manner hereinafter provided. The commission shall consist of three commissioners for all municipalities having a population less than twenty-five thousand, and five commissioners for all cities having a population of twenty-five thousand or more. The commission shall constitute the governing body, with powers as hereinafter provided, to pass ordinances, adopt regulations, and appoint a chief administrative officer to be known as the "City manager," and exercise all powers as hereinafter provided.

History: En. Sec. 12, Ch. 152, L. 1917.

Commissioner under commission form of government as municipal officer, see note in Ann. Cas. 1914D, 1231.

5411. Tenure of office—Expiration of term. The commissioners elected at the first election shall qualify, and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of this act shall then cease and terminate, and the terms of office of all their appointed officers in force in such city or town shall cease and terminate as soon as the commissioners shall by resolution declare. All commissioners shall serve for a term of four years, and until their successors are elected and have qualified; except that at the first election the two candidates having the highest number of votes shall hold office for a period of four years, less the time elapsed since the first of January of the even-numbered year last preceding. The terms of office of all other candidates shall expire on the first day of January in an even-numbered year following the special election provided for in this act.

History: En. Sec. 13, Ch. 152, L. 1917.

5412. Filling of vacancies in commission. Vacancies in the commission shall be filled by the commission for the remainder of the unexpired term, but any vacancy resulting from a recall shall be filled in the manner provided in such case.

History: En. Sec. 14, Ch. 152. L. 1917.

5413. Qualifications of commissioners—Disqualification of commissioners and employes for other public office—Not to be interested in contracts, etc. Members of the commission shall be residents of the city or town

and have the qualifications of electors, and own real estate situated therein to the assessed value of not less than one thousand dollars. Commissioners and other officers and employes shall not hold any other public office or employment, except in the state militia, as school trustees, or notaries public, and shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may become interested may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, passes or service, directly or indirectly, from any person, firm or corporation, upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section, shall be a misdemeanor. Such provision of free service shall not apply to policemen or firemen in uniform or wearing their official badges, where the same is provided by ordinance.

History: En. Sec. 15, Ch. 152, L. 1917.

5414. Nomination of candidates—Primary election. Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner, shall, at least ten days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana, }
County of ..... } ss.

I, ..., being first duly sworn, say that I reside at ..... street, (city, town) of....., county of ....., State of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19....., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by.....
.....on this.....day of....., 19.....

(Signed).....

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19..... We further state that we know him to be a qualified elector of said (city, town), and a man of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors. Number. Street.

(Space for Signatures.)

State of Montana, }
County of ..... } ss.

....., being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed)..... .....

Subscribed and sworn to before me this.....day of....., 19.....

.....,
Notary Public.

This petition, if found insufficient, shall be returned to..... .....at No.....street, ..., Montana.

Immediately upon the expiration of the time of filing the statements and petition for candidates, the clerk of the commission shall cause to be published for three consecutive days in all the daily newspapers published in the municipality in proper form, the names of the persons that are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said municipality, and the said clerk shall thereupon cause the primary ballots to be printed, and authenticated with a facsimile of his signature.

History: En. Sec. 16, Ch. 152, L. 1917.

5415. Ballots—Form, contents, and distribution—Qualifications of electors—Conduct of primary election—Regular election for commissioners. All ballots used in all elections held under authority of this act shall be without party mark or designation. The ballots shall be printed on plain, substantial white paper.

Except that the crosses here shown shall be omitted, and that in place of the names of persons here shown there shall appear the names of the persons who are candidates for nomination, the primary ballots shall be substantially as hereinafter designated. Primary, regular, and special election ballots provided under authority of this act for the nomination or election of commissioners shall not bear the name of any person or persons, or any issue, other than those candidates for nomination or election to the office of commissioner.

Official Primary Ballot.

Vote for (insert here a number equal to the number of persons to be elected to the office of commissioner at the next regular municipal election).

If you wrongly mark, tear, or deface this ballot, return it and obtain another.

Candidates for nomination to the office of commissioner at the primary election.

X	John Doe
X	Henry Smith
X	George Jones
X	James Richards
X	Richard Doe

Official ballot attest:

(Signature).....

Clerk of Commission.

Having caused said ballots to be printed, the clerk of the commission shall cause to be delivered at each polling place a number of said ballots, ten per cent in excess of the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election shall be qualified to vote at such primary election, and any person offering to vote may be orally challenged by any elector of the municipality upon any or all grounds set forth and specified in section 706 of this code and the provisions of sections 707 to 714, inclusive, of this code shall apply to all challenges made at such election. Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of such votes cast in such precinct for each of the candidates, and make return thereof to the clerk of the commission upon proper blanks to be furnished by the clerk of the commission, within twelve hours of the closing of the polls. On the day following the primary election, the clerk of the commission shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers in said municipality, at least once, the result thereof. Said canvass by the clerk of the commission shall be made publicly.

The candidates for nomination to the office of commissioner who shall have received the greatest vote in such primary election shall be placed on the ballot at the next regular municipal election, in number not to exceed double the number vacancies in the commission to be filled.

All electors of municipalities under this act, who, by ordinances governing cities and towns incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities or towns, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal elections shall be in the same general form as for such primary election so far as applicable, and in all elections in such municipalities, the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results, shall be the same as by law provided for the election of officers in such cities or towns, so far as the same are applicable and not inconsistent with the provisions of this act.

History: En. Sec. 17, Ch. 152, L. 1917.

5416. Arrangement of names of candidates on ballot. The names of candidates on all ballots used in any election held under the authority of this act shall be printed in rotation, as follows:

The ballot shall be printed in as many series as there are candidates for the office of commissioner. The whole number of ballots to be printed shall be divided by the number of series, and the quotient so obtained shall be the number of ballots in each series. In printing the first series of ballots, the names of candidates shall be arranged in alphabetical order. After printing the first series, the first name shall be placed last and the next series printed, and the process shall be repeated until each name in the list shall have been printed first an equal number of times. The ballots so printed shall then be combined in tablets, so as to have the fewest possible ballots having the same order of names printed thereon together in the same tablet.

History: En. Sec. 18, Ch. 152, L. 1917.

5417. Date of holding regular elections—Special elections. A regular election for the choice of commissioners, provided for in this act, shall be held on the first Tuesday after the first Monday in November of any odd-numbered year, and on the first Tuesday after the first Monday in November in each second year thereafter. Elections so held shall be known as regular municipal elections. All other elections held under the provisions of this act, excepting those for the nomination of candidates for the office of commissioner, shall be known as special municipal elections.

History: En. Sec. 19, Ch. 152, L. 1917.

5418. Publication of election expenses of candidates—Violation of section a misdemeanor. Every candidate for commissioner shall, within thirty days after the election, file with the clerk of the commission, and publish at least once in a daily newspaper of general circulation, or weekly, if there be no daily newspaper published, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section shall be a misdemeanor, and if committed by a successful candidate, give ground for the removal from office.

History: En. Sec. 20, Ch. 152, L. 1917.

5419. Recall of commissioners—Petition for recall. Any or all of the commissioners provided for in this act may be removed from office by the electors. The procedure to effect such removal, shall be as follows:

A petition demanding that the question of removing such officers be submitted to the electors shall be filed with the clerk of the commission.

Such petition for the recall of any or all of the commissioners shall be signed by at least twenty-five per cent. of the total number of registered voters in the municipality.

The signature to such petition need not be appended to any one paper.

History: En. Sec. 21, Ch. 152, L. 1917.

5420. Issuance of petition papers. Petition papers shall be procured only from the clerk of the commission, who shall keep a sufficient number of such blank petitions on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more qualified electors and filed with the clerk of the commission, stating the name and the office of the officer or officers sought to be removed. The clerk of the commission, upon issuing any such petition papers to an elector, shall enter in a record, to be kept in his office, the name of the elector to whom issued, the date of such issuance, and the number of papers issued, and shall certify on such papers the name of the elector to whom issued, and the date issued. No petition papers so issued shall be accepted as part of the petition unless it bears such certificate of the clerk of the commission, and unless it be filed as provided herein.

History: En. Sec. 22, Ch. 152, L. 1917.

5421. Signatures and affidavit to petition papers. Each signer of a recall petition shall sign his name in ink or indelible pencil, and shall place thereon, after his name, his place of residence by street and number. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition, and that each signature appended to the paper was made in his presence and is the genuine signature of the person whose name it purports to be.

History: En. Sec. 23, Ch. 152, L. 1917.

5422. Assembling and filing of petition papers. All papers comprising a recall petition shall be assembled and filed with the clerk of the commission as one instrument within thirty days after the filing with the clerk of the commission of the affidavit stating the name and the office of the officer sought to be removed.

History: En. Sec. 24, Ch. 152, L. 1917.

5423. Notification of officer—Recall election. The clerk of the commission shall at once submit the recall petition to the commission, and shall notify the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than seventy nor more than eighty days after the petition has been presented to the commission, at the same time as any other general or special election held within such period; but if no such election be held within such period, the commis-

sion shall call a special recall election to be held within the time aforesaid.

History: En. Sec. 25, Ch. 152, L. 1917.

5424. Ballots at recall election—Requirements—Nomination of candidates to fill vacancies. The ballots at such recall election shall conform to the following requirements:

With respect to each person whose removal is sought, the question shall be submitted, "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following each such question, there shall be printed on the ballots the two propositions, in the order set forth:

"For the recall (Name of person.)

Against the recall (Name of person)."

Immediately to the left of the proposition shall be placed a square in which the electors, by making a cross mark (X), may vote for either of such propositions. Under said questions shall be placed the names of candidates to fill the vacancy or vacancies. The name of the officer or officers whose removal is sought shall not appear on the ballot as a candidate or candidates to succeed himself or themselves.

Before any such recall election for the removal of commissioners shall be had, there shall be nominated candidates to fill the vacancy or vacancies, the nominations therefor to be made by petition, which petition for each candidate shall be signed by at least twenty-five registered electors, and shall be filed at least thirty days prior to the date fixed for holding such recall election; and the form and requirements for said petition shall be the same as hereinbefore provided in the case of primary nominations.

History: En. Sec. 26. Ch. 152, L. 1917.

5425. Effect of majority vote for or against recall. Should a majority of the votes cast at a recall election be against the recall of the officer named on the ballot, such officer shall continue in the office for the remainder of his unexpired term, subject to recall as before. If a majority of the votes cast at a recall election shall be for the recall of the officer named on the ballot, he shall, regardless of any technical defects in the recall petition, be deemed removed from office.

History: En. Sec. 27, Ch. 152, L. 1917.

5426. Limitation upon time of filing recall petition. No recall petition shall be filed against a commissioner within six months after he takes his office, nor, in case of an officer reelected in a recall election, until six months after that election.

History: En. Sec. 28, Ch. 152, L. 1917.

5427. Working for candidate forbidden. Any person who shall agree to perform any services in the interest of any candidate for any office provided in this act, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or both such fine and imprisonment.

History: En. Sec. 29, Ch. 152, L. 1917.

5428. Bribery—False answers concerning qualifications of elector—Voting by disqualified person. Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person wilfully voting or offering to vote at such election, who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than ten nor more than ninety days, or both such fine and imprisonment.

History: En. Sec. 30, Ch. 152, L. 1917.

5429. Proposed ordinances—How submitted—Requirements of petition to submit. Any proposed ordinance may be submitted to the commission by petition signed by at least ten per cent. of the total number of registered voters in the municipality. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full, and have printed or written thereon the names and addresses of at least five electors who shall be officially regarded as filing the petition, and shall constitute a committee of the petitioners for the purposes hereinafter named.

History: En. Sec. 31, Ch. 152, L. 1917.

5430. Signatures and affidavit to petitions. Each signer of a petition shall sign him name in ink or indelible pencil, and shall place on the petition papers, after his name, his place of residence by street and number. The signatures of any such petition papers need not all be appended to one paper, but to each such paper there shall be attached an affidavit by the circulator thereof, stating the number of signers to such part of the petition, and that each signature appended to the paper is the genuine signature of the person whose name it purports to be, and was made in the presence of the affiant.

History: En. Sec. 32, Ch. 152, L. 1917.

5431. Assembling and filing of petition papers—Hearing upon proposed ordinances—Submission to electors. All papers comprising a petition shall be assembled and filed with the clerk of the commission as one instrument, and when so filed, the clerk of the commission shall submit the proposed ordinance to the commission at its next regular meeting. Provision shall be made for public hearings upon the proposed ordinances.

The commission shall at once proceed to consider it, and shall take final action thereon within thirty days from the date of submission. If

the commission rejects the proposed ordinance, or passes it in a different form from that set forth in the petition, the committee of the petitioners may require it to be submitted to a vote of the electors in its original form, or that it be submitted to a vote of the electors with any proposed change, addition, or amendment, if a petition for such election is presented bearing additional signatures of fifteen per cent. of the electors of the city or town.

History: En. Sec. 33, Ch. 152, L. 1917.

5432. Submission of petition and proposed ordinance to clerk. When an ordinance proposed by petition is to be submitted to a vote of the electors, the committee of the petitioners shall certify that fact and the proposed ordinance to the clerk of the commission within twenty days after the final action on such proposed ordinance by the commission.

History: En. Sec. 34, Ch. 152, L. 1917.

5433. When proposed ordinance is to be submitted to electors. Upon receipt of the certificate and certified copy of the proposed ordinance, the clerk shall certify the fact to the commission at its next regular meeting. If an election is to be held not more than six months nor less than thirty days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall then be submitted to a vote of the electors. If no such election is to be held within the time aforesaid, the commission shall provide for submitting the proposed ordinance to the electors at a special election.

History: En. Sec. 35, Ch. 152, L. 1917.

5434. Contents of ballot—When proposed ordinance becomes effective. The ballots used when voting upon any such proposed ordinance shall state the title of the ordinance to be voted on, and below it the two propositions, "For the ordinance," and "Against the ordinance." Immediately at the left of each proposition there shall be a square, in which, by making a cross (X), the voter may vote for or against the proposed ordinance. If a majority of the electors voting on any such proposed ordinance shall vote in favor thereof, it shall thereupon become an ordinance of the municipality.

History: En. Sec. 36, Ch. 152, L. 1917.

5435. Repealing ordinances—Publication, amendment, and repeal of initiated ordinances. Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in the preceding section for initiating ordinances. Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission as in the case of other ordinances.

History: En. Sec. 37, Ch. 152, L. 1917.

5436. When ordinances of commission take effect—Petition for repeal suspends effect unless law is complied with. No ordinance passed by the commission, unless it be an emergency measure, shall go into effect until thirty days after its final passage by the commission. If at any time within the said thirty days, a petition signed by twenty-five per cent. of the total number or registered voters in the municipality be filed with the clerk of the commission, requesting that any such ordinance be repealed

or submitted to a vote of the electors, it shall not become operative until the steps taken herein shall have been taken.

History: En. Sec. 38, Ch. 152, L. 1917.

5437. Reconsideration of ordinance—Submission to electors—Failure to approve operates as repeal. The clerk of the commission shall deliver the petition to the commission, which shall proceed to reconsider the ordinance. If, upon such reconsideration, the ordinance be not entirely repealed, the commission shall provide for submitting to a vote of the electors, and in so doing, the commission shall be governed by the provisions herein contained, respecting the time of submission and manner of voting on ordinances proposed to the commission by petition. If, when submitted to a vote of the electors, any such ordinance be not approved by a majority of those voting thereon, it shall be deemed repealed.

History: En. Sec. 39, Ch. 152, L. 1917.

5438. Contents and requirements of referendum petitions—Ballots. Referendum petitions need not contain the text of the ordinance, the repeal of which is sought, but shall be subject in all other respects to the requirements for petitions submitting proposed ordinances to the commission. Ballots used in referendum elections shall conform in all respects to those provided for in section 5434 of this code.

History: En. Sec. 40, Ch. 152, L. 1917.

5439. Other ordinances subject to referendum. Ordinances submitted to the commission by initiative petition and passed by the commission without change, or passed in an amended form and not required to be submitted to a vote of the electors by the committee of the petitioners, shall be subject to a referendum in the same manner as other ordinances.

History: En. Sec. 41, Ch. 152, L. 1917.

5440. Highest affirmative vote prevails when referendum ordinances conflict. If the provisions of two or more ordinances adopted or approved at the same election conflict, the ordinance receiving the highest affirmative vote shall prevail.

History: En. Sec. 42, Ch. 152, L. 1917.

5441. Emergency ordinances subject to referendum—Rules applicable. Ordinances passed as emergency measures shall be subject to a referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinances. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

History: En. Sec. 43, Ch. 152, L. 1917.

5442. Ordinances for expenditure of money, bond issue, etc.—Preliminary steps to be taken prior to election. In case a petition be filed requiring that a measure passed by the commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such expenditure, actual

issuance of the bonds, or actual execution of the contract for such improvement, may be taken prior to the election.

History: En. Sec. 44, Ch. 152, L. 1917.

5443. Official oath and bond of commissioners. Every person who has been declared elected commissioner, shall, within ten days thereafter, take and file with the clerk of the commission his oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in such sum as the judge of the district court of the county in which such municipality is situated shall designate, conditioned for the faithful performance of the duties of his office, which bond shall be filed with the clerk and recorder of the county in which such municipality is situated. The premium on such bond as may be required, shall be paid by the municipality.

History: En. Sec. 45, Ch. 152, L. 1917.

5444. Who shall be mayor—Vacancy in office by expiration of term and other causes—Powers, duties, and prerogatives of mayor. The mayor shall be that member of the commission who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining members of the commission. In event of a vacancy in the office of the mayor, by the expiration of his term of office, the hold over commissioner having received the highest number of votes shall be the mayor. In the event there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose his successor for the unexpired term from their own number. The mayor shall be the presiding officer, except that in his absence, a president pro tempore may be chosen. The mayor shall exercise such powers conferred, and perform all duties imposed upon him by this act, the ordinances of the municipality, and the laws of the state, except that he shall have no power to veto any measure. He shall be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of military law, and for all ceremonial purposes.

History: En. Sec. 46, Ch. 152, L. 1917.

5445. Selection of successor to mayor in event of his recall—Mayor when all commissioners are recalled. In the event that the commissioner who is acting as mayor shall be recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. In the event of the recall of all the commissioners, the person receiving the highest number of votes at the election held to determine their successor shall serve as the mayor.

History: En. Sec. 47, Ch. 152, L. 1917.

5446. Quorum of commissioners—Recording votes and proceedings. In municipalities having three commissioners, two commissioners shall constitute a quorum; and the affirmative vote of two commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance, or pass any measure unless a greater number is proveded for in this act. In

municipalities having five commissioners, three commissioners shall constitute a quorum, and the affirmative vote of three commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance, or pass any measure unless a greater number is provided for in this act. Upon every vote, the ayes and the nayes shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

History: En. Sec. 48, Ch. 152, L. 1917.

5447. Compensation of commissioners and mayor. The salary of each commissioner shall be as follows: For each meeting attended, cities or towns with less than twenty-five thousand inhabitants, five dollars; cities with more than twenty-five thousand inhabitants, not to exceed ten dollars; provided, that not more than one fee shall be paid for any one day. The salary of the commissioner acting as mayor shall be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919.

5448. Meetings of commissioners—Unauthorized absence creates vacancy—Meetings and minutes to be public—Rules and order of business. At ten o'clock a. m. on the first Monday after the first day of January, following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that in municipalities having less than five thousand inhabitants, they shall meet regularly at least once and not more than four times per month, and in municipalities having more than five thousand inhabitants, they shall meet not less than once each week. Absence from five consecutive regular meetings shall operate to vacate the seat of a member, unless such absence be authorized by the commission.

The commissioner acting as mayor, any two members of the commission, or the city manager, may call special meetings of the commission upon at least twelve hours' written notice to each member of the commission, served personally on each member, or left at his usual place of residence. All meetings of the commission shall be public, and any citizen shall have access to the minutes and records thereof at all reasonable times. The commission shall determine its own rules and order of business, and shall keep a journal of its proceedings.

History: En. Sec. 50, Ch. 152, L. 1917.

5449. Ordinances and resolutions—Requirements. Each proposed ordinance or resolution shall be introduced in written or printed form, and shall not contain more than one subject, which shall be clearly stated in the title; but general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated. The enacting clause of all ordinances passed by the commission shall be, "Be it ordained by the commission of the city (city or town) of (name of city or town)." The enacting clause of all ordinances submitted by the

initiative shall be "Be it ordained by the people of the (city or town) of (name of city or town)."

No ordinance, unless it be declared an emergency, shall be passed on the day on which it shall have been introduced, unless so ordered by an affirmative vote of all the members of the commission. Every ordinance or resolution passed by the commission shall be signed by the mayor or two members, and filed with the clerk within two days, and by him recorded.

No ordinance or resolution or section thereof shall be revised or amended, unless the new ordinance or resolution contained the entire ordinance or resolution or section revised or amended.

History: En. Sec. 51, Ch. 152, L. 1917.

5450. Same—Time of taking effect—Emergency measures—Ordinances which cannot pass as such. All ordinances and resolutions shall be in effect from and after thirty days from the date of their passage by the commission, except as otherwise provided in this act. The commission may, by an affirmative vote of all the members, pass emergency measures to take effect at the time indicated therein. An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances or resolutions appropriating money, or ordering any street improvement or sewer, unless it is endangering the health or safety of the inhabitants, or granting any franchise, or extension of franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, or right to occupy or use the streets, highways, bridges, or other public places, shall never be passed as an emergency measures.

History: En. Sec. 52, Ch. 152, L. 1917.

5451. Appointment of clerk and other officers—Duties of clerk. The commission shall choose a clerk and such other officers and employees of its own body as are necessary. The clerk shall be known as the clerk of the commission, and shall keep records and perform such other duties as may be required by this act or the commission.

History: En. Sec. 53, Ch. 152, L. 1917.

5452. Auditing books of account, records, etc.—Matters to be included in statement—Printing and distribution of report—Publication of summary. The commission shall cause a continuous audit to be made of the books of account, records, and transactions of the administrative department of the municipality. Such audit, during each fiscal year, shall be made by one or more well-qualified accountants. The duty of the auditor or auditors so appointed shall include the certifications of all statements required under section 5466 of this code. Such statements shall include a general balance-sheet, exhibiting the assets and liabilities of the municipality, supported by departmental schedules and schedules for each utility publicly owned or operated; summaries of income and expenditure, supported by detailed schedules; and also comparisons, in proper classifications, with the last previous year. The report of such audit for each previous year shall be

printed and a copy thereof furnished the state bank examiner of Montana, to each member of the commission, and to each citizen who may apply therefor; and a condensed summary thereof shall be published in the manner provided by the commission.

History: En. Sec. 54, Ch. 152, L. 1917.

5453. Record of ordinances and resolutions, and authorization thereof —Publication of number and title. Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose, and shall be authenticated by the signature of the presiding officer and the clerk of the commission. At least the number and title of every ordinance or resolution shall be published at least once within ten days after its final passage in such manner as is provided in this act.

History: En. Sec. 55, Ch. 152, L. 1917.

5454. Investigation of financial transactions—Powers in conducting investigations—Contempt—Privilege of witness. The commission, or any committee thereof, duly authorized by the commission so to do, may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official, and by similar investigations may secure information upon any matter. In conducting such investigations, the commission or any committee thereof may compel the attendance of witnesses and the production of books, papers, and other evidence, and for that purpose may issue subpoenas or attachments which shall be signed by the presiding officer of the commission or the chairman of such committee, as the case may be, which may be served and executed by any officer authorized by law to serve subpoenas or other process. If any witness shall refuse to testify to any facts within his knowledge, or to produce any papers or books in his possession, or under his control, relating to the matter under inquiry, before the commission, or any such committee, the commission shall have the power to cause the witness to be punished for contempt. No witness shall be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony shall not be used against him in any criminal prosecution, except for perjury committed upon such inquiry.

History: En. Sec. 56, Ch. 152, L. 1917.

5455. Appointment of city manager. The commission shall appoint a city manager, who shall be the administrative head of the municipal government, and shall be responsible for the efficient administration of all departments. He shall be appointed without regard to his political beliefs, and may or may not be a resident of the municipality when appointed. He shall hold office at the will of the commission.

History: En. Sec. 57, Ch. 152, L. 1917.

5456. Powers and duties of city manager. The powers and duties of the city manager shall be:

1. To see that the laws and ordinances are enforced;
2. To appoint and, except as herein provided, remove all directors of

departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone, and in the classified service all appointments to be subject to the civil service provisions of this act;

3. To exercise control over all the departments and divisions created herein, or that may hereafter be created by the commission;

4. To attend all meetings of the commission, with the right to take part in the discussions, but having no vote;

5. To recommend to the commission for adoption such measures as he may deem necessary or expedient;

6. To keep the commission fully advised as to the financial condition and needs of the city; and

7. To perform such other duties as may be prescribed by this act, or be required of him by ordinance or resolution of the commission.

History: En. Sec. 58, Ch. 152, L. 1917.

5457. Salary of city manager. The city manager shall receive such salary as may be fixed by ordinance of the commission, but such salary shall not be decreased during the term of office that the city manager is appointed for.

History: En. Sec. 59, Ch. 152, L. 1917.

5458. May cause examinations of departments or the conduct of officers or employees—Powers in conducting. The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person or persons appointed by the city manager to examine the affairs of any department, or the conduct of any officer or employee, shall have the same power to compel the attendance of witnesses and the production of books and papers and other evidence, and to cause witnesses to be punished for contempt, as is conferred upon the commission by this act.

History: En. Sec. 60, Ch. 152, L. 1917.

5459. Administrative departments—Power of commission concerning. The following administrative departments are hereby established by this act:

1. Department of law;
2. Department of public service.
3. Department of public welfare;
4. Department of public safety;
5. Department of finance.

The commission may by ordinance discontinue any or several departments, and determine, combine, and distribute the functions and duties of these departments and subdivisions thereof.

History: En. Sec. 61, Ch. 152, L. 1917.

5460. Appointment and removal of directors of departments—Powers and duties of directors. The city manager shall appoint a director for each department, as specified herein or as specified by ordinance of the commission, who shall serve until removed by the city manager, or until his successor is appointed and has qualified. Each director shall conduct the affairs of his department in accordance with the rules and regulations

made by the city manager, and shall be responsible for the conduct of the officers and employees of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department.

History: En. Sec. 62, Ch. 152, L. 1917.

5461. Municipal plan board—Advisory boards. The commission may appoint a municipal plan board, and upon the request of the city manager shall appoint advisory boards. The members of such boards shall serve without compensation, and their duty shall be to consult and advise with the various departments. The duties and powers thus created shall be prescribed by ordinance.

History: En. Sec. 63, Ch. 152, L. 1917.

5462. Department of law. The head of the department of law shall be an attorney at law, who has been admitted to practice in the state of Montana, and shall be known as the city attorney. He shall be the legal advisor of and attorney and counsel for the municipality, and for all the officers and departments thereof in matters relating to their official duties. He shall prosecute and defend all suits for and in behalf of the municipality, and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned, and shall indorse on each his approval of the form and correctness thereof. He shall have such other duties and authority as are now conferred upon the city attorney by existing laws. He shall have such number of assistants as the commission by ordinance may authorize.

History: En. Sec. 64, Ch. 152, L. 1917.

5463. Department of public service. Subject to the control and supervision of the city manager in all matters, the director of public service shall manage and have charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts, canals, streams, and water-courses; of boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds. He shall manage market houses, sewerage disposal plants and farms, and all public utilities of the municipality. He shall have charge of the enforcement of all obligations of privately owned or operated public utilities enforcible by the municipality. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, and estimates for public work; the cleaning, sprinkling, and lighting of streets and public places; the collection and disposal of waste; the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality, and pertaining to the department.

History: En. Sec. 65, Ch. 152, L. 1917.

5464. Department of public welfare. Subject to the supervision and control of the city manager in all matters, the director of public welfare

shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality; the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. He shall have charge of the inspection and supervision of public amusements and entertainments. He shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health, the prevention and restriction of disease, the prevention, abatement, and suppression of nuisances, and the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs. He shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic, or threatened epidemic, he may enforce such quarantine regulations as are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, and disease, and other social problems in the community, and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters which affect the public welfare.

The health officer of the municipality shall be under the direction and control of the director of public welfare, and shall enforce all ordinances and laws relating to health, and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers; provided, that regulations affecting the public health additional to those established by general law, and for the violation of which penalties are imposed, shall be enacted by the commission and enforced as provided herein.

History: En. Sec. 66, Ch. 152, L. 1917.

5465. Department of public safety. Subject to the supervision and control of the city manager in all matters, the director of public safety shall be the executive head of the division of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings, as may be ordained by the commission or established by the general law of the state of Montana. He shall also be charged with the enforcement of all laws and ordinances relating to weights and measures.

The chief of police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force, under such rules and regulations as the director of public safety may prescribe. The police force shall be composed of a chief of police and such officers, patrolmen, and other employees as the city manager may determine. In case of riot, emergency, at time of elections, or similar occasions, the director of public safety may appoint additional patrolmen and officers for temporary service, who need not be in the classified service.

No person shall act as special policeman, special detective, or other special police officer for any purpose whatsoever, except upon the written authority of the director of public safety. Such authority shall be exercised only under the direction and control of the chief of police and for a specified time.

The fire chief shall have exclusive control of the stationing and transfer of all firemen and other officers and employees constituting the fire force, under such rules and regulations as the director of public safety may prescribe. The fire force shall be composed of a chief and such other officers, firemen, and employees as the city manager may determine. In case of riot, conflagration, or emergency, the director of public safety may appoint additional firemen and other officers for temporary service, who need not be in the classified service.

The chief of police and fire chief shall have the right to suspend any of the officers and employees in their respective divisions, who may be under their management and control, for incompetency, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause. If any officer or employee be suspended, as herein provided, the chief of the division concerned shall forthwith, in writing, certify the fact, together with the cause for the suspension, and render judgment thereon, which judgment, if the charge be sustained, may be suspension, reduction in rank, or dismissal, and such judgment in the matter shall be final, except as may be provided in the rules and regulations of the civil service board. The director of public safety, in any such investigation, shall have the same power to administer oaths and secure the attendance of witnesses and the production of books and papers as is conferred upon the commission.

The city manager shall have the exclusive right to suspend the chief of police and the fire chief for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause. If either of such chiefs be so suspended, the city manager shall forthwith certify the fact, together with the cause of suspension, to the commission, who, within five days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final.

The commission may provide by general ordinance for the relief out of the police or fire funds of members of the division of police and fire temporarily or permanently disabled in the discharge of their duty. Nothing herein shall impair, restrict, or repeal any provision of general law authorizing the levying of taxes to provide for firemen, police, and sanitary police pension funds, and to create and perpetuate boards of trustees for the administration of such funds.

History: En. Sec. 67, Ch. 152, L. 1917.

5466. Department of finance. The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the municipality; the purchase, storage, and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees and taxes, and such other duties as the commission may, by ordinance, require.

He shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable, the books of financial accounts shall be kept in the office of the department of finance. He shall require daily departmental reports of money receipts and the disposition thereof; and shall require of each, in such form as

may be prescribed, current financial and operating statements, exhibiting each transaction and the cost thereof.

Upon the death, resignation, removal, or expiration of the term of any officer, he shall examine the accounts of such officer and report his findings to the city manager.

Accounting procedure shall be devised and maintained for the municipality adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements; and the recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detailed support thereof as may be necessary to show the full effect of such transactions for each fiscal year upon the finances of the municipality, and in relation to each department of the municipal government, including distinct summaries and schedules for each utility publicly owned and operated.

He shall have charge of the preparation and certification of all special assessments for public improvements; the mailing of notices of such assessments to property owners, and all other duties connected therewith; the collection of such assessments as are payable directly to the municipality, and the preparation and certification of all unpaid assessments to the county treasurer for collection. He shall issue all licenses and collect all fees therefor, and shall pay the same into the treasury in the manner provided by ordinance.

No warrant for the payment of any claims shall be issued unless such claim shall be evidenced by a voucher approved by the head of the department for which the indebtedness was incurred, and countersigned by the city manager. Before issuing such voucher, the supplies and material delivered, or work done, shall be duly inspected and certified to by the head of the proper department or office, or by a person designated by him. The head of each department or office shall require proper time reports from all service rendered to be certified by those having cognizance thereof, to serve as a basis for the preparation of pay-roll vouchers. Each director of a department and his surety shall be liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in his department. Prior to the drawing of a warrant for the payment of any voucher or claim, the director of finance may at his discretion cause an investigation or inspection to be made by a person designated by him, and shall have power to summon persons and examine them under oath or affirmation, which oath or affirmation he may administer.

The director of finance shall be the custodian of all public money of the municipality, and all other public money coming into his hands. He shall keep and preserve such money in the place or places determined by ordinance or by the provisions of any law applicable thereto. Except as otherwise provided in this act, he shall collect, receive, and disburse all public money of the municipality upon warrant, and shall also receive and disburse all other public money coming into his hands, in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.

The director of finance shall, in manner provided by ordinance, purchase all supplies for the municipality, sell all real and personal property of the municipality not needed or unsuitable for public use, or that may have been condemned as useless by the director of a department. He shall have charge of such storerooms and storehouses of the municipality as may be provided by ordinance, in which shall be stored all supplies and materials purchased by the municipality, and not delivered to the various departments.

He shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no voucher shall be honored unless the accompanying invoice shall be indorsed as approved.

He may require from the director of each department, at such times as contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

Upon certification that funds are available in the proper appropriations, such goods shall be purchased and shall be paid for from funds in the proper department for that purpose. However, this procedure shall not prejudice the director of finance from purchasing goods for cash to the credit of the store's account, to be furnished the several departments on requisition, goods so furnished to be paid for by the department furnished therewith by warrant made payable to the store's account.

He shall not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such department an available appropriation balance in excess of all unpaid obligations sufficient to pay for such supplies.

Before making any purchase or sale, the director of finance shall give opportunity for competition, all proposals to be upon precise specifications, and under such rules and regulations as the commission shall establish; each order of purchase or sale to be approved and countersigned by the city manager or his deputy.

In cases of emergency purchases may be made without competition, if a sufficient appropriation has theretofore been made against which such purchases may lawfully be charged. In such cases, a copy of the order issued shall be filed with the director of finance, together with a certificate by the head of the department, stating the facts of the emergency. A copy of this certificate shall be attached to and filed with the voucher covering payment for the supplies. The director of finance shall have such assistants and force of office employees as may be necessary to properly carry out his duties under the provisions of this act. If it is found desirable, he may divide his office into divisions presided over by the following officers: accountant, treasurer, and purchasing agent.

History: En. Sec. 68, Ch. 152, L. 1917.

5467. Sinking fund trustees. The members of the commission, the city manager, and the director of finance shall constitute the sinking fund trustees. The mayor shall be the president, and the director of finance shall be the secretary of the trustees of the sinking fund. The trustees of the sinking fund shall manage and control the sinking fund in the manner provided by laws of the state of Montana or by ordinance.

History: En. Sec. 69, Ch. 152, L. 1917.

5468. Advertising and matter for publication. All public advertising or publication mentioned as being necessary under the provisions of this act, shall be in a daily newspaper of general circulation within the municipality, if there be such, otherwise in a weekly newspaper published therein, and shall be done by contract, or in a journal published by the municipality, as may be determined by ordinance. If such contract shall be with a newspaper, it shall be entered into only after opportunity has been given for competition under such rules and regulations as the commission may establish, and for a term not longer than one year.

History: En. Sec. 70, Ch. 152, L. 1917.

5469. Limit on amount of contract not approved by city manager and commission. No contract involving an expenditure of more than two hundred and fifty dollars for material or supplies shall be awarded, except upon the approval of the city manager and the commission.

History: En. Sec. 71, Ch. 152, L. 1917.

5470. Police judge—Appointment and powers. The commission shall appoint a police judge, who shall have the power and authority now conferred by existing laws.

History: En. Sec. 72, Ch. 152, L. 1917.

5471. Civil service board. The commission shall appoint three electors of the municipality as a civil service board; one to serve for two years, and one for four years, and one for six years, to take office on the first day of January after the municipality comes under the provisions of this act, or as soon thereafter as appointed and qualified. Thereafter members of the civil service board shall be appointed to serve for six years, and until their successors have been appointed and have qualified. Members of the board shall not hold any other public office. The commission may remove any member of the board upon stating in writing the reasons for removal, and allowing him an opportunity to be heard in his own defense. Any vacancy shall be filled by the commission for the unexpired term.

Immediately after appointment, the board shall organize by electing one of its members chairman. The board shall appoint a chief examiner, who shall also act as secretary. The board may appoint such other subordinates as may by appropriation be provided for.

History: En. Sec. 73, Ch. 152, L. 1917.

5472. Classified and unclassified service. The civil service of a municipality is hereby divided into the unclassified and the classified service.

1. The unclassified service shall include:

(a) All officers elected by the people;

(b) The city manager;

(c) The heads of departments and heads of divisions of departments, and members of appointive boards;

(d) The deputies and secretaries of the city manager, and one assistant or deputy, and one secretary for each department, and the clerk of the commission.

2. The classified service shall comprise all positions not specifically included in this act in the unclassified service. There shall be in the classified service three classes, to be known as the competitive class, the non-competitive class, and the labor class.

(a) The competitive class shall include all positions and employment for which it is practicable to determine the merit and fitness of applicants by competitive examination;

(b) The non-competitive class shall consist of all positions and employment requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. No competitive examinations will be given for these positions, but the past achievements of the applicant will be considered;

(c) The labor class shall include ordinary unskilled labor, which is employed by the year.

History: En. Sec. 74, Ch. 152, L. 1917.

5473. Rules and regulations governing appointments—Other duties of board. The board, subject to the approval of the commission, shall adopt, amend, and enforce a code of rules and regulations, providing for appointment and employment in all positions in the classified service, based on merit, efficiency, character, and industry, which shall have the force and effect of law; shall make investigations concerning the enforcement and effect of this chapter, and of the rules adopted. It shall make an annual report to the commission.

History: En. Sec. 75, Ch. 152, L. 1917.

5474. Chief examiner—Duties. The chief examiner shall be the employment officer of all municipal employees coming under the classified service. He shall provide examinations in accordance with the regulations of the board, and maintain lists of eligibles of each class of the service of those meeting the requirements of said regulations. Positions in the classified service shall be filled by him from such eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists.

History: En. Sec. 76, Ch. 152, L. 1917.

5475. Promotions in classified service. The board shall provide for promotion to all positions in the classified service, based on records of merit, efficiency, character, conduct, and seniority.

History: En. Sec. 77, Ch. 152, L. 1917.

5476. Probationary period. An appointment or promotion shall not be deemed complete until a period of probation not to exceed six months has elapsed, and a probationer may be discharged or reduced at any time within the said period of six months, upon the recommendation of the head of the department in which said probationer is employed, with the approval of the majority of the board.

History: En. Sec. 78, Ch. 152, L. 1917.

5477. Discharges or reductions in rank—How made. An employee shall not be discharged or reduced in rank or compensation until he has been presented with the reasons for such discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in his own defense. The reason for such discharge or reduction, and any reply in writing thereto by such employee, shall be filed with the board.

History: En. Sec. 79, Ch. 152, L. 1917.

5478. Appeal to civil service board. Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or the city manager, may appeal from the decision of such officer to the civil service board, and such board shall define the manner, time, and place in which such appeal shall be heard. The judgment of such board shall be final.

History: En. Sec. 80, Ch. 152, L. 1917.

5479. Present incumbents to retain positions unless same are abolished. Any person in the employ of a municipality, holding a position in the classified service, at the time that the municipality comes under the provisions of this act, shall, unless his position be abolished, retain same until discharged, reduced, promoted, or transferred in accordance herewith.

History: En. Sec. 81, Ch. 152, L. 1917.

5480. Salaries to be withheld until names of appointees or employees are certified. The director of finance or other public disbursing officer shall not pay any salary or compensation for services to any person holding a position in the classified service, unless the pay-roll or account for such salary or compensation shall bear the certificate of the board, by its secretary, that the persons named therein have been appointed or employed and are performing service in accordance with the provisions of this act, or the rules established thereunder.

History: En. Sec. 82, Ch. 152, L. 1917.

5481. Power of board to procure testimony in investigation. In any investigation conducted by the board it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation, and to administer oaths to such witnesses.

History: En. Sec. 83, Ch. 152, L. 1917.

5482. Persons in classified service not affected by political or religious opinions or race—Political contributions and activity forbidden. No person in the classified service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color, or religious beliefs. No officer or employee of the municipality shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessments, subscription, or contribution for any political party or political purpose whatever. No person holding a posi-

tion in the classified service shall take any part in political management or affairs or in political campaigns, further than to cast his vote or to express privately his opinion.

History: En. Sec. 84, Ch. 152, L. 1917.

5483. Penalties for violation of civil service provisions—To be prescribed by board. The board, subject to the approval of the commission, shall by ordinance determine the penalties for the violations of the civil service provisions of this act.

History: En. Sec. 85, Ch. 152, L. 1917.

5484. Fixing of salaries and appropriation for civil service. The salaries of the board and its employees shall be determined by the commission, and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this act.

History: En. Sec. 86, Ch. 152, L. 1917.

5485. Local improvements—Assessments—Laws governing. The commission shall have the power, by ordinance, to provide for the construction, reconstruction, repair, and maintenance by contract, or directly by the employment of labor, of all things in the nature of local improvements, and to provide for the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting, adjacent, and contiguous or other specially benefited property, as provided by general law. Whenever the payments for such improvements are to extend over a period of years, and are to be paid for in instalments, the proceedings and all things done in connection with such improvements are to be done in strict conformity with the provisions of sections 5225-to 5257 of this code.

History: En. Sec. 87, Ch. 152, L. 1917.

5486. Sewer, water, gas, or other connections—Notice to property owners—Service and contents. The director of public service shall have authority to compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in his judgment be constructed. He shall cause written notice of his determination thereof to be given to the owner of each lot or parcel of land to which such connections are to be made, which notice shall state the number and character of connections required. Such notice shall be served by a person, designated by the director of public service, in the manner provided for the service of summons in civil actions. Non-residents of the municipality, or persons who cannot be found, may be served by one publication of such notice in a daily newspaper of general circulation in the municipality, if such there be, and if not, by one publication in a weekly newspaper. The notice shall state the time within which such connections shall be constructed; and if they be not constructed within the said time, the work may be done by the municipality, and the cost thereof, together with a penalty of five per cent., assessed against the lots and lands for which such connections are made. Said assessments shall be certified and collected as other assessments for street improvements. The

actual work of making such connections shall be done under such regulations as are provided for by ordinance.

History: En. Sec. 88, Ch. 152, L. 1917.

5487. Surveys and plats of land subdivided for sale. Any owner of lots or grounds within the municipality, who subdivides or lays them out for sale, must cause to be made an accurate survey and plat thereof, conforming in all things to the provisions of sections 4980 to 4993, inclusive, of this code.

History: En. Sec. 89, Ch. 152, L. 1917.

5488. Effect of recorded map or plat. The map or plat recorded under the provisions of the foregoing act shall thereupon be sufficient conveyance to vest in the municipality the fee of the parcel of land designated or intended for streets, alleys, ways, commons, or other public uses, to be held in the corporate name in trust to and for the uses and purposes in the instrument set forth, expressed, designated, or intended.

History: En. Sec. 90, Ch. 152, L. 1917.

5489. Director of public service as supervisor of plats—Powers and duties. The director of public service shall be the supervisor of plats of the municipality. He shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width, and to be conterminous with the adjoining streets and alleys, and that all other regulations are conformed with. Whenever he shall deem it expedient to plat any portion of the territory within the corporate limits, in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys, or when any person plats any land within the corporate limits or within three miles thereof, the supervisor of plats shall, if such plats are in accordance with the regulations prescribed therefor, indorse his written approval thereon. No plat subdividing lands within the corporate limits, or within three miles thereof, shall be entitled to record in the recorder's office of the county without such written approval so indorsed thereon.

History: En. Sec. 91, Ch. 152, L. 1917.

5490. Restriction as to acceptance of streets and alleys by municipality. No streets or alleys, except those laid down on such plat and bearing the approval of the supervisor of plats, as hereinbefore provided, shall subsequently in any way be accepted as public streets or alleys by the municipality, nor shall any public funds be expended in the repair or improvement of streets or alleys subsequently laid out and not on such plat. This restriction shall not apply to a street or alley laid out by the municipality, nor to streets, alleys, or public grounds laid out on a plat by or with the approval of the supervisor of plats.

History: En. Sec. 92, Ch. 152, L. 1917.

5491. Care, control, improvement, etc., of public highways and places. The commission shall provide, by ordinance, for the care, supervision, control, and improvement of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the munici-

pality, and shall cause them to be kept open, in repair, and free from nuisance.

History: En. Sec. 93, Ch. 152, L. 1917.

5492. Improvement and vacation of streets and highways. When it deems it necessary, the commission may cause any street, alley, or public highway to be opened, straightened, altered, diverted, narrowed, widened, or vacated.

History: En. Sec. 94, Ch. 152, L. 1917.

5493. Acceptance of dedication of streets and alleys necessary. No street or alley hereafter dedicated to public use by the proprietor of ground in the municipality shall be deemed a public street or alley, or under the care or control of the commission, unless the dedication be accepted and confirmed by ordinance passed for such purpose, or unless the provisions hereof relating to subdivisions shall have been complied with.

History: En. Sec. 95, Ch. 152, L. 1917.

5494. Vacating or changing names of streets, etc.—Proceedings. The commission in vacating any street or part of a street, or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue, but before vacating any street or part thereof, or narrowing any street, the commission shall first pass a resolution declaring its intention so to do. The city manager shall cause notice of such resolution to be served in the manner that service of summons is required to be made in civil actions upon all persons whose property abuts upon the portion of the street affected by the proposed vacation or narrowing, and by publication once in one daily newspaper of general circulation in the municipality, if such there be, and if not, once in one weekly newspaper of like circulation, as to all persons who cannot be personally served. Said notice shall state the time and place at which objection will be heard. Unless fifty-one per cent. of the affected property objects to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing, and such order of the commission vacating or narrowing a street or alley, which has been dedicated to public use by the proprietor, shall, to the extent that it is vacated or narrowed, operate as a revocation of the acceptance thereof by the commission, but the right of way and easement therein of any lot owner shall not be impaired thereby.

History: En. Sec. 96, Ch. 152, L. 1917.

5495. Appropriation of property for public or municipal purposes. Property within the corporate limits of the municipality may be appropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state, such appropriation shall be made as herein provided. By such appropriation, the municipality may acquire a fee simple title, or any less estate, easement, or use. Appropriations of property outside of the corporate limits of the municipality shall be made according to the requirements of and as provided by general law.

History: En. Sec. 97, Ch. 152, L. 1917.

5496. Power of commission to grant rights to occupy streets, highways, etc.—Ordinances and resolutions. The commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are, or hereafter may be, granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall be complete in the form in which it is finally passed, and remain on file with the commission for inspection by the public for at least one week before the final adoption or passage thereof.

History: En. Sec. 98, Ch. 152, L. 1917; amd. Sec. 3, Ch. 44, L. 1919.

5497. Renewal of franchises. The commission may, by ordinance, renew any grant for the construction or operation of any utility, at its expiration, subject to petition and referendum as hereinbefore provided.

History: En. Sec. 99, Ch. 152, L. 1917.

5498. No exclusive franchise or renewal to be granted. No exclusive grant or renewal shall ever be granted, and no grant shall be renewed before two years prior to its expiration.

History: En. Sec. 100, Ch. 152, L. 1917; amd. Sec. 4, Ch. 44, L. 1919.

5499. Manner of use and occupation of streets and public grounds to be prescribed. The commission shall, in any ordinance granting or renewing any grant to construct and operate a public utility, prescribe the manner in which the streets and public grounds shall be used and occupied.

History: En. Sec. 101, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919.

5500. Extension of public utility subject to referendum. The commission may, by ordinance, grant to any individual, company, or corporation operating a public utility, the right to extend the appliances and service of such utility outside of the territory as designated by the franchise, subject to petition and referendum as hereinbefore stated. All such extensions shall become part of the aggregate property of the utility, and shall be subject to all the obligations and reserved rights in favor of the municipality applicable to the property of the utility by virtue of the ordinance providing for its construction and operation. The right to use and maintain any such extensions shall expire with the original grant of the utility to which the extension was made, or any renewal thereof.

History: En. Sec. 103, Ch. 152, L. 1917.

5501. When property owner's consent to public utility necessary. No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, and maintenance or operation of any public utility by original grant or renewal, unless such public utility is of such character that its construction or operation is an additional burden upon the rights of the property owners in such highways or public grounds.

History: En. Sec. 104, Ch. 152, L. 1917.

5502. Fiscal year—Estimate and classification of expenditures—Information to be included in estimates—Copies of estimates. The fiscal year of the municipality shall begin on the first day of January. On or before the first day of November of each year, the city manager shall submit to the commission an estimate of the expenditures and revenues of the municipal departments for the ensuing year. The estimate shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the expenditures shall be as nearly uniform as possible for the main functional divisions of all departments, and shall give in parallel columns the following information.

(a) A detailed estimate of the expenses of conducting each department as submitted by the department;

(b) Expenditures for corresponding items for the last two fiscal years;

(c) Expenditures for the corresponding items for the current fiscal year, including adjustments due to transfers between appropriations, plus an estimate of expenditure necessary to complete the current fiscal year;

(d) Amount of supplies and materials on hand at the date of the preparation of the invoice;

(e) Increase or decrease of requests compared with the corresponding appropriations for the current year;

(f) Such other information as is required by the commission, or that the city manager may deem advisable to submit;

(g) The recommendation of the city manager as to the amounts to be appropriated, with reasons therefor in such detail as the commission may direct.

A sufficient number of copies of such estimate shall be prepared and submitted, that there may be copies on file in the office of the commission for inspection by the public.

History: En. Sec. 105, Ch. 152, L. 1917.

5503. Appropriation ordinance—Details concerning. Upon receipt of such estimate, the commission shall prepare an appropriation ordinance in such form as may be prescribed by ordinance or resolution. Before finally acting upon such tentative appropriation, the commission shall fix a time and place for holding public hearings upon the tentative appropriation, and shall give public notice of such hearings. Following the public hearings and before its final passage, the appropriation ordinance shall be published with a parallel comparison with the recommendation of the city manager. The commission shall not pass the appropriation ordinance until ten days after its publication, nor before the second Monday in January.

History: En. Sec. 106, Ch. 152, L. 1917.

5504. Power of first commission over appropriations already made. If, at the beginning of the term of office of the first commission elected under the provisions of this act, the appropriations for the expenditures of the municipal government for the current fiscal year have been made, said commission shall have the power by ordinance to revise, repeal, or change said appropriations, and to make additional appropriations.

History: En. Sec. 107, Ch. 152, L. 1917.

5505. Transfer of funds. Upon request of the city manager, the commission may transfer any part of an unincumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient, or may authorize a transfer to be made between items appropriated to the same office or department.

History: En. Sec. 108, Ch. 152, L. 1917.

5506. Unexpended appropriations—Manner of drawing moneys and incurring obligations. At the close of each fiscal year, the unincumbered balance of each appropriation shall revert to the respective fund from which it was appropriated, and shall be subject to future appropriations.

Any accruing revenue of the municipality, not appropriated as hereinbefore provided, and any balance at any time remaining after the purpose of the appropriation shall have been satisfied or abandoned, may from time to time be appropriated by the commission to such uses as will not conflict with any uses for which specifically such revenues accrued.

No money shall be drawn from the treasury of the municipality, nor shall any obligation for the expenditure of money be incurred, except pursuant to the appropriation made by the commission.

History: En. Sec. 109, Ch. 152, L. 1917.

5507. Fixing salaries and compensation—Disposition of fees. The commission shall fix by annual salary ordinance, the salary or compensation of the city manager, the heads of departments, its own employees, except as provided by this act, the salary or compensation of the members of the division of police and fire under the immediate control of the chief, and of members of boards in the unclassified service of the municipality.

The city manager shall fix the number and salaries or compensation of all other officers and employees.

The salary or compensation so fixed shall be uniform for like service in each grade of the service, as the same shall be graded or classified by the city manager in accordance with the rules and regulations adopted by the civil service board. All such salaries and rates of pay, shall be reported to the secretary of the civil service board. All fees and moneys received or collected by officers and employees shall be paid into the city treasury.

History: En. Sec. 110, Ch. 152, L. 1917.

5508. Bonds of clerks and employees—Premium. The commission or city manager, in fixing the salary of any officer, clerk, or employee, shall determine whether such officer, clerk, or employee shall give a bond and the amount thereof, which bond shall be secured from a regularly accredited surety company authorized to do business under the laws of Montana. Premiums on such bonds shall be paid by the municipality.

History: En. Sec. 111, Ch. 152, L. 1917.

5509. Persons holding office at time act takes effect—Powers and duties imposed by present laws. All persons holding office at the time this act goes into effect shall continue in office and the performance of their duties until provision shall have been otherwise made in accordance

with the provisions of this act for the performance or discontinuance of the duties of any such office. When such provision shall have been made, the term of any such officer shall expire and the office be abolished.

The powers which are conferred and the duties which are imposed upon any officer, board, or commission or department of the municipality under the laws of the state, shall, if such officer, board, commission, or department is abolished by this act, be thereafter exercised and discharged by the officer, board, commission, or department upon whom are imposed corresponding functions, duties, and powers under the provisions of this act.

History: En. Sec. 112, Ch. 152, L. 1917.

5510. Official oath. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation, to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office.

History: En. Sec. 113, Ch. 152, L. 1917.

5511. Saving clause as to contracts, work, and improvements. All contracts entered into by the municipality for its benefit, prior to the taking effect of this act, shall continue in full force and effect. All public work begun prior to the taking effect of this act shall be continued and perfected hereunder. Public improvements for which legislative steps shall have been taken under the laws in force at the time this act takes effect may be carried to completion in accordance with the provisions of such laws.

History: En. Sec. 114, Ch. 152, L. 1917.

5512. Eight-hour day may be established. The commission shall have the power to provide, by ordinance, that on any public work carried on by the municipality, whether done by contract or otherwise, not to exceed eight hours shall constitute a day's work.

History: En. Sec. 115, Ch. 152, L. 1917.

5513. Assessment for removal of snow and ice from sidewalks, etc. The commission shall have the power to provide, by ordinance, for assessing against the abutting property the cost of removing from the sidewalks all accumulation of snow and ice, and for assessing against the property the cost of cutting and removing therefrom obnoxious weeds and rubbish.

History: En. Sec. 116, Ch. 152, L. 1917.

5514. Abandonment of commission-manager plan—Proceedings. Any municipality which shall have operated for more than two years under the provisions of this act, may abandon such organization hereunder, and accept the provisions of the general law of the state applicable to municipalities of its population.

Upon the petition of not less than twenty-five per cent, of the electors of such municipality registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the (city or town) of (name of city or town) abandon its organization under (name of this act) and become a (city or town) under the general law governing (cities or towns) of like population; or if formerly organized under special charter, shall resume said special charter?"

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general laws of the state for municipalities of like population, and upon the qualification of such officers, such municipality shall become a municipality under such general law of the state, but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such municipality, but shall merely extend to each change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, as provided for by the provisions of this act, in so far as the provisions thereof are applicable. Whenever the form of government of a municipality is determined by a vote of the people under the provisions of this section, the same question shall not be submitted again for a period of two years, and any ordinance adopted by the vote of the people shall not be repealed or the same question submitted for a period of two years.

History: En. Sec. 117, Ch. 152, L. 1917.

5515. Laws continued in force by this chapter. All acts and parts of acts, and all laws now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect, and shall be considered and construed as not repealed by this act, except in so far as the same may be in conflict or inconsistent with the provisions of this act.

History: En. Sec. 118, Ch. 152, L. 1917.

5516. Repealing and saving clause. All laws and parts of laws in conflict herewith are hereby repealed; provided, however, that this act shall not repeal or modify any of the provisions of an act approved March 4, 1913, entitled "An act making the board of railroad commissioners of the state of Montana ex-officio a public service commission for the regulation and control of certain public utilities, etc.," or any amendment or amendments of said act, or section 6645 of this code, and neither shall this act in any manner curtail or impair the power of authority of said public service commission, and any order made, action taken, or regulation provided by said commission shall supersede and nullify any order, regulation, ordinance, or other action authorized by this act in conflict with any such order, regulation, or action of said public service commission.

History: En. Sec. 119, Ch. 152, L. 1917.

5517. Effect of organization of communities into single municipal district. Whenever any group of communities shall become a single municipal district under the provisions of this law, the commissioners elected at the first election shall have the same functions and authority, and municipal procedure in all respects shall be the same as is provided in this law where single communities, cities, or towns adopt the commission-manager

form of government, and the terms of all municipal officers in any prior city or town which may be included in such new municipal district shall in like manner cease and terminate as soon as the commissioners shall by resolution so declare, and the corporate functions and existence of any such prior municipal corporation may in like manner be terminated by said commissioners when the need for the further existence of such prior corporation shall be at an end.

History: En. Sec. 6, Ch. 44, L. 1919.

5518. Name of new municipal district. Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, such municipal district shall bear the same name as the principal incorporated city or town in such district.

History: En. Sec. 6, Ch. 44, L. 1919.

5519. Property vests in new municipality—Improvements payable by special assessments—Unpaid indebtedness of old municipalities. Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, the corporate property of each such city or town shall become the property of the new municipality, but improvements paid for in whole or in part by special assessments upon abutting property within special improvement districts shall not be deemed municipal property within the meaning of this law, to the extent of payments so made. If such prior city or town shall have an unpaid indebtedness, the commissioners of said new municipality elected at at the first municipal election shall inventory and appraise or cause to be inventoried and appraised, all of such property, and if the amount of the indebtedness of such prior city or town shall exceed the inventory value of the property surrendered to the new municipality by such prior city or town, then the excess of such indebtedness over the inventory value of said property shall be a charge only against the taxable property within the limits of such prior city or town, and shall be paid by levy upon such property alone.

History: En. Sec. 6, Ch. 44, L. 1919.

5520. Rental of county buildings—Contracts with county commissioners for work—Rate of compensation. Whenever any city organized under this act includes the county seat of the county in which it is situated, any unused space in the county buildings in such city may be rented to the city commissioners for municipal use by the board of county commissioners for such rent as shall represent an income of not more than six per cent. upon the investment in such buildings proportionate to the space rented. Such commissioners may also contract with the board of county commissioners for the performance by county officials or employees of any kind of municipal work which can be feasibly performed by them. The compensation for such work shall be based upon additional cost to the county of its performance, and such compensation shall be paid into the general fund of such county unless otherwise provided by law.

History: En. Sec. 6, Ch. 44, L. 1919.

PART V.

THE ENACTMENT, REVISION, PUBLICATION AND EFFECT OF THE CODES.

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CHAPTER 1.

THE ENACTMENT AND EFFECT OF THE CODES.

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History: En. Sec. 5160, Pol. C. 1895; re-en. Sec. 3553, Rev. C. 1907. Cal. Pol. C, Sec. 4478.

Cited or applied as section 5160, Political Code, in Steele v. Gilpatrick, 18 Mont. 453, 454, 45 Pac. 1089; Dowty v. Pittwood, 23 Mont. 113, 116, 57 Pac. 727.

Constitutionality of code amendments and revisions, see note in 86 A. S. R. 267.

Power of legislature to enact a code or compilation of laws, or amend many or undesignated sections thereof, by a single statute, see note in 55 L. R. A. 833.

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5522. Construction of the codes with relation to each other. With relation to each other, the provisions of the four codes must be construed (except as in the next two sections provided) as though all such codes had been passed at the same moment of time, and were parts of the same statute.

History: En. Sec. 5161, Pol. C. 1895; re-en. Sec. 3554, Rev. C. 1907. Cal. Pol. C. Sec. 4480.

Cited or applied as section 5161, Political Code, in Steele v. Gilpatrick, 18 Mont. 453, 454, 45 Pac. 1089; state ex rel. Nissler v. Donlan, 32 Mont. 256, 264, 80 Pac. 244; as section 3554, Revised Codes, in Brown v. Foster, 48 Mont. 114, 119, 135 Pac. 993.

5523. Conflicts between titles—Which to prevail. If the provisions of any title conflict with or contravene the provisions of another title, the

provisions of each title must prevail as to all matters and questions arising out of the subject-matter of such title.

History: En. Sec. 5162, Pol. C. 1895; re-en. Sec. 3555, Rev. C. 1907. Cal. Pol. C. Sec. 4481.

Cited or applied as section 5162, Political Code, in Hilburn v. St. P. Ry. Co., 23 Mont. 229, 243, 58 Pac. 551; State ex rel. City of Butte v. Weston, 29 Mont. 125, 131, 74 Pac. 415; In re O'Brien, 29 Mont. 530, 541, 75 Pac. 196, 1 Ann. Cas. 373; State ex rel. Nissler v. Donlan, 32 Mont. 256, 264, 80 Pac. 244; In re Pomeroy, 33 Mont. 69, 72, 81 Pac. 629; Great Falls Meat Co. v. Jenkins, 33 Mont. 417, 422, 84 Pac. 74; as section 3555, Revised Codes, in Monidah Trust v. Kemper, 44 Mont. 1, 6, 118 Pac. 811; Ann. Cas. 1912D, 1326.

5524. Conflicts between chapters—Which to prevail. If the provisions of any chapter conflict with or contravene the provisions of another chapter of the same title, the provisions of each chapter must prevail as to all matters and questions arising out of the subject matter of such chapter.

History: En. Sec. 5163, Pol. C. 1895; re-en. Sec. 3556, Rev. C. 1907. Cal. Pol. C. Sec. 4482.

Cited or applied as section 5163, Political Code, in State ex rel. Nissler v. Donlan, 32 Mont. 256, 264, 80 Pac. 244; Flowerree Cattle Co. v. Lewis and Clark County, 33 Mont. 32, 39, 81 Pac. 398, 8 Ann. Cas. 674; as section 3556, Revised Codes, in State v. Story, 53 Mont. 573, 584, 165 Pac. 748; Minneapolis Steel & Machinery Co. v. Thomas, 54 Mont. 132, 135, 168 Pac. 40.

5525. Conflicting sections of the same title—Which to prevail. If conflicting provisions are found in different sections of the same chapter or part, the provisions of the section last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter or article.

History: En. Sec. 5165, Pol. C. 1895; re-en. Sec. 3558, Rev. C. 1907. Cal. Pol. C. Sec. 4484.

Note.—The word "article" originally appearing in the above section changed to "part" in this code.

Where a clause seems to have crept into the body of an act as the result of misconception or ill-advised amendment, and it cannot be given effect without violence to the clear and plain intent of the law, considered in its entirety, it must be regarded as an inadvertence, and as not militating against the legislative intent. State ex rel. Seres v. District Court, 19 Mont. 501, 506, 48 Pac. 1104; State ex rel. Kehoe v. Stromme, 49 Mont. 25, 28, 139 Pac. 1002; State ex rel. Eagye v. Bawden, 51 Mont. 357, 364, 152 Pac. 761.

The circumstance that a section of an act is the last word upon the subject is not sufficient to prevail over all other provisions of the act indicating a different legislative intent. State ex rel. Kehoe v. Stromme, 49 Mont. 25, 28, 139 Pac. 1002.

Cited or applied as section 5165, Political Code, in State ex rel. Aachen & Munich F. Ins. Co. v. Rotwitt, 17 Mont. 41, 49, 41 Pac. 1004; State v. Courtney, 27 Mont. 378, 384, 71 Pac. 308; In re Scheuer's Estate, 31 Mont. 606, 617, 79 Pac. 244; State ex rel. Nissler v. Donlan, 32 Mont. 256, 264, 80 Pac. 244; Clark v. Maher, 34 Mont. 391, 400, 87 Pac. 272; as section 3558, Revised Codes, in Morse v. Granite County, 44 Mont. 78, 96, 119 Pac. 286.

5526. Repeal of repealed statutes. The repeal of any statute or part of a statute heretofore repealed must not be so construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

History: En. Sec. 5180, Pol. C. 1895; re-en. Sec. 3560, Rev. C. 1907. Cal. Pol. C. Sec. 4504.

Cited or applied as section 5180, Political Code, in Dowty v. Pittwood, 23 Mont. 113, 117, 57 Pac. 727; as section 3560, Revised Codes, in State v. Bradshaw, 53 Mont. 96, 100, 161 Pac. 710.

5527. Certain acts remain in force. An act, entitled an act to create the office of county auditor, approved March 7, 1891, and all acts of the third and fourth sessions of the legislative assembly of the state of Montana, shall be and remain in full force and effect in like manner as if enacted after the adoption of the four codes, namely: The Code of Civil Procedure, the Penal Code, the Civil Code, and the Political Code, notwithstanding the provisions of sections 5521 and 5522 of this code, nor any provisions of either of said codes to the contrary; and all acts of the fourth session of the legislative assembly amending or repealing any provision of either of said codes shall be observed in compiling and printing thereof, so that such repealed provision shall be omitted and amendments inserted in lieu of the original provision.

History: En. Sec. 5181, Pol. C. 1895; re-en. Sec. 3561, Rev. C. 1907.

Cited or applied as section 5181, Political Code, in Campana v. Calderhead, 17 Mont. 548, 549, 44 Pac. 83, 36 L. R. A. 277; Steele v. Gilpatrick, 18 Mont. 453, 454, 45 Pac. 1089; Proctor v. Cascade County, 20 Mont. 315, 316, 50 Pac. 1017; Jobb v. County of Meagher, 20 Mont. 242, 429, 51 Pac. 1034; Penwell v. Board of County Commrs. of Lewis and Clark County, 23 Mont. 351, 357, 59 Pac. 167; King v. Pony Gold Min. Co., 24 Mont. 470, 478, 62 Pac. 783; State ex rel. McGinnis v. Dickinson, 26 Mont. 391, 393, 68 Pac. 468; State ex rel. Tel. Co. v. Mayor of Red Lodge, 30 Mont. 338, 343, 76 Pac. 758.

5528. When codes go into effect. The said four codes, and all amendments thereof, adopted by the fourth session of the legislative assembly of the state of Montana, shall go into force and effect at twelve o'clock noon on the first day of July, A. D. 1895, and the same, together with the acts of the third and fourth sessions of the legislative assembly, shall constitute the public statutes of Montana. And all other statutes of this state of a general nature existing and in force theretofore, that is, prior and up to the time designated for the said codes to take effect, are hereby repealed, abrogated, and superseded, unless continued in force by incorporation into said codes, and this repeal provision shall take effect at the time said codes go into force and effect as aforesaid, subject, however, to the following conditions:

1. Nor shall the foregoing repeal provision apply to, abrogate, or affect any statute or resolution making appropriation of public moneys, or creating or providing for the payment of public obligations, or from raising revenue therefor, nor abridge, abolish, or impair any vested right or rights, accruing or accrued; nor shall such repeal change the force and effect of any act done or judgment rendered, or suit or proceeding had or commenced under the law as it stood prior to the taking effect of the provisions of this section, but all such rights and liabilities may be enforced and the provisions continued conforming the same as far as practical to the provisions and remedies prescribed by said codes; nor shall such repeal in any manner abridge or affect the term, tenure, or emolument of any officer during the term for which the incumbent may have been appointed or elected, unexpired when the codes take effect.

2. All offenses committed and all penalties or forfeitures incurred by virtue of any statute embraced in the foregoing repeal provision may be enforced, prosecuted, or punished as the case may require, subject to the same limitation, if any, prescribed when such offense was committed, or such penalty or forfeiture was incurred.

3. The arrangement and classification of the several parts of said codes have been made for the purpose of convenience and orderly arrangement, and therefore no implication or presumption of a legislative construction is to be drawn therefrom, nor shall annotations be deemed any part of the statutes.

History: En. Sec. 5182, Pol. C. 1895; re-en. Sec. 3562, Rev. C. 1907.

The division of the codes into parts, titles, chapters, articles, and sections is a mere device for convenience, and no implication or presumption of a legislative construction is to be drawn therefrom. Brown v. Foster, 48 Mont. 114, 119, 135 Pac. 993.

Cited or applied as section 5182, Political Code, in Campana v. Calderhead, 17 Mont. 548, 549, 44 Pac. 83, 36 L. R. A. 277; Chicago Title & Trust Co. v. O'Marr, 18 Mont. 568, 578, 46 Pac. 809, 47 Pac. 4; Mutual Benefit Life Ins. Co. v. Winne, 20 Mont. 20, 35, 49 Pac. 446; Kimpton v. Jubilee Placer Co., 22 Mont. 107, 108, 55 Pac. 918; Dowty v. Pittwood, 23 Mont. 113, 117, 57 Pac. 727; State ex rel. McGinnis v. Dickinson, 26 Mont. 391, 394, 68 Pac. 468; Stadler v. City of Helena, 46 Mont. 128, 132, 127 Pac. 454; as section 3562, Revised Codes, in State ex rel. Brandegee v. Clements, 52 Mont. 57, 59, 155 Pac. 271; State ex rel. Wooten v. District Court, 57 Mont. 517, 524, 189 Pac. 233.

5529. Certain acts to be compiled. All acts and parts of acts enumerated in this act are, and the same are hereby declared to be, parts of the Political Code, the Civil Code, the Code of Civil Procedure, and the Penal Code, respectively, and the commissioner appointed to codify and compile the said codes is hereby authorized and directed to place and arrange the said acts and parts of acts in their proper places in the said codes.

History: En. Secs. 5184, 5185, Pol. C. 1895; re-en. Secs. 3564, 3565, Rec. C. 1907.

Cited or applied as section 5183, Political Code, in Steele v. Gilpatrick, 18 Mont. 453, 455, 45 Pac. 1089; State ex rel. McGinnis v. Dickinson, 26 Mont. 391, 394, 68 Pac. 468; City of Helena v. Rogan, 27 Mont. 135, 137, 69 Pac. 709; as section 3563, Revised Codes, in State v. Bradshaw, 53 Mont. 96, 100, 161 Pac. 710.

5530. Construction of conflicting acts. If any of the acts or parts of acts herein enumerated are in conflict with, or are inconsistent with any of the provisions of the said codes enumerated in the preceding section, or any of them, the acts or parts of acts herein enumerated are to be considered and construed as amendments to the respective code or codes, whose provisions they are in conflict with, or are inconsistent with, it being intended hereby that all of the acts or parts of acts herein enumerated shall be the law of the state of Montana, upon the respective subjects, so far as they are inconsistent with the provisions of the said codes, or any of them, except as herein provided. If any of the acts or parts of acts herein enumerated are in conflict with, or are inconsistent with any act or acts passed by the fourth legislative assembly of the state of Montana, the acts or parts of acts passed by the fourth legislative assembly shall be considered and construed as repealing such acts or parts of acts herein enumerated.

History: En. Sec. 5184, 5185, Pol. C. 1895; re-en. Secs. 3564, 3565, Rev. C. 1907.

Note.—Sections 3566, Revised Code 1907 (5186 Political Code 1895), omitted from this code, enumerates the titles of the acts of the third session of 1893 which were declared to be in force and effect.

Cited or applied as section 5184, Political Code, in Steele v. Gilpatrick, 18 Mont. 453, 455, 45 Pac. 1089; Jobb v. County of Meagher, 20 Mont. 424, 429, 51 Pac. 1034; Home B. & L. Assn. v. Nolan, 21 Mont. 205, 208, 53 Pac. 738; Penwell v. Board of County Commrs. of Lewis and Clark County, 23 Mont. 351,

357, 59 Pac. 167; as section 5185, in King v. Pony Gold Min. Co., 24 Mont. 470, 478, 62 Pac. 783; State ex rel. McGinnis v. Dickinson, 26 Mont. 391, 394, 68 Pac. 468; City of Helena v. Rogan, 27 Mont. 135, 137, 69 Pac. 709; as section 5185, in Western Ranches v. Custer County, 28 Mont. 278, 283, 72 Pac. 659; Delmoe v. Long, 35 Mont. 139, 156, 88 Pac. 778; State ex rel. Cascade Bank v. Yoder, 38 Mont. 202, 206, 103 Pac. 499; John v. Northern Pacific Ry. Co., 42 Mont. 18, 56, 111 Pac. 632; as section 3564, Revised Codes, in Merges v. Altenbrand, 45 Mont. 355, 361, 123 Pac. 21; State v. Bradshaw, 53 Mont. 96, 100, 161 Pac. 710.

CHAPTER 2.

THE REVISION OF THE CODES.

Section 5531. Appointment of Code Commissioner—Qualifications and Duties—Arrangement of Codes.
5532. County Boundaries.
5533. Inconsistencies, Ambiguities, Omissions, etc.—New Sections—Term of Office of Commissioner—Time for Completion of Work.
5534. Oath of Office.
5535. Division of Codes and Index.
5536. Matter to Be Included in Codes.
5537. History of Statutes and Annotations.
5538. Powers of Commissioner—Supervision of Work by Supreme Court.
5539. Revised Codes of Montana of 1921.
5540. Same—Contents, History and Annotations.
5541. Making of Citation.
5542. Repeal of Sections Revised Codes 1907.
5543. Repeal of Session Acts.
5544. Repeal of Initiative Act.
5545. 1921 Laws Extra Session—Codification.
5546. Same—Publication.

5531. Appointment of code commissioner—Qualifications and duties—Arrangement of codes. The supreme court of the state of Montana is hereby authorized and directed to appoint, on or before the first day of April, A. D. 1919, some competent and qualified person as commissioner to compile and revise the Revised Codes of 1907 of the state of Montana, and the general statutes passed by the eleventh, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth regular sessions, and all extraordinary sessions of the legislative assemblies of the state of Montana, and all laws initiated and adopted by the people, and all other acts and parts of acts which have not been repealed, either by any of the session laws or by the people of Montana, and which have not been adjudged unconstitutional by the supreme court of the state of Montana; and it shall be the duty of the said commissioner to compile, revise, and arrange under proper headings, subjects, and chapters, all laws of a permanent and general nature which shall be in force after the adjournment of the sixteenth legislative assembly, with authority to rearrange the chapters in the respective codes, and to number and transpose such sections, and to provide other and different head-notes to chapters. Such compilations and revision shall be arranged under proper headings, subjects, and chapters, and be divided into the Political Code, the Civil Code, the Code of Civil Procedure, the Penal Code, and the General Laws of Montana.

History: En. Sec. 1, Ch. 195, L. 1919.

5532. County boundaries. It is hereby made the duty of the said commissioner, and he is hereby authorized, in compiling, revising and

arranging the Political Code, to define the boundaries of all of the counties in the state of Montana as they shall exist on the first day of July, A. D. 1919, as defined in the Revised Codes of 1907, and the several session laws subsequent thereto, and also to define the boundaries of the several counties which have been created under the general law providing for the organization of new counties by petition and election by the people, in accordance with the records in the office of the secretary of state.

History: En. Sec. 2, Ch. 195, L. 1919.

5533. Inconsistencies, ambiguities, omissions, etc.—New sections—Term of office of commissioner—Time for completion of work. In addition to the work of such compilation and revision of all the laws of the state, it shall also be the duty of the said commissioner to note all inconsistencies, ambiguities, omissions, contradictions, and imperfections in the several sections of the codes, and to prepare new sections for the purpose of correcting and reconciling all inconsistencies, ambiguities, omissions, contradictions, and imperfections, and to submit such proposed new sections by way of bills to be introduced at the seventeenth legislative assembly, and also to make a full and complete report, which shall accompany such proposed bills, explaining the inconsistencies, ambiguities, omissions, contradictions, and imperfections in the present codes and session laws, and the necessity for the enactment of the proposed new sections. The said commissioner shall enter upon the discharge of his duties on the first day of April, A. D. 1919, and shall devote his entire time to such work, and he shall complete the work of such compilation and revision on or before the first Monday of January, A. D. 1921. The appointment of such commissioner shall continue until after the adjournment of the regular session of the seventeenth legislative assembly, and until all laws of a permanent and general nature enacted at the said seventeenth session shall have been compiled and arranged under proper headings, subjects, and chapters of the Political Code, Civil Code, Code of Civil Procedure, Penal Code, and General Laws of Montana.

History: En. Sec. 3, Ch. 195, L. 1919.

5534. Oath of office. Before entering upon the discharge of his duties, the said commissioner shall take and subscribe the oath of office provided by the constitution, which oath shall be filed in the office of the secretary of state.

History: En. Sec. 4, Ch. 195, 1919.

5535. Division of codes and index. The commissioner shall divide the laws into five parts: The Political Code, the Civil Code, the Code of Civil Procedure, the Penal Code, and the General Laws of Montana, and shall make for each of the said codes and general laws a new, complete, and working index of the contents thereof, alphabetically arranged, and of sufficient particularity to refer to each section contained in such codes and the general laws, and the subjects thereof, which index must be printed and bound in its appropriate volume, and must make a new and complete general index of all the codes, which must be printed and bound in one of said volumes.

History: En. Sec. 5, Ch. 195, L. 1919.

5536. Matter to be included in codes. The said commissioner is hereby authorized and directed to prepare with said codes for publication, and in the first part of the first volume, a copy of the magna charta, the declaration of independence, the constitution of the United States and amendments, the organic act of the territory of Montana, the enabling act, the constitution of the state of Montana, and laws of congress relating to the authentication of laws and records, together with an index to each of the foregoing.

History: En. Sec. 6, Ch. 195, L. 1919.

5537. History of statutes and annotations. In compiling and revising the said statutes, there must be added by the commissioner to each section a note, printed in small italics, showing date of its enactment and its complete history; and the said codes and laws, as compiled and revised, shall be annotated so as to show by proper and appropriate reference all decisions of the supreme court of the state of Montana, commenting upon or in any way referring to any sections of the laws or constitution of Montana, up to the first day of January, A. D. 1921, and the decisions of any other state or states construing statutes similar to the section under which such annotations are made. Such annotations shall contain the names of the plaintiffs and defendants, the number of the volume, and page of the report containing such decisions in the Montana reports, or other reports, and also a brief statement of the holding of such case, with reference to the particular section of the laws or constitution.

History: En. Sec. 7, Ch. 195, L. 1919.

5538. Powers of commissioner—Supervision of work by supreme court. This act shall not be construed as giving the said commissioner any power to change, modify, or make any law or laws, but only as giving him full power and authority to complete a full revision and compilation of the laws of the state of Montana, and to make the recommendations hereinbefore provided with reference to inconsistencies, ambiguities, omissions, contradictions, and imperfections in the several sections of the laws. The said commissioner, in revising and compiling the codes, in the preparation of the indexes and all annotations, and in arranging the laws of the Political Code, the Civil Code, the Code of Civil Procedure, the Penal Code, and the General Laws, and under the several headings, subjects, and chapters, shall at all time be subject to the supervision and direction of the justices of the supreme court.

History: En. Sec. 8, Ch. 195, L. 1919.

5539. Revised Codes of Montana of 1921. The four codes of law heretofore enacted by the legislative assembly of the state of Montana under the name and designation of the Political Code of the state of Montana, the Civil Code of the state of Montana, the Code of Civil Procedure of Montana, and the Penal Code of Montana, together with such other statutes and acts of the several legislative assemblies of the state of Montana as have been enacted since the date of the adoption of said codes and as are now in force and effect, including such laws as shall be enacted by the seventeenth legislative assembly of the state of Montana,

shall, when compiled, revised, and arranged into a code of law by the code commissioner appointed under the authority of chapter 195 of the laws of the sixteenth legislative assembly of the state of Montana, be known and designated as the Revised Codes of Montana of 1921.

History: En. Sec. 1, Ch. 109, L. 1921.

5540. Same—Contents, history and annotations. The Revised Codes of Montana of 1921 shall consist of four separate codes to be known and designated as the Political Code of Montana, the Civil Code of Montana, the Code of Civil Procedure of Montana, and the Penal Code of Montana, the same comprising as a whole a complete code of law. Each of said codes shall be divided into parts and chapters and the laws in each code shall be designated by section numbers which shall run consecutively and continuously through the entire four codes. Each of said four codes shall be published in a separate volume accompanied by an index and a table of contents and the Penal Code shall also be accompanied by a general index and by an appendix containing a table of omitted laws and of comparative sections. In addition to the subject-matter herein specified the Revised Codes of Montana of 1921 shall contain the history of the various laws of the state and the annotations to the decisions of the supreme court of Montana and of the United States construing same, together with the other subject-matter prescribed in section 5536 of this code.

History: En. Sec. 2, Ch. 109, L. 1921.

5541. Making of citation. Whenever any section of the Revised Codes of Montana of 1921 shall be cited, referred to, or amended the same may be designated by giving the number of the section followed by the words "Revised Codes of Montana of 1921." Said citation may also be made by abbreviation by giving the number of the section followed by the letters and figures "R. C. M. 1921," and said abbreviation shall be authentic and sufficient for all purposes.

History: En. Sec. 3, Ch. 109, L. 1921.

5542. Repeal of sections Revised Codes 1907. The following sections of the Revised Codes of Montana of 1907 are hereby repealed: Sections 19, 44, 45, 46, 52, 116, 117, 127, 129, 138, 140, 142, 201 to 204, inclusive, 205 to 207, inclusive, 219 to 225, inclusive, 264, 269, 289, 306, 313, 315, 316, 340, 458, 463, 467, 468, 571, 667, 669, 670, 671, 690, 691, 696, 702, 706, 730, 731, 734, 770, 771, 774, 777, 1148 to 1154, inclusive, 1161, 1162, 1164, 1167, 1179, 1180, 1181, 1224, 1225, 1226, 1232, 1266, 1268, 1269, 1274, 1304, 1324, 1325, 1327 to 1336, inclusive, 1339, 1343, 1369, 1370, 1373 to 1384, inclusive, 1385, 1386, 1387, 1388, 1389, 1391, 1397 to 1409, inclusive, 1411 to 1416, inclusive, 1417 to 1419, inclusive, 1420 to 1433, inclusive, 1434, 1455, 1512 to 1539, inclusive, 1641, 1642, 1658, 1712, 1718, 1731, 1732, 1733, 1744, 1745, 1758, 1761, 1792, 1825, 1826, 1827, 1828 to 1835, inclusive, 1841, 1842, 1847, 1848, 1850, 1851, 1852, 1907, 1908, 1913, 1914, 1915, 1916, 1948, 1972, 1976, 1977, 1977a, 1978, 1979, 1980, 1981, 1982, 1987, 1995, 2041 to 2049, inclusive, 2092, 2112 to 2118, inclusive, 2152 to 2221, inclusive, 2225 to 2237, inclusive, 2507, 2531 to 2539, inclusive, 2578, 2579, 2595, 2596, 2757, 2759 to 2762, inclusive, 2764, 2765, 2766, 2767, 2768, 2769, 2771, 2782, 2974, 2979, 2980, 3093, 3094,

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History: En. Sec. 4, Ch. 109, L. 1921.

5543. Repeal of session acts. The following session laws enacted by the legislative assembly of Montana are hereby repealed: Section 1 of chapter 110, section 1 of chapter 37, and section 1 of chapter 112 of the laws of the eleventh legislative assembly of 1909; sections 1, 2, 3, 4, 6, 7, 8 and 9 of chapter 2, section 1 of chapter 18, and sections 4, 9, 19, and 25 of chapter 120, of the laws of the twelfth legislative assembly of 1911; all of chapter 8, sections 204 and 606 of chapter 76, and all of chapters 99 and 100 of the laws of the thirteenth legislative assembly of 1913; all of chapters 28, 41, and 123, and chapter 9 of chapter 141 of the laws of the fourteenth legislative assembly of 1915; sections 5 to 8, inclusive, of chapter 54, all of chapters 98, 102, and 147 of the laws of the fifteenth legislative assembly of 1917; all of chapters 2 and 8 of the laws of the fifteenth extraordinary legislative assembly of 1918; and section 9 of chapter 195 of the laws of the sixteenth legislative assembly of 1919.

History: En. Sec. 5, Ch. 109, L. 1921.

5544. Repeal of initiative act. An act initiated and passed by the people at the general election of 1914 entitled "A bill to proposed by initiative petition a law, 'Providing for the safe investment of the state permanent common school funds, and all other state educational, charitable, and penal institution funds in the securities herein designated, for the prompt collection of interest thereon, providing a method of procedure in making said investments to guard and protect such funds and prescribing the duties and obligations of the various officers of the state and the several counties to whom such funds are intrusted,' " is hereby repealed. The repeal of the act mentioned in this section shall not be deemed to affect any right or obligation heretofore created under the terms of said act, nor to prevent the foreclosure of any mortgage executed under the terms of said act.

History: En. Sec. 6, Ch. 109, L. 1921.

5545. 1921 laws extra session—Codification. The code commissioner of Montana is hereby authorized and directed to include and codify in the Revised Codes of Montana of 1921 the laws passed by the seventeenth extraordinary legislative assembly of 1921.

History: En. Sec. 1, Ch. 2, Ex. L. 1921.

5546. Same—Publication. The secretary of state shall publish the acts of the seventeenth extraordinary legislative assembly of 1921 in the same book with the acts of the regular session of said legislative assembly.

History: En. Sec. 2, Ch. 2, Ex. L. 1921.

CHAPTER 3.

THE PUBLICATION OF THE CODES.

Section 5547. Contract for Publication of Codes.
5548. Contract, to Whom Let—Delivery of Codes.
5549. Time for Performance of Contract.
5550. Number of Volumes—Style of Publication.
5551. Publisher to Supply for Private Use—Payment.
5552. Bond of Publisher.
5553. Distribution of Codes.

5547. Contract for publication of codes. The state board of examiners is hereby authorized to contract for the publication of the Revised Codes of Montana of 1921; said contract shall be advertised and let in the same manner as provided by law for the letting of contracts for state printing.

History: En. Sec. 1, Ch. 122, L. 1921.

5548. Contract, to whom let—Delivery of codes. The board of examiners shall contract for the publication of said work on the terms most expeditious and advantageous to the state, and the contract shall specify that one thousand sets of said codes shall be printed and delivered to the secretary of state of Montana, for the purpose of distribution as hereinafter provided.

History: En. Sec. 2, Ch. 122, L. 1921.

5549. Time for performance of contract. The board of examiners shall fix the time to be allowed for the completion of the work, and the performance of said work within the time so fixed shall constitute a part of the terms of the contract.

History: En. Sec. 3, Ch. 122, L. 1921.

5550. Number of volumes—Style of publication. The work shall be published in four volumes similar in the style of printing, quality of paper and workmanship to the Revised Codes of Montana of 1907, except that buckram binding instead of sheep may be accepted in the discretion of the board. The styles and size of type to be used, and the form and plan of arrangement shall be designated by the code commissioner of Montana, subject to the approval of the justices of the supreme court.

History: En. Sec. 4, Ch. 122, L. 1921.

5551. Publisher to supply for private use—Payment. The contract shall require the publisher to keep on hand for sale at a reasonable price to be fixed by the state board of examiners, a sufficient number of copies of said codes to supply all demands for the same for private use in the state of Montana for a period of ten years.

Whenever the secretary of state of Montana shall issue his certificate that he has received one thousand sets of said codes, printed and bound in accordance with said contract the state auditor is hereby directed to draw his warrant in favor of the publishers of said code for the amount of money due under said contract, and the state treasurer is hereby authorized to pay said warrant out of any moneys in his hands appropriated for said purpose by the legislature. The state board of examiners is also hereby authorized in its discretion to advance to the publishers of said

work partial payments upon said contract during the progress of the work, whenever in its judgment the making of such advance is necessary and proper to promote the progress of said publication.

History: En. Sec. 5, Ch. 122, L. 1921.

5552. Bond of publisher. The publisher to whom said contract is awarded must execute to the state of Montana, a good and sufficient bond to be approved by the board of examiners in the sum of ten thousand dollars conditioned for the faithful performance of said contract.

History: En. Sec. 6, Ch. 122, L. 1921.

5553. Distribution of codes. The secretary of state upon receipt of said published codes shall distribute the same, or so many of them as may be necessary, in the following manner, to-wit:

To each department of the state government of Montana, one copy.

To each member of the seventeenth legislative assembly of Montana, one copy.

To the state law library, two copies.

To the library of congress, one copy.

To the state historical and miscellaneous library, one copy.

To the state law librarian, for the purpose of exchanges with libraries, universities and other institutions, such number of copies, not to exceed one hundred, as may be required by him.

To each of the component institutions of the university of Montana, one copy.

To the United States district judge for the district of Montana, and to each of the judges of the supreme and district courts of Montana, one copy.

To the county clerk of each county, three copies, for the use of the various county officials.

To each county attorney and to each clerk of the district court, one copy.

History: En. Sec. 7, Ch. 122, L. 1921.

PART VI.

LOCAL AND SPECIAL LAWS.

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CHAPTER 1.

BOND ISSUE FOR ERECTION OF WINGS AT STATE CAPITOL BUILDING.

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5554. Bonds for wings at capitol building—Authorization and term. The state board of examiners of the state of Montana are hereby authorized to issue and dispose of bonds for the purpose of erecting wings at the east and west ends of the state capitol building, at Helena, Montana, under the following conditions and restrictions, to-wit:

First: The aggregate amount of bonds authorized by this act shall not exceed the sum of five hundred thousand dollars.

Second: The denomination of each bond shall be one thousand dollars.

Third: The term of said bonds shall not exceed thirty years from their date, and they shall be payable at any time after fifteen years from their date, at the option of the state board of examiners.

Fourth: The bonds may bear any rate of interest not in excess of five per cent. per annum, and the interest may be payable semi-annually.

Fifth: The principal and interest shall be payable at the office of the state treasurer, at Helena, Montana.

Sixth: The state board of examiners shall prescribe the form of the bond, and the bonds shall bear upon their face the words, "Second Issue Capitol Building Bonds of the State of Montana," and shall be signed by the members of the state board of examiners, and the great seal of the state of Montana shall be affixed to each bond, and the bonds shall be registered in the office of the state treasurer.

Seventh: The coupons representing the interest on the bonds shall have lithographed facsimile signatures of the members of the state board of examiners affixed thereon.

History: En. Sec. 1, Ch. 63, L. 1909.

5555. Disposal of bonds. The bonds provided for in this act shall be disposed of by the state board of examiners in such manner as they shall deem for the best interest of the state, provided that no bond shall be disposed of for less than its par value.

History: En. Sec. 2, Ch. 63, L. 1909.

5556. Interest and sinking fund. The principal and interest of the bonds authorized by this act shall be paid out of the special fund provided for by section 1240, Revised Codes of Montana of 1907, designated as the "capitol building interest and sinking fund," and from said "capitol building interest and sinking fund" there shall, as the same becomes due and payable, be paid the interest on the said bonds; and it is further provided, that it is the duty of the state board of land commissioners, whenever there are any funds in the said "capitol building interest and sinking fund," over and above the sum of twenty-five hundred dollars in excess of the amount required to pay the yearly interest on the bonds issued pursuant to section 1238 of the Revised Codes of Montana of 1907, known as the "capitol building bonds of the state of Montana," and the interest on the bonds provided for by this act, to invest such excess funds in the manner set forth and provided in section 1241 of the Revised Codes of Montana of 1907, and the amount so invested shall constitute a permanent fund to pay the principal of the bonds issued pursuant to section 1238 of the Revised Codes, and the bonds issued pursuant to this act; but all interest or profit derived from the investment shall be paid into the "state capitol building interest and sinking fund," and the principal and interest of the bonds issued pursuant to section 1238, Revised Codes, shall be a first lien upon said funds and the lands granted and belonging to the state for the purpose of erecting buildings at the state capitol, and the principal and interest of the bonds authorized by this act shall be a second lien upon said funds and all lands granted and belonging to the state for the purpose of erecting buildings at the state capitol.

History: En. Sec. 3, Ch. 63, L. 1909.

Note.—The sections above referred to are omitted from this code being no longer a part of the permanent laws of the state.

5557. Reimbursement of general fund, when. It is hereby provided and set forth that in the event the state of Montana shall at any time provide and pay the interest, or any part thereof, on the bonds authorized by this act from the general fund of the state, or by any special appropriation made, or taxes levied therefor, then for any and all interest so

paid the state shall be reimbursed from the said "capitol building and interest and sinking fund" by the payment of the amount so paid or due whenever there is sufficient money in said "capitol building interest and sinking fund" to pay the same, after paying the principal and interest due on the bonds issued pursuant to section 1238 of the Revised Codes of Montana of 1907.

History: En. Sec. 4, Ch. 63, L. 1909. See note to Sec. 5556.

5558. State treasurer, duties concerning bonds. The state treasurer is hereby designated as the custodian of the funds provided by this act, and he shall pay all warrants properly drawn by the state auditor, save and except as to the interest on the bonds, which he shall pay as the same become due, and charge the amount thereof to the "capitol building interest and sinking fund" hereinbefore referred to.

History: En. Sec. 5, Ch. 63, L. 1909.

5559. Calling and payment of bonds, how. Whenever any bonds authorized by this act shall become due and payable, and there is sufficient funds to pay the same, they shall be called in and paid in the order of their issuance, beginning with the lowest number.

History: En. Sec. 6, Ch. 63, L. 1909.

5560. Cost of issuance, how paid. The cost and expense of issuing the bonds provided for by this act may be paid out of the proceeds from the sale thereof, or be chargeable to the expenses of the construction of said wings to the capitol building.

History: En. Sec. 7, Ch. 63, L. 1909.

5561. Warrants for interest due to be issued. In the event there shall not at any time be sufficient money in the "capitol building interest and sinking fund" to pay the interest when due, the state board of examiners shall, by an order entered on their minutes or record books, cause warrants to be issued on the said "capitol building interest and sinking fund" for the amount of interest due, and the warrants so issued shall be registered in the office of the treasurer of the state and shall bear interest at the rate of five per cent per annum, and said warrants shall be paid by the state treasurer whenever there is sufficient money accumulated in said fund to pay the same, after paying the interest on the bonds issued pursuant to section 1238 of the Revised Codes, and by reason of the delivery of said warrants to the holders of said bonds, and the surrender of the said interest coupons, there shall be no default in the payment of interest.

History: En. Sec. 8, Ch. 63, L. 1909. See note to Sec. 5556.

5562. Liability of state limited. Nothing in this act shall be so construed as to in any wise hold the state of Montana liable for the payment of the bonds herein authorized, or the interest thereon, except as to the lien heretofore created against the lands and funds granted for the purpose of erecting buildings at the state capitol, and such liens shall not be abridged or set aside until the bonds authorized by this act shall have been fully paid, together with interest thereon, and the governor is hereby especially authorized and empowered to use all lawful means to enforce the provisions of this act.

History: En. Sec. 9, Ch. 63, L. 1909.

5563. Moneys, how disbursed. All moneys received from the sale of the bonds authorized by this act shall be paid to the state treasurer, and shall constitute a special fund for the erection of said wings to the state capitol building, and shall be disbursed by the state treasurer on warrants properly drawn by the state auditor, pursuant to the order of the state board of examiners.

History: En. Sec. 10, Ch. 63, L. 1909.

5564. Procedure for erection of wings. Upon the sale of the bonds authorized by this act it shall be the duty of the state board of examiners to secure the erection and completion of wings at the east and west ends of the state capitol building. In furtherance of this purpose said board shall procure plans and specifications in such manner as the board shall direct, under proper and safe conditions. The architect whose plan is selected as the plan for said wings must be required to furnish full and complete specifications for the erection and heating, lighting and plumbing of the same, with full and complete full-sized drawings and details and working plans so that any capable architect may take the plans, drawings and specifications submitted and erect said wings in accordance therewith. The board may employ, with the consent of the designing architect, any skilled and reputable architect as supervising architect of said wings, if in its judgment the best interests of the state would be subserved thereby.

History: En. Sec. 11, Ch. 63, L. 1909.

5565. Architect, duties, bond, and compensation. The architect whose plan is selected by the board shall receive such compensation as the board shall deem reasonable. He shall prepare all plans, specifications and details for all contracts for construction and material for said wings, and if employed by the board to superintend the construction of said wings he shall see that all material furnished and work done shall be of the best quality, and that all contracts with the said board are faithfully performed by the parties contracting with said board for work or material. He shall perform all other duties devolving upon him as supervising architect and may be removed at the pleasure of said board. Neither said architect nor any of his subordinates or assistants shall be in any way connected with any work done or material furnished for said wings, or any contract therefor, or shall have any interest therein, directly or indirectly. He shall furnish bond to the state of Montana in the sum of fifteen thousand dollars, with a fidelity company authorized to do business under the laws of this state, as surety, conditioned for the faithful performance by said architect, his assistants and subordinates of his and their duties as herein prescribed; provided, that the superintendents and contractors shall be residents of the state of Montana.

History: En. Sec. 12, Ch. 63, L. 1909.

5566. Superintendent of construction, appointment and duties. The board may appoint a specially qualified person to act as superintendent of the construction of said wings. It shall be his duty to see that all contracts made with the board are faithfully performed, that all material furnished and the work done shall be as required by law, or the contract therefor; that all duties imposed upon the architect are faithfully per-

formed by him and his subordinates and that no provisions of this act are violated. To report to the board any violation of this act or of any contract or of any duty by any architect, contractor or employee of said board, and to do such other duties as may be required of him by the board. Said superintendent shall receive as his compensation such sum as the board shall deem reasonable, not exceeding eight dollars per day for each and every day he is actually engaged in the performance of his duties. He shall be removed at the pleasure of the board.

History: En. Sec. 13, Ch. 63, L. 1909.

5567. Materials how procured—Limitation of cost. The board shall procure all material used in the construction of said building from the products of the state of Montana; provided, the same is produced in the state of Montana and can be procured as cheaply therein as material of like kind and quality can be procured elsewhere; and provided, further, that the total cost of the erection and furnishing of said wings, including steam heating apparatus and other fixtures shall not exceed the sum of five hundred thousand dollars, and the board shall at all times have this object in view, and all plans accepted, and all contracts awarded, shall be accepted and awarded only after the board shall be satisfied that the cost of the wings, when they shall be completed and furnished, shall not exceed said sum.

History: En. Sec. 14, Ch. 63, L. 1909.

5568. Time for completion of work. The entire construction and furnishing of said wings shall be completed by the first day of January, 1911; provided, that the bonds provided for in this act shall have been sold in time to enable the commencement of work so as to complete the wings by that date.

History: En. Sec. 15, Ch. 63, L. 1909.

5569. Bills how audited and paid. All disbursements on account of the erection of said wings shall be made pursuant to the orders of said board. All claims, bills and demands for labor performed or material furnished shall be presented to the board in duplicate, and shall be fully itemized, and shall be passed upon by said board only at regular sessions thereof and after careful examination of every item named. If found correct they shall audit the same, preserving one duplicate and transmitting the other to the state auditor, with directions to the state auditor to draw his warrant on the special fund for the erection of the wings to the state capitol building for the amount allowed and to the order of the person named in said order; provided, that no order shall be issued by the state board of examiners in excess of the amount received from the sale of the bonds authorized by this act.

History: En. Sec. 16, Ch. 63, L. 1909.

5570. Powers and duties of board of examiners with reference to erection of wings at state capitol. The state board of examiners be and it is hereby fully authorized and empowered to expend the entire amount of money authorized to be secured from the bond issue provided for by the act of the eleventh legislative assembly entitled "An act to provide for the issue and sale by the state board of examiners of bonds for the

purpose of erecting wings to the state capitol building; and to provide for the erection of said wings under the authority and direction of the state board of examiners approved March 4, 1909," and in addition thereto the entire amount authorized by the bond issue provided for by the act of the eleventh legislative assembly passed at the extraordinary session thereof, entitled "An act to provide for the issue and sale by the state board of examiners of additional bonds for the purpose of erecting wings to the state capital building and to provide for the erection of said wings under the authority and direction of the said state board of examiners, approved December 30, 1909, in the erection, completion, decorating and furnishing of the wings to the state capitol now in course of construction, and that the only limitation upon the said state board of examiners, in their actions with reference to said wings and the full completion, furnishing and decoration thereof be the full amount of said bond issues, namely, the sum of six hundred fifty thousand dollars.

History: En. Sec. 1, Ch. 19, L. 1911.

CHAPTER 2.

CAPITOL BUILDING REFUNDING BONDS.

Section 5571. Capitol Building Refunding Bonds—Authorization and Terms.
5572. Disposal of Bonds.
5573. Capitol Building Interest and Sinking Fund.
5574. State, How Reimbursed for Interest Paid.
5575. Duties of State Treasurer.
5576. Calling and Payment of Bonds.
5577. Issuance and Registry of Warrants to Pay Interest.
5578. Limitation of Liability of State.
5579. Money, How Applied.
5580. Bonds to Be Issued, When.

5571. Capitol building refunding bonds—Authorization and terms. The state board of examiners of the state of Montana are hereby authorized to issue and dispose of bonds for the purpose of providing funds to pay maturing, redeemable and outstanding "capitol building bonds of the state of Montana," issued under the provisions of an act of the fifth legislative assembly of the state of Montana approved March 4, 1897, authorizing the issuance of bonds for the erection of the state capital building, the same being sections 1238 to 1247, both inclusive, of the Revised Codes of Montana of 1907, under the following conditions and restrictions, to-wit:

First. The aggregate amount of bonds authorized by this act shall not exceed the sum of one hundred twenty-five thousand dollars.

Second. The denomination of each bond shall be one hundred dollars, or any multiple thereof, but the maximum of any bond shall not exceed the sum of one thousand dollars.

Third. The term of said bonds shall not exceed ten years; and the bonds issued pursuant to this act shall be redeemable and payable at the option of the said board of examiners in the following manner: One-fifth within one year from their date, or at any interest paying date thereafter; one-fifth within two years from their date, or at any interest paying date thereafter; one-fifth within three years from their date, or at any interest paying date thereafter; and one-fifth within four years from their date, or at any interest paying date thereafter; one-fifth within five years from their date, or at any interest paying date thereafter.

Fourth. The bonds may bear any rate of interest not in excess of four per cent. per annum, and the interest may be payable semi-annually.

Fifth. The principal and interest shall be payable at the office of the state treasurer at Helena, Montana.

Sixth. The state board of examiners shall prescribe the form of the bond. The bonds shall bear upon their face the words "refunding capitol building bond of the state of Montana," and they shall be signed by the members of the state board of examiners, and shall be countersigned by the secretary and treasurer of the state of Montana, and the great seal of the state shall be affixed to each bond, and the bonds shall be registered in the office of the state treasurer.

Seventh. The coupons representing the interest on the bonds shall be signed by the state treasurer, or an engraved or lithographic facsimile of the signature of the treasurer may be affixed thereto; provided, it is so authorized in the bond.

History: En. Sec. 1, Ch. 13, L. 1917.

Note.—The sections above referred to are omitted from this code, being no longer a part of the permanent laws of the state.

5572. Disposal of bonds. The bonds provided for in this act shall be disposed of by the state board of examiners, in such manner as they shall deem for the best interest of the state; provided, that no bond shall be disposed of for less than its par value.

History: En. Sec. 2, Ch. 13, L. 1917.

5573. Capitol building interest and sinking fund. The principal and interest of the bonds authorized by this act shall be paid out of the special fund provided for by section 1240 of the Revised Codes of Montana of 1907, designated as the "capitol building interest and sinking fund," and from said "capitol building interest and sinking fund" there shall, as the same becomes due and payable, be paid the interest on the said bonds; and it is further provided that it is the duty of the state board of land commissioners, whenever there are any funds in the said "capitol building interest and sinking fund," over and above the sum of twenty-five hundred dollars in excess of the amount required to pay the yearly interest on the bonds issued pursuant to chapter 63 of the session laws of the eleventh legislative assembly of the state of Montana, and the yearly interest on the bonds issued pursuant to chapter 11 of the laws and resolutions passed at the extraordinary session of the eleventh legislative assembly, and the interest on the bonds provided for by this Act, to invest such excess funds in the manner set forth and provided in section 1241 of the Revised Codes of the state of Montana of 1907, and the amount so invested shall constitute a permanent fund to pay the principal of the bonds issued pursuant to chapter 63 of the session laws of the eleventh legislative assembly of the state of Montana, of the bonds issued pursuant to chapter 11 of the laws and resolutions passed at the extraordinary session of the eleventh legislative assembly, and of the bonds issued pursuant to this act; and all interest or profit derived from the investment shall be paid into the "state capitol building interest and sinking fund," and the principal and interest of the bonds issued pursuant to this act shall be a first lien upon said funds and the lands granted and belonging to the state for the purpose of erecting a state capitol building.

History: En. Sec. 3, Ch. 13, L. 1917. See note to Sec. 5571.

5574. State, how reimbursed for interest paid. It is hereby provided and set forth that in the event the state of Montana shall at any time provide and pay the interest, or any part thereof, on the bonds authorized by this act from the general fund of the state, or by any special appropriation made, or taxes levied therefor, then for any and all interest so paid, the state shall be reimbursed from the said "capitol building interest and sinking fund," by the payment of the amount so paid or due, whenever there is sufficient money in said "capitol building interest and sinking fund" to pay the same.

History: En. Sec. 4, Ch. 13, L. 1917.

5575. Duties of state treasurer. The state treasurer is hereby designated as the custodian of the funds provided by this act, and he shall pay all interest upon the bonds herein provided for as the same become due and charge the amount thereof to the "capitol building interest and sinking fund," hereinbefore referred to.

History: En. Sec. 5, Ch. 13, L. 1917.

5576. Calling and payment of bonds. Whenever any bonds authorized by this act shall become redeemable, and there is sufficient funds to pay the same, they shall be called in and paid in the order of their issuance, beginning with the lowest number.

History: En. Sec. 6, Ch. 13, L. 1917.

5577. Issuance and registry of warrants to pay interest. In the event there shall not at any time be sufficient money in the "capitol building interest and sinking fund," to pay the interest when due, the state board of examiners shall, by an order entered in their minutes or record books, cause warrants to be issued on the said "capitol building interest and sinking fund" for the amount of interest due, and the warrants so issued shall be registered in the office of the treasurer of the state, and shall bear interest at the rate of four per cent. per annum, and said warrants shall be paid by the state treasurer whenever there is sufficient money accumulated in said fund to pay the same, and by reason of the delivery of the said warrants to the holders of the said bonds, and the surrender of said interest coupons, there shall be no default in the payment of interest.

History: En. Sec. 7, Ch. 13, L. 1917.

5578. Limitation of liability of state. Nothing in this act shall be construed as to in anywise hold the state of Montana liable for the payment of the bonds herein authorized, or the interest thereon, except as to the lien heretofore created against the lands and funds granted for the purpose of erecting a state capitol building, and such liens shall not be abridged, annulled or set aside until the bonds authorized by this act shall have been fully paid, together with interest thereon, and the governor is hereby specially authorized and empowered to use all lawful means to enforce the provisions of this act.

History: En. Sec. 8, Ch. 13, L. 1917.

5579. Money, how applied. All moneys received from the sale of the bonds authorized by this act shall be paid to the state treasurer, and must be by him applied to the payment of the maturing, redeemable and outstanding "capitol building bonds of the state of Montana," issued under

the provisions of an act of the fifth legislative assembly of the state of Montana approved March 4, 1897, authorizing the issuance of bonds for the erection of the state capitol building, the same being sections 1238 to 1247, both inclusive, of the Revised Codes of the state of Montana of 1907.

History: En. Sec. 9, Ch. 13, L. 1917. See note to Sec. 5571.

5580. Bonds to be issued, when. Only so many of the refunding bonds herein provided for shall be issued as may be necessary to pay the outstanding and redeemable "capitol building bonds of the state of Montana," issued under the provisions of an act of the fifth legislative assembly of the state of Montana approved March 4, 1897, authorizing the issuance of bonds for the erection of the state capitol building, the same being sections 1238 to 1247, both inclusive, of the Revised Codes of the state of Montana of 1907.

History: En. Sec. 10, Ch. 13, L. 1917. See note to Sec. 5571.

CHAPTER 3.

FOURTH ISSUE CAPITOL BUILDING BONDS.

Section 5581. Issuance Bonds to Acquire Lands for Capitol Grounds.
5582. Disposal of Bonds.
5583. Bonds, From What Funds Payable.
5584. Reimbursement of State for Interest Payments.
5585. Custodian of Funds.
5586. Calling for and Payment of Bonds.
5587. Cost, How Paid.
5588. Issuance of Warrants for Payment of Interest.
5589. Moneys, How Disposed of.

5581. Issuance bonds to acquire lands for capitol grounds. The state board of examiners of the state of Montana be and they are hereby authorized to issue and dispose of bonds for the purpose of acquiring lands and lots in the city of Helena, Montana, to be used as part of the state capitol grounds under the following conditions and restrictions, to-wit:

First. The aggregate amount of bonds authorized by this act shall not exceed the sum of fifty thousand dollars.

Second. Nothing in this act shall be construed as to in anywise hold the state of Montana liable for the payment of the bonds herein described, or the interest thereon, except to the lien heretofore created against the lands and funds granted to the state of Montana for the purpose of erecting buildings at the state capitol, and such liens shall not be abridged or set aside until the bonds authorized by this act shall have been fully paid, together with the interest thereon, and the governor is hereby especially authorized and empowered to use all lawful means to enforce the provisions of this act.

Third. The denomination of each bond shall be one thousand dollars.

Fourth. The term of said bonds shall not exceed thirty years from their date and they shall be payable at any time after fifteen years from their date, at the option of the state board of examiners.

Fifth. The bonds may bear any rate of interest not in excess of six per cent. per annum and the interest may be payable semi-annually.

Sixth. The principal and interest shall be payable at the office of the state treasurer at Helena, Montana.

Seventh. The state board of examiners shall prescribe the form of the bond and the bonds shall bear upon their face the words, "fourth issue capitol building bonds of the state of Montana," and shall be signed by the members of the state board of examiners and the great seal of the state of Montana shall be affixed to each bond and the bonds shall be registered at the office of the state treasurer.

Eighth. The coupons representing the interest on the bonds shall have lithographic facsimile signatures of the members of the state board of examiners affixed thereon.

History: En. Sec. 1, Ch. 265, L. 1921.

5582. Disposal of bonds. The bonds provided for in this act shall be disposed of in such manner as they shall deem for the best interests of the state; provided, that no bonds shall be disposed of for less than their par value.

History: En. Sec. 2, Ch. 265, L. 1921.

5583. Bonds, from what funds payable. The bonds provided for in this act and the principal and interest of said bonds shall be paid out of the special fund provided for by section 1240, Revised Codes of Montana of 1907, designated as the "capitol building interest and sinking fund," and from said capitol building interest and sinking fund there shall, as the same become due and payable, be paid the interest on said bonds; and it is further provided that it is the duty of the said board of land commissioners, whenever there are any funds in the capitol building interest and sinking fund over and above the sum of twenty-five hundred dollars, in excess of the amount required to pay the yearly interest on the bonds issued pursuant to section 1238 of the Revised Codes of Montana of 1907, known as the "capitol building bonds of the state of Montana," and the interest on the bonds provided for by section 63 of the session laws of the eleventh legislative assembly known as the "second issue capitol building bonds of the state of Montana," to invest such excess funds in the manner set forth and provided in section 1241 of the Revised Codes of Montana of 1907, and the amount so invested shall constitute a permanent fund to pay the principal of the bonds issued pursuant to chapter 63 of the session laws of the eleventh legislative assembly and the bonds issued pursuant to this act, but all interest or profit derived from the investment shall be paid into the state capitol interest and sinking fund, and the principal and interest of the bonds issued pursuant to section 1238, Revised Codes, shall be a first lien upon said funds and the lands granted and belonging to the state for the purpose of erecting buildings of the state capitol and the principal and interest of the bonds authorized by chapter 63 of the session laws of the eleventh legislative assembly, shall be a second lien upon said funds and lands granted and belonging to the state for the purpose of erecting buildings at the state capitol, and the principal and interest of the bonds authorized by this act shall be a third lien upon the said funds and lands granted and belonging to the state.

History: En. Sec. 3, Ch. 265, L. 1921.

Note.—The sections above referred to are omitted from these codes, being no longer a part of the permanent laws of this state.

5584. Reimbursement of state for interest payments. In the event that the state of Montana shall at any time provide and pay the interest, or any part thereof, of the bonds authorized by this act from the general funds of the state, or by any special appropriation made, or taxes levied therefor, then for any and all interest so paid the state shall be reimbursed from the said capitol bulding interest and sinking fund by the payment of the amount so paid or due whenever there is sufficient money in said capitol building interest and sinking fund to pay the same, after paying the principal and interest due on the bonds issued, pursuant to chapter 63 of the session laws of the eleventh legislative assembly.

History: En. Sec. 4, Ch. 265, L. 1921.

5585. Custodian of funds. The state treasurer is hereby designated as the custodian of the funds provided by this act and he shall pay all warrants properly drawn by the state auditor, save and except as to the interest on the bonds, which he shall pay as the same become due and charge the amount thereof to the capitol building interest and sinking fund, hereinbefore referred to.

History: En. Sec. 5, Ch. 265, L. 1921.

5586. Calling for and payment of bonds. Whenever any bonds authorized by this act shall become due and payable and there are suffiicient funds to pay the same, they shall be called in and paid in the order of their issuance, beginning with the lowest number.

History: En. Sec. 6, Ch. 265, L. 1921.

5587. Cost, how paid. The cost and expense of issuing the bonds provided for by this act may be paid out of the proceeds from the sale thereof.

History: En. Sec. 7, Ch. 265, L. 1921.

5588. Issuance of warrants for payment of interest. In the event that at any time there shall not be sufficient money in the capitol building interest and sinking fund to pay the interest on the bonds herein provided for when due, the state board of examiners shall, by an order entered on their minutes, cause warrants to be issued on the said capitol building interest and sinking fund for the amount of interest due and the warrants so issued shall be registered in the office of the state treasurer and shall bear interest at the rate of five per cent. per annum and said warrants shall be paid by the state treasurer whenever there is sufficient money accumulated in said fund to pay the same, after paying the interest on the bonds issued pursuant to section 1238 of the Revised Codes, and chapter 63, sessions laws of the eleventh legislative assembly. By reason of the delivery of said warrants to the holders of said bonds and the surrender of the said interest coupons, there shall be no default in the payment of interest.

History: En. Sec. 8, Ch. 265, L. 1921.

5589. Moneys, how disposed of. All moneys received from the sale of the bonds authorized by this act shall be paid to the state treasurer and shall constitute a special fund for the purpose of acquiring additional lands to be used as capitol grounds and shall be disbursed by the state

treasurer on warrants properly drawn by the state auditor, pursuant to the order of the state board of examiners.

History: En. Sec. 9, Ch. 265, L. 1921.

CHAPTER 4.

CAPITOL ANNEX BONDS FOR BOARD OF HEALTH BUILDING.

Section 5590. Capitol Annex Bonds for Board of Health Building—Authorization.
5591. Disposal of Bonds.
5592. Capitol Building Interest and Sinking Fund.
5593. State to Be Reimbursed for Interest Paid.
5594. Duties of State Treasurer.
5595. Calling and Payment of Bonds.
5596. Cost of Bonds, How Paid.
5597. Warrants On Interest and Sinking Fund, When Issued.
5598. Credit of State, How Far Liable.
5599. Moneys, How Disposed of.
5600. Erection of Annex—Employment of Architect.
5601. Architect—Plans, Compensation, Bond and Duties.
5602. Superintendent of Construction, Appointment and Duties.
5603. Material, How Procured—Limit of Expenditures.
5604. Time for Completion of Building.
5605. Bills, How Audited and Paid.

5590. Capitol annex bonds for board of health building, authorization. The state board of examiners of the state of Montana are hereby authorized to issue and dispose of bonds for the purpose of erecting an annex to the state capitol building on the state capitol grounds at Helena, Montana, for use as a laboratory and office for the state board of health, under the following conditions and restrictions, to-wit:

First. The aggregate amount of bonds authorized by this act shall not exceed the sum of fifty thousand dollars.

Second. The denomination of each bond shall be one thousand dollars.

Third. The term of said bonds shall not exceed thirty years from their date, and they shall be payable at any time after fifteen years from their date, at the option of the state board of examiners.

Fourth. The bonds may bear any rate of interest not in excess of five per cent. per annum, and the interest may be payable semi-annually.

Fifth. The principal and interest shall be payable at the office of the state treasurer, at Helena, Montana.

Sixth. The state board of examiners shall prescribe the form of the bond, and the bonds shall bear upon their face the words , ''annex issue capitol building bonds of the state of Montana,'' and shall be signed by the members of the state board of examiners, and the great seal of the state of Montana shall be affixed to each bond, and the bonds shall be registered in the office of the state treasurer.

Seventh. The coupons representing the interest on the bonds shall have lithographic facsimile signatures of the members of the state board of examiners affixed thereon.

History: En. Sec. 1, Ch. 194, L. 1919.

5591. Disposal of bonds. The bonds provided for in this act shall be disposed of by the state board of examiners in such a manner as they shall

deem for the best interest of the state, provided that no bond shall be disposed of for less than its par value.

History: En. Sec. 2, Ch. 194, L. 1919.

5592. Capitol building interest and sinking fund. The principal and interest of the bonds authorized by this act shall be paid out of the special fund provided for by section 1240, Revised Codes of Montana of 1907, designated as the "capitol building interest and sinking fund," and from said "capitol building interest and sinking fund" there shall, as the same becomes due and payable, be paid the interest on the said bonds; and it is further provided, that it is the duty of the state board of land commissioners, whenever there are any funds in the said "capitol building interest and sinking fund," over and above the sum of twenty-five hundred dollars in excess of the amount required to pay the yearly interest on the bonds issued pursuant to section 1238 of the Revised Codes of Montana of 1907, known as the "capitol building bonds of the state of Montana," and the interest on the bonds provided for by this act, to invest such excess funds in the manner set forth and provided in section 1241 of the Revised Codes of Montana of 1907, and the amount so invested shall constitute a permanent fund to pay the principal of the bonds issued pursuant to section 1238 of the Revised Codes, and the bonds issued pursuant to this act; but all interest or profit derived from the investment shall be paid into the "state capitol building interest and sinking fund," and the principal and interest of the bonds issued pursuant to section 1238, Revised Codes, shall be a first lien upon said funds and the lands granted and belonging to the state for the purpose of erecting buildings at the state capitol, and the principal and interest of the bonds authorized by this act shall be a second lien upon said funds and all lands granted and belonging to the state for the purpose of erecting buildings at the state capitol.

History: En. Sec. 3, Ch. 194, L. 1919.

Note.—The sections above referred to are omitted from these codes, being no longer a part of the permanent laws of the state.

5593. State to be reimbursed for interest paid. It is hereby provided and set forth that in the event the state of Montana shall at any time provide and pay the interest, or any part thereof, on the bonds authorized by this act from the general fund of the state, or by any special appropriation made, or taxes levied therefor, then for any and all interest so paid the state shall be reimbursed from the said "capitol building and interest and sinking fund" by the payment of the amount so paid or due whenever there is sufficient money in said "capitol building interest and sinking fund" to pay the same, after paying the principal and interest due on the bonds issued pursuant to section 1238 of the Revised Codes of Montana of 1907.

History: En. Sec. 4, Ch. 194, L. 1919.

5594. Duties of state treasurer. The state treasurer is hereby designated as the custodian of the funds provided by this act, and he shall pay all warrant properly drawn by the state auditor, save and except as to the interest on the bonds, which he shall pay as the same become due, and charge the amount thereof to the "capitol building interest and sinking fund" hereinbefore referred to.

History: En. Sec. 5, Ch. 194, L. 1919.

5595. Calling and payment of bonds. Whenever any bonds authorized by this act shall become due and payable, and there is sufficient funds to pay the same, they shall be called in and paid in the order of their issuance, beginning with the lowest number.

History: En. Sec. 6, Ch. 194, L. 1919.

5596. Cost of bonds how paid. The cost and expense of issuing the bonds provided for by this act may be paid out of the proceeds from the sale thereof, or be chargeable to the expenses of the construction of said annex to the capital building.

History: En. Sec. 7, Ch. 194, L. 1919.

5597. Warrants on interest and sinking fund when issued. In the event there shall not at any time be sufficient money in the "capitol building interest and sinking fund" to pay the interest when due, the state board of examiners shall, by an order entered on their minutes or record books, cause warrants to be issued on the said "capitol building interest and sinking fund" for the amount of interest due, and the warrants so issued shall be registered in the office of the treasurer of the state and shall bear interest at the rate of five per cent. per annum, and said warrants shall be paid by the state treasurer whenever there is sufficient money accumulated in said fund to pay the same, after paying the interest on the bonds issued pursuant to section 1238 of the revised codes, and by reason of the delivery of said warrants to the holders of said bonds, and the surrender of the said interest coupons, there shall be no default in the payment of interest.

History: En. Sec. 8, Ch. 194, L. 1919. See note to Sec. 5592.

5598. Credit of state how far liable. Nothing in this act shall be so construed as to in any wise hold the state of Montana liable for the payment of the bonds herein authorized, or the interest thereon, except as to the lien heretofore created against the lands and funds granted for the purpose of erecting buildings at the state capital, and such liens shall not be abridged or set aside until the bonds authorized by this act shall have been fully paid, together with interest thereon, and the governor is hereby especially authorized and empowered to use all lawful means to enforce the provisions of this act.

History: En. Sec. 9, Ch. 194, L. 1919.

5599. Moneys how disposed of. All moneys received from the sale of the bonds authorized by this act shall be paid to the state treasurer, and shall constitute a special fund for the erection of said annex to the state capitol building, and shall be disbursed by the state treasurer on warrants properly drawn by the state auditor, pursuant to the order of the state board of examiners.

History: En. Sec. 10, Ch. 194, L. 1919.

5600. Erection of annex—Employment of architect. Upon the sale of the bonds authorized by this act it shall be the duty of the state board of examiners to secure the erection and completion of an annex to the state capitol building. In furtherance of this purpose said board shall procure plans and specifications in such manner as the board shall direct, under proper and safe conditions. The architect whose plan is selected

as the plan for said annex must be required to furnish full and complete specifications for the erection and heating, lighting and plumbing of the same, with full and complete full-sized drawings and details and working plans so that any capable architect may take the plans, drawings and specifications submitted and erect said annex in accordance therewith. The board may employ, with the consent of the designing architect, any skilled and reputable architect as supervising architect of said annex, if in its judgment the best interests of the state would be subserved thereby.

History: En. Sec. 11, Ch. 194, L. 1919.

5601. Architect—Plans—Compensation, bond and duties. The architect whose plan is selected by the board shall receive such compensation as the board shall deem reasonable. He shall prepare all plans, specifications and details for all contracts for construction and material for said annex, and if employed by the board to superintend the construction of said annex he shall see that all material furnished and work done shall be of the best quality, and that all contracts with the said board are faithfully performed by the parties contracting with said board for work or material. He shall perform all other duties devolving upon him as supervising architect and may be removed at the pleasure of said board. Neither said architect, nor any of his subordinates or assistants shall be in any way connected with any work done or material furnished for said annex, or any contract therefor, or shall have any interest therein, directly or indirectly. He shall furnish bond to the state of Montana in the sum of fifteen thousand dollars, with a fidelity company authorized to do business under the laws of this state, as surety, condition for the faithful performance by said architect, his assistants and subordinates of his and their duties as herein prescribed; provided, that the superintendents and contractors shall be residents of the state of Montana.

History: En. Sec. 12, Ch. 194, L. 1919.

5602. Superintendent of construction, appointment and duties. The board may appoint a specially qualified person to act as superintendent of the construction of said annex. It shall be his duty to see that all contracts made with the board are faithfully performed, that all material furnished and the work done shall be as required by law or the contract therefor, that all duties imposed upon the architect are faithfully performed by him and his subordinates and that no provisions of this act are violated. To report to the board any violation of this act or of any contract or of any duty by any architect, contractor, or employee of said board, and to do such other duties as may be required of him by the board Said superintendent shall receive as his compensation such sum as the board shall deem reasonable, not exceeding ten dollars per day for each and every day he is actually engaged in the performance of his duties. He shall be removed at the pleasure of the board.

History: En. Sec. 13, Ch. 194, L. 1919.

5603. Material, how procured—Limit of expenditure. The board shall procure all material used in the construction of said building from the products of the state of Montana; provided the same is produced in the state of Montana and can be procured as cheaply therein as material of like kind and quality can be procured elsewhere; and, provided,

further, that the total cost of the erection and furnishing of said annex, including steam heating apparatus and other fixtures shall not exceed the sum of fifty thousand dollars, and the board shall at all times have this object in view, and all plans accepted, and all contracts awarded, shall be accepted and awarded only after the board shall be satisfied that the cost of the annex, when it shall be completed and furnished, shall not exceed said sum.

History: En. Sec. 14, Ch. 194, L. 1919.

5604. Time for completion of building. The entire construction and furnishing of said annex shall be completed by the first day of January, 1920; provided, that the bonds provided for in this act shall have been sold in time to enable the commencement of work so as to complete the annex by that date.

History: En. Sec. 15, Ch. 194, L. 1919.

5605. Bills, how audited and paid. All disbursements on account of the erection of said annex shall be made pursuant to the orders of said board. All claims, bills and demands for labor performed or material furnished shall be presented to the board in duplicate, and shall be full itemized, and shall be passed upon by said board only at regular sessions thereof and after careful examination of every item named. If found correct they shall audit the same, preserving one duplicate and transmitting the other to the state auditor, with directions to the state auditor to draw his warrant on the special fund for the erection of the annex to the state capitol building for the amount allowed and to the order of the person named in said order; provided, that no order shall be issued by the state board of examiners in excess of the amount received from the sale of the bonds authorized by this act.

History: En. Sec. 16, Ch. 194, L. 1919.

CHAPTER 5.

EDUCATIONAL BONDS.

Section 5606. Educational Bonds Authorized.
5607. Purpose of Bonds—Series.
5608. Denominations, Interest and Terms of Bonds.
5609. Educational Bonds of the State of Montana.
5610. Bonds, How Disposed of.
5611. Moneys, How Applied and Expended.
5612. Tax Levy for Payment of Bonds and Interest.
5613. Investment of Educational Bonds—Sinking and Interest Fund.
5614. Same—In What Securities Invested.

5606. Educational bonds authorized. The state board of examiners of the state of Montana is hereby authorized, empowered and directed to issue bonds in the name of the state of Montana, in an amount not exceeding five million dollars, in excess of the constitutional limitation of indebtedness and over and above any bonded indebtedness heretofore incurred or created and for which the state of Montana is now obligated. the money derived from the sale of said bonds to be used for the purpose of constructing, repairing, and equipping necessary buildings at the several educational institutions of the state of Montana now under the control of the state board of education, and consisting of the state university at Missoula, the state college of agriculture and mechanic arts at Bozeman,

the Montana state school of mines at Butte, and the Montana state normal college at Dillon, now comprised in the university of Montana, and the state orphans' home at Twin Bridges, the Montana school for the deaf and blind at Boulder, the Montana state industrial school at Miles City, and the state vocational school for girls at Helena.

History: Secs. 5606-5612 were enacted by the people as an initiative measure Nov. 2, 1920; effective under governor's proclamation Dec. 6, 1920.

5607. Purpose of bonds—Series. Such bonds shall be issued in series from time to time, and at such times and in such amounts as may appear to said board of examiners, in the exercise of its judgment and discretion, to be for the best interests of the state and necessary for the erection, repair, and equipment of necessary buildings at the institutions under the control of the state board of education; provided, however, that no series of said bonds shall be issued or sold by the state board of examiners unless the state board of education shall have first determined the necessity therefor and the amount thereof and requested the state board of examiners to issue and sell the same.

History: See history of Sec. 5606.

5608. Denominations, interest, and terms of bonds. Each series of bonds provided for in this act shall be issued in such denominations as may be determined by the state board of examiners at the time the same are authorized to be issued under the provisions of this act, shall bear date as of the day of issuance thereof, shall become due and payable twenty years from their date and be redeemable at the option of the state board of examiners at any time after ten years from their date at any interest paying period, and shall bear interest at the rate of not exceeding five and one-half per centum per annum, payable semiannually, on such dates as may be determined and fixed by the state board of examiners, at the office of the state treasurer of the state of Montana; provided, however, that for each series of said bonds issued after the issuance of the first series thereof, the state board of examiners shall so fix the interest paying dates that the interest thereon will become due and payable on the same dates as the interest on such first series of bonds shall become due and payable, and in order so to do the state board of examiners may provide that the first interest shall be due and payable at a date less than six months after the date of the issuance of such series.

History: See history of Sec. 5606.

5609. Educational bonds of the state of Montana. The state board of examiners shall prescribe the form of such bonds, and the bonds of each series shall bear upon their face the words "educational bonds of the state of Montana," with a letter or figure to designate the series thereof, and shall be signed by the members of the state board of examiners, and the great seal of the state of Montana shall be affixed to each bond, and the bonds shall be registered in the office of the state treasurer. Said bonds shall have interest coupons attached thereto covering the interest due semiannually, which coupons shall be executed with facsimile signatures of all the members of the state board of examiners, and the signing of said coupons with said facsimile signatures shall be recognized as sufficient execution of said coupons on behalf of the state of Montana.

History: See history of Sec. 5606.

5610. Bonds, how disposed of. The bonds provided for in this act shall be disposed of by the state board of examiners in such a manner as they shall deem for the best interests of the state in carrying out the provisions of this act; provided, that no bonds shall be disposed of for less than its par value.

History: See history of Sec. 5606.

5611. Moneys, how applied and expended. All moneys derived from the issuance and sale of the bonds authorized by this act shall be paid into the state treasury, and shall constitute a special fund for the construction, repair, and equipment of necessary buildings at the state university, the college of agriculture and mechanic arts, the Montana state school of mines, and the Montana state normal college, now comprised in the university of Montana, and the state orphans' home, the Montana school for the deaf and blind, the Montana state industrial school, and the state vocational school for girls, and shall be expended only for the construction, repair, and equipment of necessary buildings at said institutions, and shall be disbursed by the state treasurer on warrants properly drawn against such fund by the state auditor pursuant to the orders of the state board of examiners; provided, however, that from the moneys derived from the sale of all of said bonds not more than three million seven hundred and fifty thousand dollars shall be expended for the construction, repair, and equipment of buildings at the several institutions now comprised in the university of Montana, and not more than one million two hundred and fifty thousand dollars thereof shall be expended for the construction, repair, and equipment of necessary buildings at the state orphans' home, the Montana school for the deaf and blind, the Montana state industrial school, and the state vocational school for girls; provided, further, that the money derived from the issuance and sale of any one series of said bonds may be applied wholly to the construction, repair, and equipment of buildings at the institutions now comprised in the university of Montana, or to the construction, repair, and equipment of buildings at the state orphans' home, the Montana school for the deaf and blind, the Montana state industrial school and the state vocational school for girls, or the money derived from any one series of said bonds may be apportioned and part thereof applied to the construction, repair, and equipment of buildings at the institutions now comprised in the university of Montana, and part thereof applied to the construction, repair, and equipment of buildings at said other educational institutions, it being intended that the money derived from the issuance and sale of said bonds shall be expended for the construction, repair, and equipment of necessary buildings at the aforesaid institutions at such times, and in such amounts as the state board of education shall deem necessary, but that when the whole of said amount shall have been expended not more than three million seven hundred and fifty thousand dollars thereof shall have been expended for the construction, repair, and equipment of buildings at the several institutions now comprised in the university of Montana, and not more than one million two hundred and fifty thousand dollars thereof for the construction, repair, and equipment of buildings at the state orphans'

home, the Montana school for the deaf and blind, the Montana state industrial school and the state vocational school for girls.

History: See history of Sec. 5606.

5612. Tax levy for payment of bonds and interest. There shall be and there is hereby levied annually upon all property in the state of Montana subject to taxation, an ad valorem tax of ten-twelfths of one mill on each dollar of the assessed valuation of such property, which tax when collected by the county treasurers of the several counties of the state, shall be by them accounted to and paid into the state treasury of the state of Montana and by the state treasurer placed in the state educational bond sinking and interest fund, which fund shall be used exclusively for the payment of the principal of, and the interest accruing on, said bonds.

History: See history of Sec. 5606.

5613. Investment of educational bonds—Sinking and interest fund. Whenever there are any funds in the state educational bond sinking and interest fund over and above the sum of two thousand dollars in excess of the amount required to pay the next succeeding semiannual instalment of interest on all outstanding bonds, according to their tenor, it shall be the duty of the state board of land commissioners to invest such excess funds in the manner set forth and provided in the following section, and the amount so invested shall constitute a permanent fund to pay the principal of said bonds; but all interest or profit from such investments shall be paid into the said state educational bond sinking and interest fund, and the principal and interest of the said bonds shall be first lien upon said funds.

History: En. Sec. 1, Ch. 83, L. 1921.

5614. Same—In what securities invested. The state board of land commissioners is hereby authorized and directed to invest the permanent fund provided for in the preceding section:

1st. In the state educational bonds; provided, that they can be purchased at a price not exceeding their par value and accrued interest.

2nd. In interest bearing warrants of the general fund of the state.

3rd. In any legally issued bonds of any county, city, town, or school district of the state of Montana; provided, that they can be purchased at a price not exceeding their par value and accrued interest.

In investing such permanent fund, the state board of land commissioners shall give preference to warrants upon the general fund of the state of Montana, if purchasable.

History: En. Sec. 2, Ch. 83, L. 1921.

CHAPTER 6.

THREE MILLION DOLLARS TREASURY CERTIFICATES.

Section 5615. Preamble—Authorization Three Million Dollars Treasury Certificates.
5616. Loan, How Negotiated—Form of Note.
5617. Date of Notes—Interest—Place of Payment.
5618. Board of Examiners to Order Sale—Terms and Conditions of Sale.
5619. Preparation, Form and Execution of Notes.
5620. Appropriation to Pay Notes and Interest—Treasury Note Redemption Fund.
5621. Payment of Notes and Interest After 1921.
5622. Appropriation for Expenses.
5623. Emergency Clause.

5615. Preamble—Authorization three million dollars treasury certificates.

Preamble.

It appearing that there are outstanding and unpaid valid claims chargeable against the general fund of the state of Montana in an amount greatly in excess of the actual cash on hand in said fund available for the payment thereof, and that in addition thereto the current expenses of the state and lawful charges against said fund are constantly accruing in an amount exceeding for the time being and temporarily, the actual cash income of said fund, but that there is outstanding in taxes levied, in addition to revenue constantly accruing to said fund from sources other than taxation, an amount in excess of three million dollars, available for the payment of any warrants, claims or charges against the said general fund immediately upon receipt of the same in cash in the treasury of the state, now, therefore,

Be it enacted by the legislative assembly of the state of Montana:

For the purpose of anticipating the revenue to accrue in the general fund of the state of Montana from taxes levied for the current biennium and thereby advancing the time of payment of the outstanding claims and charges against the said general fund, together with accruing charges, claims and appropriations against said fund, a loan for the use and benefit, and in the name of the state of Montana, in the principal sum of three million dollars, lawful money of the United States of America, is hereby authorized and directed, the proceeds of which said loan shall be deposited in the treasury of the state of Montana in the general fund therein and shall be subject to the appropriations now made or hereafter to be made from or against said general fund and to disposition in like manner as all other moneys accumulating in said fund.

History: En. Sec. 1, Ch. 13, Ex. L. 1921.

5616. Loan, how negotiated—Form of note. Said loan shall be negotiated by the issuance and sale of a series of treasury notes of the state of Montana, all of which, except as to date, interest, rate, number and denominations, shall be substantially in the form following, to-wit:

No..... $.....

United States of America
State of Montana
Treasury Note.

For value received, the state of Montana acknowledges itself to owe, and promises to pay, to bearer, at the office of the treasurer of the state of Montana at Helena, Montana, on the.....day of....., A. D. 19...., the sum of $....., in lawful money of the United States of America, together with interest thereon in like money, at the rate of.....per cent. per annum from the date hereof, interest payable semi-annually on surrender of the appropriate interest coupon hereto attached. This note is one of a series aggregating the principal sum and total par value of three million dollars ($3,000,000.00), which notes are identical in all terms, conditions and respect, save and except as to numbers, dates, denominations, interest rate and maturities. All notes of said series are entitled to payment on maturity in the order of their presentation at the

office of the state treasurer, or at the....., in New York City, but are otherwise entitled to no priority or preference the one over the other, and all are issued in pursuance of and subject to the terms and provisions of Chapter.....of the acts of the seventeenth extraordinary legislative assembly of Montana of 1921 (here inserting the number of the chapter assigned to this act upon its passage and approval).

It is hereby certified, recited and declared that all matters, acts, conditions and things, required by law to make this treasury note a valid, outstanding and binding obligation of the state of Montana, have happened, have been done and have been performed, and the faith and credit of the state of Montana is solemnly pledged for the payment of the same.

In witness whereof, and pursuant to the authority in them, and each of them, vested, and under and by direction of the aforesaid act of the legislature, the members of the state board of examiners of the state of Montana have caused these presents to be executed in the name of the state of Montana and have hereunto affixed their, and each of their, official signatures as members of said board, and the secretary of state of the state of Montana has attested the same by his official signature and the great seal of the state of Montana at Helena, the capital of said state, this .....day of....., A. D. 19....

The State of Montana.
By the State Board of Examiners.

.....
Governor, President of the Board.

.....
Secretary of State, Sec'y of the Board.

.....
Attorney-General, Member of the Board.

Countersigned.

.....
Secretary of State.

On the back of each of said notes shall be printed the following:

"This note registered in my office on this.....day of ....., A. D. 19....

.....
Treasurer of the State of Montana."

Attached to each of said notes shall be two printed, lithographed or engraved interest coupons, numbered one and two, respectively, bearing the lithographed, printed or engraved facsimile signature of the treasurer of the state of Montana, which signature shall bind the state, and providing that the state of Montana will pay to the bearer thereof, on maturity of the coupon, a sum to be expressed in dollars and cents, which sum shall be the amount of interest due on the note to which the coupon is attached at the date of the maturity of the coupon. The coupon numbered one shall mature six months from the date of the issuance of the note to which it is attached and the coupon number two shall mature one year from the issuance of the note to which it is attached.

History: En. Sec. 2, Ch. 13, Ex. L. 1921.

5617. Date of notes—Interest—Place of payment. All the said treasury notes shall bear date on the day they are actually issued and shall be

due and payable not to exceed one year from such date. All said notes and the interest coupons thereunto attached shall be made payable to the bearer at the office of the state treasurer of the state Montana, in Helena, Montana, on maturity, and shall be entitled to payment in the order of their presentation, otherwise without preference or priority one over the other; provided, however, that the state board of examiners may provide that said notes and interest coupons attached thereto shall be payable at some bank or trust company in New York City, to be selected and designated by such state board of examiners. All of said treasury notes issued during the year 1921 shall bear interest at a rate not to exceed seven and one-half per cent. per annum; all said notes issued during the year 1922 shall bear interest at a rate not to exceed seven per cent per annum; all interest shall be payable semi-annually, and each and all of said notes shall be issued subject to the terms and conditions set forth in the form of note hereinbefore set out and to such other and further terms and conditions as are in this act specified and as the state board of examiners shall specify under the authority hereinafter vested in them.

History: En. Sec. 3, Ch. 13, Ex. L. 1921.

5618. Board of examiners to order sale—Terms and conditions of sale. The state board of examiners of the state of Montana are hereby authorized, directed and empowered at any time after the passage and approval of this act, and prior to the close of the fiscal year 1922, in their discretion, by resolution to be entered of record in the minutes of their proceedings, by a majority vote, to order the sale of such amounts of said notes as they deem best, in denominations to suit the purchaser, and at the lowest interest rate obtainable on bids as hereinafter provided, but in no case exceeding the rates hereinbefore prescribed, payable semi-annually; provided, however, that the said board shall not order or permit to be sold during the year 1921 an amount of notes exceeding in their total par value plus interest to date of maturity, the total tax levy in said year for general state purposes, nor shall said board during said year sell or permit to be sold more than one-half of the total treasury notes hereby authorized; and, that further, during the year 1922, the said board shall not order to be sold, nor permit to be sold, an amount of said notes exceeding in total par value, plus interest to date of maturity, the amount of taxes levied in the year 1922 for general state purposes. Immediately upon the passage and adoption by the board of any such resolution, the said board of examiners shall publish for ten days in two daily newspapers of general circulation published in the state of Montana, a notice specifying the notes to be sold, the amount thereof, the place of payment and the maximum interest rate, that the denominations will be made to suit such purchasers, that interest will be payable semi-annually, and asking that bids therefor, specifying, in addition to the price offered, the rate of interest at which the bidder will purchase the said notes and likewise the denominations desired, be submitted to the said board at or prior to the day and hour to be specified in the notice, which time shall not be less than ten days from the publication of the notice. The notice shall also require that each bid be accompanied by certified check in amount to be fixed by the treasurer as guaranty that the bidder will accept the notes in accordance with the terms of his bid,

if it be accepted, and, further, that all bids shall be subject to rejection. At the expiration of the time specified in the notice for receipt of bids, all said bids shall be received by the state board of examiners, and the board may reject any and all bids. The notice shall also require that each bid be accompanied by a certified check in the amount fixed by the board as guaranty that the bidder will accept the notes in accordance with the terms of his bid, if it be accepted. Notice shall also provide that the board shall reserve the right to reject any and all bids at the expiration of the time specified in the notice of receipt of bids. All said bids which have been received shall be considered by said board and the notes sold to the best bidder; provided, always, that no notes shall be sold on any other terms than that of cash and none for less than the par value thereof and accrued interest, if any. And provided, further, that the state board of examiners may, if deemed desirable and to the best interest of the state, sell said notes at private sale. Immediately upon the completion of any sale, the said board shall make a verified return of said sale to the state treasurer, specifying the number of bids received, the maker of each, the amount, interest rate, terms and conditions specified in each, and showing, further, the person to whom said notes were sold and the price, terms and conditions of sale.

History: En. Sec. 4, Ch. 13, Ex. L. 1921.

5619. Preparation, form and execution of notes. Immediately after the sale of all or any instalment of the said notes, the treasurer of the state of Montana is hereby authorized, directed and empowered to cause to be prepared a series of printed, lithographed or engraved treasury notes of the state of Montana in the form hereinbefore set forth, dated as of the date the same are to be issued, numbered consecutively—if it be the first instalment, from one upward, and in case of subsequent instalments, numbered consecutively from the highest number of the last previous instalment—in the denominations and bearing the rate of interest specified in the accepted bid, and with interest coupons thereto attached as hereinbefore described, specifying the amount of interest and the date of maturity in words and figures. Immediately after the preparation of said notes, the same shall be subscribed by the members of the state board of examiners of the state of Montana, in their official capacity and attested by the secretary of state by his official signature and the great seal of the state of Montana, and immediately thereafter the same shall be registered by the treasurer of the state of Montana, in a book to be kept by him for that purpose.

History: En. Sec. 5, Ch. 13, Ex. L. 1921.

5620. Appropriation to pay notes and interest—Treasury note redemption fund. For the purpose of paying the first semi-annual instalment of interest, if any, coming due on said treasury notes, there is hereby appropriated from the general fund for the said purpose, a sum equivalent to the amount of such interest payment, and the state treasurer is directed to pay the coupons representing such interest upon maturity from the said general fund. For the purpose of paying said treasury notes, as the same become due, and of paying interest thereon maturing after the close of the calendar year 1921, there is hereby created in the treasury of the state

of Montana, a special fund to be known as the "treasury note redemption fund," so much of the moneys accruing in the treasury of the state of Montana in the year 1921, from taxes levied for general state purposes as will equal the amount of treasury notes and interest coupons issued and outstanding, and to become due during the year 1922, and so much of the moneys accruing into the treasury of the state of Montana in the year 1922, from taxes levied for general state purposes as will equal the amount of treasury notes and interest coupons issued and outstanding, and to become due in the year 1922 and thereafter, are hereby apportioned to, set apart to, and shall be paid into and transferred to said "treasury note redemption fund," and the said "treasury note redemption fund" and all moneys accruing or to accrue therein are hereby appropriated exclusively to and for the payment of such treasury note and the interest thereon. The appropriation and transfer of said moneys arising from said tax levies for the years 1921 and 1922, as hereinbefore provided, is, and shall be, a claim and charge on said tax money accruing in said year to the "treasury note redemption fund," and, until funds sufficient to pay and discharge all said treasury notes and coupons maturing during any fiscal year have been diverted from said tax moneys, no payment, transfer or disposition of any kind or character shall be made therefrom.

History: En. Sec. 6, Ch. 13, Ex. L. 1921.

5621. Payment of notes and interest after 1921. The treasurer of the state of Montana is hereby authorized, directed and empowered upon maturity of any of the said coupons belonging to said series of notes maturing after the close of the fiscal year 1921, to pay to the bearer thereof, on presentation and surrender of the same at his office, or at the bank or trust company in the City of New York, selected or designated by the state board of examiners, the amount thereof, and, upon maturity of the said notes and each of them, said treasurer is authorized, directed and empowered to pay the principal sum thereof to the bearer upon presentation and surrender of the same at his office, or at the bank or trust company in the City of New York designated by the state board of examiners, all of which payments of notes and coupons shall be made in the order of presentation and all of which, with the exception of instalments of interest falling due during the year 1921 and hereinbefore provided for, shall be paid from the "treasury note redemption fund" and upon the surrender of any coupons or notes, the treasurer shall cancel and mark the same paid.

History: En. Sec. 7, Ch. 13, Ex. L. 1921.

5622. Appropriation for expenses. That for the purpose of paying the expense of making said loan and the preparation and sale of said notes and the registration of the same, and all other incidental expenses in connection with said loan, and the repayment thereof, there is hereby appropriated from any moneys in the general fund of the state of Montana, not otherwise appropriated, the sum of one thousand dollars, or as much thereof as may be necessary.

History: En. Sec. 8, Ch. 13, Ex. L. 1921.

5623. Emergency clause. Whereas, the passage of this act is necessary for the immediate preservation of the public peace, health and safety, an.

emergency is hereby declared to exist and this act shall take effect and be in full force from and after its passage and approval.

History: En. Sec. 10, Ch. 13, Ex. L. 1921.

CHAPTER 7.

WAR DEFENSE BONDS.

Section 5624. Board of Examiners to Borrow Money On Credit of State Appropriation.
5625. Purpose for Which Money Expended.
5626. Applications for Loans, How Made.
5627. Penalty for Misuse of Money.
5628. Purchase of Bonds With Trust Funds of State Forbidden.
5629. Powers of Montana Council of Defense.
5630. Issuance and Term of Bonds—Tax Levy.
5631. Credit of State Pledged.
5632. War Defense Fund.
5633. Fees Not to Be Charged By Public Officers.
5634. Official Bonds Required of Members of Council of Defense.
5635. Accounts to Be Kept.
5636. Reports to Be Made.
5637. Purpose of Act.

5624. Board of examiners to borrow money on credit of state appropriation. The board of examiners of the state of Montana is hereby authorized and empowered to borrow any sum of money in an amount not exceeding five hundred thousand dollars upon the credit of the state of Montana, and there is hereby appropriated five hundred thousand dollars, or so much thereof as may be necessary, out of the receipts of any such loan or loans so made, under the provisions of this act, for the purpose of aiding and assisting the United States in carrying on and prosecuting the war and for repelling invasion and suppressing insurrection.

History: En. Sec. 1, Ch. 21, Ex. L. 1918. Campbell v. Stewart, 54 Mont. 504, 171 Pac. 755, Ann. Cas. 1918D, 1101.
This act is constitutional. State ex rel.

5625. Purpose for which money expended. The money hereby appropriated may be expended by the Montana council of defense, with the approval of the state board of examiners, by loan, for the purpose of encouraging, aiding and assisting those engaged in agricultural pursuits, in procuring seed, in planting, sowing, raising and harvesting crops, and in procuring labor and assistance necessary for such purposes, for the purpose of encouraging, aiding and assisting farmers and stock growers in procuring livestock and feed for the same, and in raising livestock, and in procuring labor and assistance necessary for such purposes, and for the purpose of transporting and aiding and assisting in the transportation and marketing of crops and livestock, to the end that the food supplies of the nation may be sufficient and adequate for the support of its armies, and for all other purposes public exigencies may require for the support, aid and assistance of the United States in carrying on and prosecution of such war.

History: En. Sec. 2, Ch. 21, Ex. L. 1918.

5626. Applications for loans, how made. Any person making application for a loan under the provisions of this law shall make such application in writing, and shall designate in such application the purpose, or purposes, for which the money to be secured is to be used. He shall also

furnish to the Montana council of defense satisfactory proof of the necessity for such loan, and, if the same be for seed grain, that he has land available and in a proper state of cultivation, and has the ability to plant and properly cultivate the same if such seed be obtained.

History: En. Sec. 3, Ch. 21, Ex. L. 1918.

5627. Penalty for misuse of money. Any person who shall make application for, and secure a loan under the provisions of this law, and shall thereafter divert the moneys received under such loan to any purpose not designated in his application therefor, or who shall, after the purchasing of seed, livestock or other property, under the provisions of this law, sell, transfer, take or carry away, or in any manner dispose of the same or the proceeds thereof, without applying the same to the uses and purposes intended, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a term not less than one year nor more than five years, or by a fine not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 21, Ex. L. 1918.

5628. Purchase of bonds with trust funds of state forbidden. No moneys belonging to the state of Montana, or in any of the trust funds belonging to the state of Montana, shall be used in the purchase of the bonds or warrants herein provided for.

History: En. Sec. 5, Ch. 21, Ex. L. 1918.

5629. Powers of Montana council of defense. The Montana council of defense shall adopt such rules and regulations as may be necessary and proper governing the loaning and the expenditure of the money hereby appropriated, and may make and enter into any and all contracts in connection with loans of such money, and may require the execution of all such notes, liens and mortgages to secure repayment of loans as such council may deem necessary and proper; provided, however, that all such contracts, notes, liens and mortgages shall be made payable to the state of Montana, and shall, after being recorded in the proper county of the state, be filed in the office of the state treasurer.

History: En. Sec. 6, Ch. 21, Ex. L. 1918.

5630. Issuance and term of bonds—Tax levy. The board of examiners of the state of Montana is hereby empowered and authorized to issue bonds or warrants in a sum not exceeding five hundred thousand dollars, at an interest-bearing rate not to exceed six per cent per annum, and upon such other terms and conditions as such board may deem wise, proper and necessary to obtain funds sufficient to meet any loans or expenditures made under the provisions of this act; provided, however, that the life of any such bonds issued shall not be greater than five years, and may be redeemed at any interest paying period or within thirty days thereafter.

There is hereby levied upon all property in the state liable to taxation, for the year 1918, an ad valorem tax of one-eighth mill on each dollar of the value of all such property for the purpose of paying the interest on

and to constitute a sinking fund for the redemption of bonds or warrants issued under the provisions of this act.

History: En. Sec. 7, Ch. 21, Ex. L. 1918.

5631. Credit of state pledged. Any debt created under the preceding section shall be binding on the state of Montana, and for the payment thereof, with interest thereon, the faith of the state is irrevocably pledged.

History: En. Sec. 8, Ch. 21, Ex. L. 1918.

5632. War defense fund. The money appropriated by this act shall be by the state treasurer credited to a fund to be known and designated as "the war defense fund," and shall be paid out of said fund by the state treasurer on warrants issued by the state auditor on orders drawn by the Montana council of defense, and approved by the state board of examiners. All moneys becoming due to the state of Montana on contracts, liens, notes and mortgages given to the state of Montana to secure payment of moneys loaned or advanced by the Montana council of defense, shall be paid to the state treasurer, and shall be by such state treasurer placed to the credit of "the war defense fund," and upon full payment of any such contract, note, lien or mortgage, the state treasurer shall make and execute a proper release which shall, after being recorded in the proper county of the state, be filed in the office of the state treasurer, and by the state treasurer attached to the original contract, note, lien or mortgage which is to be released thereby.

History: En. Sec. 9, Ch. 21, Ex. L. 1918.

5633. Fees not to be charged by public officers. No fee of any kind shall be charged by any county or state officer for the recording or filing of any such, contract, note, lien or mortgage, or for the recording or filing of any release thereof.

History: En. Sec. 10, Ch. 21, Ex. L. 1918.

5634. Official bonds required of members of council of defense. None of the powers or authority granted by this act to the Montana council of defense shall be exercised by said council of defense until each of the members thereof shall have given to the state of Montana a bond in the sum of twenty thousand dollars, which said bonds shall be conditioned as provided in section 475 of this code, and approved by the governor and filed and recorded in the office of the secretary of state, and all such bonds shall be subject to all of the provisions of sections 468 to 509, inclusive, of this code, applicable to bonds of state officers; provided, however, that any and all premiums required to be paid for any of such bonds may be paid out of the money appropriated by this act.

History: En. Sec. 11, Ch. 21, Ex. L. 1918.

5635. Accounts to be kept. The Montana council of defense shall keep full, true and correct accounts showing all expenditures made by such council of the money hereby appropriated, and it shall be the duty of the state examiner to examine such accounts.

History: En. Sec. 12, Ch. 21, Ex. L. 1918.

5636. Reports to be made. The Montana council of defense shall make a full, true and correct report to the next regular session of the legislative

assembly for all money expended by such council, which report shall show in detail the amounts expended and the purpose for and the manner in which the same has been expended.

History: En. Sec. 13, Ch. 21, Ex. L. 1918.

5637. Purpose of act. This act and all of its provisions is for the purpose of aiding and assisting the United States in carrying on and prosecuting the war now existing between the United States and the German and Austrian Empires and all other enemies, and to repel invasion and suppress insurrection, and for no other purpose, and upon the termination of such war the power and authority granted by this act to the Montana council of defense to expend the money hereby appropriated shall immediately cease and terminate, and the Montana council of defense shall immediately proceed to close and wind up its affairs and file with the governor a full, true and correct report of all of its acts.

History: En. Sec. 14, Ch. 21, Ex. L. 1918.

CHAPTER 8.

THE MONTANA SOLDIER SETTLEMENT ACT.

Section 5638. Object of Act—How Cited.
5639. Soldier Settlement Board—Creation and Compensation.
5640. Powers and Duties of Board.
5641. Purchase of Lands, How Made.
5642. Board Empowered to Take Title to Lands.
5643. Basis of Co-operation Between State and Federal Government.
5644. Agricultural Training to Be Provided.
5645. Special Districts May Be Organized to Advance Work.
5646. Exercise of Power of Eminent Domain.
5647. Disposal of Lands to Other Citizens, When.
5648. Co-operation With Federal Officers in Reclaiming Lands.
5649. Annual Reports to Governor.
5650. General Powers of Board.
5651. Appropriations When Available.
5652. Effect of Partial Invalidity of Act.

5638. Object of act—How cited. The object of this act is, in recognition of military service, to provide useful employment and rural homes for soldiers, sailors, marines, and others who have served with the armed forces of the United States in the European war or other wars of the United States, including former American citizens who served in allied armies against the Central Powers and have been repatriated, and who have been honorably discharged; and to acomplish such purpose by co-operation with the agencies of the United States there is hereby created a similar character. This act may be cited as "the Montana soldier settlement act."

History: En. Sec. 1, Ch. 201, L. 1919.

5639. Soldier settlement board—Creation and compensation. For co-operation with the agencies of the United States there is hereby created soldier settlement board, hereafter referred to as the board, composed of three members, the attorney-general and state engineer of the state of Montana, who shall serve without pay, and one person to be appointed by the state board of land commissioners, the last named to be chairman of

the board and who shall receive a salary not exceeding forty-five hundred dollars per annum. Said board to be designated as soldier settlement commissioners. All commissioners shall receive all necessary traveling expenses while engaged in such work. The commissioners shall hold office for a term of two years from the time of their appointment. In case of the death or resignation of the chairman of said board, such vacancy shall be filled by appointment by the state board of land commissioners. The attorney-general shall be the legal advisor of the board and prosecute or defend any suit or actions arising out of the discharge of their official duties. The board shall appoint, with the power of dismissal, such employees as it deems necessary, shall fix their salaries and provide for all necessary expenses for carrying out the provisions of this act. Two members shall constitute a quorum which may exercise all the power and authority conferred upon the board.

History: En. Sec. 2, Ch. 201, L. 1919.

5640. Powers and duties of board. The board shall satisfy itself of the practicability of each undertaking, utilizing all state agencies, and thereupon shall co-operate with the authorities of the United States in the preparation of plans for settlement of soldiers. Projects may be undertaken in co-operating with the United States involving reclamation of the lands within the state by drainage, irrigation, and removal of trees and stumps, the building of levees, necessary roads, land leveling, fertilization, sanitation or involving such other means as may be found practicable and desirable to make the lands suitable for agricultural purposes and rural homes. The board is authorized to utilize public lands of the state and to acquire lands which may be deemed suitable for agricultural settlement, together with necessary water right, rights of way, and other appurtenances. When deemed advisable in the discretion of the board and co-operating agencies of the United States, any of said lands may be leased until it may be deemed advisable to sell or use the same. The board may also set aside and dedicate to public use appropriate tracts for roads, school houses, churches or other public purposes. Any lands belonging to the state and deemed by the board suitable for the purposes of this Act shall be available for disposition by the board, and the state land board shall co-operate with the boards in every way necessary to carry out the purposes of this act in regard to such lands. The board is hereby authorized to perform all acts necessary to co-operate fully with the agencies of the United States engaged in work of similar character, and to obtain for the state of Montana the full benefit of the said proposed act of congress.

History: En. Sec. 4, Ch. 201, L. 1919.

5641. Purchase of lands, how made. Whenever the board, in accordance with plans agreed upon with the authorities of the United States, desires to acquire land, it shall give notice by publication in one or more newspapers of general circulation in the state calling for offers from owners of land of the character desired. Such notice shall be published once a week for five consecutive weeks, the last date of publication being not more than one week prior to the date of opening offers, and shall specify the matter which should be incorporated in such offers. After thorough investigation and report as to the character of the lands, rights and appur-

tenances, upon an examination by one or more members of the board, together with a representative of the co-operating agency of the United States, and such experts as may be deemed advisable, and after approval by the attorney-general of the state of the title to lands and water rights or other rights appurtenant thereto deemed essential by the board, and after approval of the purchase by the authorities of the United States and arrangements made by the United States so that the federal government may undertake the reclamation of the lands if necessary and for improvement and subdivision of the lands, the board may recommend the acquirement of the land to the state board of land commissioners, and on the approval by the state board of land commissioners, the lands deemed necessary for carrying out the plans agreed to with the United States, shall be acquired by purchase, gift, or condemnation. Payment, if necessary, shall be made out of the funds provided by the state or by settlers under conditions fixed by agreement between the board and the owners of said lands. The board shall have the discretion to reject any or all offers, to accept offers which may not be the lowest and to re-advertise from time to time as it may deem necessary.

History: En. Sec. 5, Ch. 201, L. 1919.

5642. Board empowered to take title to lands. In co-operating with the agencies of the United States the board is empowered to take title in the name of the state to lands in fee simple, or in trust, or under such other conditions as may be deemed advisable for the purposes of this act, and may convey title thereto or execute such liens as may be necessary for carrying out the plans decided upon in co-operation with the agencies of the United States. The title to the land furnished by the state shall be held by all purchasers under such conditions and restrictions as may be specified in the federal statutes relating to this subject or approved by the secretary of the interior.

History: En. Sec. 6, Ch. 201, L. 1919.

5643. Basis of co-operation between state and federal government. The basis of co-operation between the state of Montana and the United States shall be that the state shall provide the land needed for settlement, and the United States shall provide the money necessary to meet the expenses of reclamation and subdivision, and the necessary improvements and equipment, perform the necessary work, and have charge of all settlement work. The board shall make appropriate arrangements with the agencies of the United States for repayment to the state of the cost of land furnished by the board which may be utilized in providing homes for the soldiers, and all moneys so received or otherwise received by the board shall be turned into the soldier settlement fund, and be available for meeting the obligations of the board on account of the land, and for further expenditures in accordance with the provisions of this act. The moneys so payable to the state shall be collected by federal agencies, and the board may contract with the United States to the end that where disbursements have been made by way of construction costs for the reclamation and improvement of any given land, repayments to the United States on account thereof shall be divided between the federal government and

the state soldier settlement fund in proportion to the disbursements made by the federal agencies and the board, respectively.

History: En. Sec. 7, Ch. 201, L. 1919.

5644. Agricultural training to be provided. The board may provide all necessary means for furnishing agricultural training for the soldiers so as to render him better qualified for the cultivation of the land. The board is authorized to arrange with the agencies of the federal government for sharing in the expense of such work under appropriate conditions of supervision by the federal government.

History: En. Sec. 8, Ch. 201, L. 1919.

5645. Special districts may be organized to advance work. In any case where works have been or are to be constructed which are of general benefit to an area involving a number of farms or allotments, as in the case of irrigation, drainage, clearing cut-over land or other means of reclamation or development, and where the co-operating of federal agencies find that the interest of the project would be advanced by the organization of an irrigation, drainage, conservancy, improvement district or other public corporation, the board shall take all necessary steps in its power to accomplish such organization. The board is authorized to contract with such district or the United States, or both, to carry out any or all provisions of this act.

History: En. Sec. 9, Ch. 201, L. 1919.

5646. Exercise of power of eminent domain. The power of eminent domain shall be exercised by the state for the uses and in the manner provided for in sections 9933 to 9958 of these codes, and amendments thereto, at the request of the board, for the condemnation of property of any kind which may be necessary for carrying out the purposes of this act, and upon request of the board the attorney-general shall promptly initiate and carry on the appropriate proceedings. The board shall have full authority to appropriate water under the laws of the state as may be necessary or desirable for carrying out the purposes of the act.

History: En. Sec. 10, Ch. 201, L. 1919.

5647. Disposal of lands to other citizens, when. Whenever the secretary of the interior and the board shall find out that all or any part of such lands remaining available will not be required for homes for soldiers they may be opened to disposition to other citizens of the United States, subject to the provisions and limitations of this act.

History: En. Sec. 11, Ch. 201, L. 1919.

5648. Co-operation with federal offices in reclaiming lands. In case of any undertaking for the reclamation of lands in two or more states, or any undertaking involving construction works in any state for the drainage, irrigation or reclamation of lands, in whole or in part, in another state, the board is authorized and directed to co-operate with similar boards of the other states and the authorized agents and officers of the United States, and either the United States or the said board of such other state, shall have authority to acquire by condemnation, purchase, or other

lawful means, such property, rights or easements in this state as may be needed for such interstate undertaking, upon the same terms and in like manner as if such undertaking were wholly in this state.

History: En. Sec. 12, Ch. 201, L. 1919.

Note.—Section 13 of Chapter 201 supra, relates to appropriations and is omitted from this code.

5649. Annual reports to governor. The board shall report annually to the governor, giving a full statement of its operation, shall also make investigations regarding the subjects with which it is authorized to deal, and make recommendations for legislation. The board shall furnish copy of its report to the secretary of the interior.

History: En. Sec. 14, Ch. 201, L. 1919.

5650. General powers of board. The board is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect.

History: En. Sec. 15, Ch. 201, L. 1919.

5651. Appropriations, when available. The appropriation herein made for carrying out the purposes of this act shall not be available until and unless the congress of the United States enacts and the president of the United States approves an act providing for the co-operation of the United States in the settlement of soldiers in the state of Montana as provided in this act; any and all salaries or expenses shall begin to run from and after the date of such act and approval.

History: En. Sec. 16, Ch. 201, L. 1919.

5652. Effect of partial invalidity of act. If any part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the particular part thereof directly involved in the controversy wherein such judgment shall have been rendered.

History: En. Sec. 17, Ch. 201, L. 1919.

CHAPTER 9.

EMPLOYMENT OF SOLDIERS AND SAILORS.

Section 5653. Preference of Soldiers and Sailors in Public Employment.
5654. County Clerks to Record Certificate of Discharge.

5653. Preference of soldiers and sailors in public employment. In every public department, and upon all public works of the state of Montana, and of any county thereof, honorably discharged union soldiers and sailors and their widows of the civil war, the Spanish-American war, the Philippine insurrection, and of the late war with Germany and her allies, shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved;

provided, however, that none of the benefits of this act shall accrue to any person who refused to serve on active duty in the military service to which attached or to take up arms in the defense of the United States.

History: En. Sec. 1, Ch. 211, L. 1921.

Constitutionality and intent of veterans' preference laws, see notes in 1 Ann. Cas. 291, 295; 9 Ann. Cas. 1049; Ann. Cas. 1914D, 725; 10 L. R. A. (N. S.) 825.

Discretion of appointing power with respect to appointments under veterans' preference laws, see note in Ann. Cas. 1918B, 999.

5654. County clerks to record certificates of discharge. It shall be the duty of the county clerk of any county of the state of Montana to record, without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged soldier, sailor, or marine who served with the United States forces in any of said wars.

History: En. Sec. 2, Ch. 211, L. 1921.

CHAPTER 10.

VETERANS' WELFARE FUND AND COMMISSION.

Section 5655. Board of Examiners Authorized to Borrow Money.
5656. Bonds or Warrants to Be Issued.
5657. Faith of the State Pledged.
5658. Purpose of Act to Aid Soldiers.
5659. Veterans' Welfare Fund.
5660. Veterans' Welfare Commission.
5661. Disbursement of Money.
5662. Certain Appropriation to Be Returned to General Fund.
5663. Duty of Officers to Aid Veterans' Welfare Commission.
5664. Record and Audit of Expenditures.
5665. Tax Levy to Pay Interest and Redeem Bonds.
5666. Sale of Bonds for Veterans' Welfare Fund.
5667. Disposal of Moneys.
5668. Appropriation.

5655. Board of examiners authorized to borrow money. The board of examiners of the state of Montana is hereby directed, authorized and empowered to borrow any sum of money in an amount not exceeding two hundred thousand dollars upon the credit of the state of Montana, and there is hereby appropriated two hundred thousand dollars, or so much thereof as may be necessary, out of the receipts of any such loan or loans so made, under the provisions of this act, the United States now being at war, to suppress insurrection, repel invasion, defend the state, and to assist in defending the United States.

History: En. Sec. 1, Ch. 105, L. 1919.

5656. Bonds or warrants to be issued. The board of examiners of the state of Montana is hereby empowered and authorized to issue bonds or warrants in a sum not exceeding two hundred thousand dollars, at an interest bearing rate not to exceed five per cent. per annum, and upon such other terms and conditions as such board may deem wise, proper and necessary to obtain money sufficient to meet the purposes of this act; provided, however, that the life of any such bonds issued shall not be greater than ten years, and may be redeemed at any interest paying period or within thirty days thereafter.

History: En. Sec. 2, Ch. 105, L. 1919.

5657. Faith of the state pledged. Any debt created under the preceding section shall be binding on the state of Montana, and for the payment thereof, with interest thereon, the faith of the state is irrevocably pledged.

History: En. Sec. 3, Ch. 105, L. 1919.

5658. Purpose of act to aid soldiers. The purpose of this act is for the encouragement, aid and assistance of soldiers of the United States going to and returning from the war in which the United States is fighting Germany and her allies; to get jobs and employment, to provide for the education, training and comfort, and the physical and material well-being of those who have been in the military and naval service of the United States during the war.

History: En. Sec. 4, Ch. 105, L. 1919.

Validity of statute granting state bounty or aid to war veterans, see note in 1913B, 951.

5659. Veterans' welfare fund. That the money to be derived and appropriated under the provisions of this act shall be known as the veterans' welfare fund, and shall be kept separately as such and credited by the state treasurer to such fund, and be paid out by the state treasurer on warrants issued by the state auditor on orders drawn by the veterans' welfare commission.

History: En. Sec. 5, Ch. 105, L. 1919.

5660. Veterans' welfare commission. There is hereby created a commission to be known as the veterans' welfare commission, to consist of three members who shall be appointed by and removable at the pleasure of the governor. Each commissioner shall serve without compensation, but shall be allowed his necessary expenses. The commission shall organize immediately after its appointment, and select one of its number as chairman and one as secretary, and may employ such persons as necessary to assist in its work, and expend such of the money appropriated by this act as it may deem necessary to carry out the purpose of this act.

History: En. Sec. 6, Ch. 105, L. 1919.

5661. Disbursement of money. It shall be the duty of the veterans' welfare commission to disburse the money appropriated by this act for the purposes enumerated in section 5658 of this code, and for the general welfare of the veterans and the soldiers, sailors and marines of the United States in the war with Germany and her allies, who at the time of their enlistment or induction were bona fide residents of the state of Montana, or who may hereafter become bona fide residents of the state of Montana. The commission may disburse the money provided by this act in such manner and for such purpose as in its judgment will best facilitate and promote the return of such veterans, soldiers, sailors and marines to civil life, and to keep a high morale in the fighting forces of the United States in the war with Germany and her allies, and bring contentment and satisfaction among the people of the state of Montana, and especially among the veterans, soldiers, sailors and marines within the borders of this state, and to promote this end the commission may establish employment agencies, furnish employment, provide for institutions of any sort, assist the United States in any reclamation or reconstruction work that congress may provide for, make grants or loans, or expend such money in any

manner whatsoever for such persons, and the enumeration of specific purposes shall not be construed to exclude other purposes, but the manner in which such funds shall be expended shall be entirely in the discretion of the commission.

History: En. Sec. 7, Ch. 105, L. 1919.

5662. Certain appropriation to be returned to general fund. The commission is hereby ordered and instructed to return to the general fund of the state treasury out of the money appropriated by this act an amount equal to all of the money expended under the authority of house bill No. 262 of the sixteenth legislative assembly.

History: En. Sec. 8, Ch. 105, L. 1919.

Note.—House Bill No. 262 above referred to is an appropriation bill found on p. 595, Laws 1919.

5663. Duty of officers to aid veterans' welfare commission. It shall be the duty of all state, county and municipal officers to render such aid to the veterans' welfare commission as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 9, Ch. 105, L. 1919.

5664. Record and audit of expenditures. The veterans' welfare commission shall keep proper records of all expenditures, which shall be audited by the state board of examiners.

History: En. Sec. 10, Ch. 105, L. 1919.

5665. Tax levy to pay interest and redeem bonds. There is hereby levied upon all property in the state liable to taxation for the year 1919 an ad valorem tax of one-twentieth mill on each dollar of the assessed value of all such property, and there is hereby levied upon all property in the state liable to taxation for the year 1920, an ad valorem tax of one-twentieth mill on each dollar of the assessed value of all such property for the purpose of paying the interest on and to constitute a sinking fund for the redemption of bonds or warrants issued under the provisions of this act.

History: En. Sec. 11, Ch. 105, L. 1919.

5666. Sale of bonds for veterans' welfare fund. The state board of examiners be, and it is hereby authorized and directed to sell the unsold portion of the issue of two hundred thousand dollars of bonds or warrants authorized by chapter 105 of the laws of the regular session of the sixteenth legislative assembly, and to deliver the proceeds derived from the sale of said bonds or warrants to the state treasurer, who is hereby directed to place said moneys in the veterans' welfare fund.

History: En. Sec. 1, Ch. 99, L. 1921.

5667. Disposal of moneys. Whereas, a doubt might be suggested as to whether the appropriation, made by chapter 105 of the regular session of the sixteenth legislative assembly of the two hundred thousand dollars authorized by said chapter to be raised by the sale of bonds or warrants of the state of Montana, will be ineffective under section 12 of article XII of the constitution of Montana, after two years, or will continue of its own force until the expenditure of all of said moneys, or until the purpose of said act has been fully carried out; and,

Whereas, it is the intention of the legislative assembly by this act to make certain the continued availability of the unexpended portion of said two hundred thousand dollars, for the purpose specified in said chapter 105, without in any way or manner limiting the effect of the appropriation contained in said chapter 105 of the said regular session of said sixteenth legislative assembly. Be it further enacted:

That all of the unexpended moneys now remaining in said veterans' welfare fund, and all moneys hereafter derived from the sale of bonds or warrants authorized by chapter 105 of the regular session of the sixteenth legislative assembly, and by the preceding section, be, and they are hereby appropriated for the use of the veterans' welfare commission in carrying out the provisions of said chapter 105 of said regular session of said sixteenth legislative assembly, and the state treasurer is hereby authorized and directed to disburse any moneys now in or hereafter coming into said veterans' welfare fund upon warrants issued by the state auditor under the direction of the state board of examiners for the use of said veterans' welfare commission.

History: En. Sec. 2, Ch. 99, L. 1921.

5668. Appropriation. There be and is hereby appropriated, in addition to the moneys appropriated by the preceding section, the sum of fifty thousand dollars, or so much thereof as may be necessary, out of any moneys in the state treasury not otherwise appropriated, for the use of the veterans' welfare commission in carrying out the provisions of chapter 105 of the regular session of the sixteenth legislative assembly; the moneys appropriated by this section to be used only after the moneys realized from the sale of bonds or warrants of said issue of two hundred thousand dollars authorized by said chapter 105 and by section 5666 of this code shall have been exhausted; and the state treasurer is hereby directed to disburse the moneys appropriated by this section upon warrants issued by the state auditor under the direction of the state board of examiners for the use of said veteran's welfare commission.

History: En. Sec. 3, Ch. 99, L. 1921.

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